

INFRASTRUCTURE AND SERVICE AGREEMENT

THIS INFRASTRUCTURE AND SERVICE AGREEMENT (this "Agreement") made effective this ____ day of _____, 2019 (the "Effective Date").

BETWEEN:

SASKATCHEWAN POWER CORPORATION, incorporated
under *The Power Corporation Act* ("SaskPower")

AND:

CITY OF MOOSE JAW, incorporated
Under *The Cities Act* ("City")

WHEREAS SaskPower is developing a new 350 megawatt net combined cycle gas turbine facility in Moose Jaw, Saskatchewan which it will own and operate for the generation of electricity (the "MJ Project");

AND WHEREAS City has been requested to provide certain services and utilities to the Project essential to its ongoing use and operation;

AND WHEREAS it is anticipated that the MJ Project will have ongoing economic benefits to City;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration now paid and delivered by each Party to the other, the receipt and sufficiency whereof are hereby acknowledged by each Party, the Parties agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, the following words and phrases wherever used (including in all schedules appended hereto), shall have the following meanings, except where the context otherwise requires:

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to either (i) elect a majority of the directors of that Person; or (ii) direct or cause the direction of the

management or policies of that Person, whether through the ownership of securities or partnership or other ownership interests, or by contract, agreement, trust or otherwise;

“Agreement” means this Signed Agreement and all schedules hereto, as amended from time to time, and the expressions “herein”, “hereto”, “hereof”, “hereby”, “hereunder”, and similar expressions referred to in this Signed Agreement or any schedule hereto shall refer to this Signed Agreement and all schedules hereto as so defined and not to any particular article, section, subsection or other subdivision hereof;

“Animal” means a non-human being with a developed nervous system;

“Business Day” means any day other than a Saturday, Sunday or statutory holiday in the Province of Saskatchewan;

“Change in Control” of a Person means and shall be deemed to have occurred at any time when control of the Person is changed, directly or indirectly, whether by merger, amalgamation, arrangement, consolidation, share issuance, share sale or otherwise. For the purposes of this definition, “control”, as applied to any Person, means the possession, directly or indirectly, of the power to either (i) elect a majority of the directors of that Person; or (ii) direct or cause the direction of the management or policies of that Person, whether through the ownership of securities or partnership or other ownership interests, by contract, agreement, trust or otherwise;

“City Engineer” means the Director of Engineering or designate, employed by the City;

“City’s Facilities” means those Facilities for which the City is responsible during the Construction Period and the Supply Period, namely the Water Supply Facilities, Sanitary Waste Facilities and the Storm Water Facilities;

“Claim” or “Claims” means any claim, demand, action, cause of action, proceeding, regulatory investigation or order;

“Confidential Information” has the meaning given to that term in Section 20.1;

“Construction Period” means the period between the Effective Date and the date of the completion of the construction of the Facilities;

“Corstorphine Avenue” means that portion of Corstorphine Avenue from Coteau Street East to the MJ Plant, as more particularly described in Schedule F;

“Direct Costs” means only the actual, direct, out-of-pocket costs necessarily incurred and paid by the City to a third party in good faith in respect of such item in the proper performance of the design, construction and commissioning of the City’s Facilities, such costs (i) not to exceed competitive market rates for similar work in Saskatchewan and (ii) shall not include any amount, mark-up or adjustment for contingency, profit, overhead or general expenses;

provided for greater certainty that “Direct Costs” shall not include:

- (i) any other amount;
- (ii) salaries, benefits, payroll burdens or compensation of any City employee;
- (iii) any compensation paid to contractors or consultants of the City for work that the City has unreasonably contracted out to such contractors or consultants where such work would typically be performed by City employees;
- (iv) travel and subsistence expenses for the personnel described in clause (ii);
- (v) the City’s contingency, profit, markup, overhead or general expenses of any kind;
- (vi) costs arising from the City’s negligence, fraud, gross negligence or willful misconduct or the negligence, fraud, gross negligence or willful misconduct of any contractor or subcontractor of the City;

- (viii) financing costs and premiums for bonds and insurance;
- (ix) adjustments in taxes and duties for which the City is liable;
- (x) rental charges for tools, machinery and equipment owned by the City;
- (xi) costs related to securing easements or rights-of-way for the Facilities; and
- (xii) costs related to or resulting from new or amended bylaws passed by the City following the Effective Date that are not generally applicable to its customers, but not including any new or amended bylaws passed by the City that result from changes to Provincial or Federal legislation.

“Effective Date” means the effective date as shown at the top of the first page of this Agreement;

“Facilities” means the Water Supply Facilities, the Process Water Facilities, the Sanitary Waste Facilities and the Storm Water Facilities.

“Force Majeure” has the meaning given to that term in Section 15.1;

“Good Utility Practice” means recognized practices, methods and courses of action together with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from operators of facilities similar to the Facilities, as applicable, under conditions comparable to those applicable to the Facilities, respectively and as applicable, in light of the known facts or facts which should reasonably have been known at the time, and consistent with applicable Laws, including in all cases the provision of:

- (i) adequate materials;

- (ii) suitable personnel;
- (iii) appropriate operating and maintenance procedures;
- (iv) on-going monitoring and testing of facility performance to ensure compliance with all applicable Laws; and
- (v) safe operating procedures;

and is not restricted to the optimum practice, method or course of action to the exclusion of all others, but rather comprises the spectrum of reasonable practices, methods or courses of action applicable to the circumstances, and having regard to economic considerations;

“Government Authority” means any federal, provincial, or local governments or any of their boards or agencies, or any regulatory authority;

“Grant Funding” means any federal or provincial grant or other third party funding, contribution or reimbursement received by the City for the development of the City’s Facilities;

“GST” means the goods and services taxes imposed under Part IX of the *Excise Tax Act* (Canada);

“Indemnitees” means the Indemnitees as identified and referred to in Section 18.1;

“Indemnitor” means the Indemnitor as identified and referred to in Section 18.1;

“Laws” means all federal, provincial, local and municipal statutes, laws, by-laws, rules, codes, ordinances, requirements, permits, certificates, authorizations, licences, approvals, and regulations in effect from time to time and made or issued by Government Authorities, administrative tribunals, regulatory bodies, or courts having jurisdiction over the Parties, the Facilities or either of them;

“Loss” or “Losses” means injury or death, damage to or loss of property, costs, losses, damages, liabilities, environmental remediation or reclamation costs, fines, interest, penalties, legal fees and expenses arising from any Claim;

“Metering Equipment” has the meaning given to that term in Section 13.1;

“MJ Plant” means the Power Generating Station located at NE 27-16-26 W2M Surface Parcel #203368563 and SE 27-16-26 W2M Surface Parcel #164609275, as may be modified from time to time;

“Oversight Committee” means the committee as constituted pursuant to Section 10.1;

“Operating Requirements” means all requirements imposed by applicable Laws and Good Utility Practice;

“Operating Year” means a twelve (12) month period commencing January 1 and ending on the following December 31 except that the first Operating Year shall commence on the commercial operation date for the MJ Plant and end on December 31 of that year and the last Operating Year shall end at the end of the Supply Period;

“Optional Road” means that road described in Schedule H for which SaskPower may provide a portion of funding to construct, subject to the conditions and obligations in section 7.5;

“Optional Road Funding” has the meaning given to it in section 7.5(a);

“Optional Road Funding Cap” means a value equal to 70% of the Grant Funding attributable to the Waterline, plus 100% of the Grant Funding attributable to the Sewerline, plus 100% of the Grant Funding attributable to the Storm Water Facilities;

“Outage” means any period other than a Scheduled Maintenance Period during which the City’s Facilities are unable to fulfill their applicable function because of:

- (i) the occurrence of any environmental condition, operational condition, component failure, equipment breakdown or similar event that results in or requires any of the City’s Facilities to be removed from service for inspection, repairs and/or replacements to restore normal operability;
- (ii) the occurrence of any interruption of the operation or supply of water being provided by the Buffalo Pound Water Treatment Plant; or
- (iii) a decision by City to shut down (other than for a Scheduled Maintenance Period) any of the City’s Facilities to effect maintenance activities that, in accordance with the Operating Requirements, should not be deferred until the next Scheduled Maintenance Period;

“Parties” means SaskPower and City;

“Party” means SaskPower or City, as applicable;

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, limited liability companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof;

“Personal Information” means personal information as defined in *The Freedom of Information and Protection of Privacy Act* (Saskatchewan);

“Point of Change of Ownership” as it applies to each of the Facilities, means the point as shown in the applicable Schedule for each of the Facilities;

“Process Waste” means the discharge water from the water treatment system at the MJ Plant containing minerals not suitable to be used in the power plant systems;

“Process Waste Line” means the pipeline that transports process waste water from the MJ Plant to the City’s lagoon, further described in Schedule C Process Waste Line and as such Schedule may be revised from time to time by mutual agreement of the Parties, and which shall be and remain for the exclusive use of SaskPower.

“Prohibited Waste” means:

- i) any substance designated as a ‘hazardous substance’ within the meaning of *The Hazardous Substances and Waste Dangerous Goods Regulations*, R.R.S., c. E-10.2 Ref3;
- ii) Sewage waste having a content of BOD greater than 2500 PPM or suspended solids greater than 1500 PPM;
- iii) Used or discarded oil;
- iv) Petroleum or petroleum-contaminated waste;
- v) Gasoline or other combustible liquids;
- vi) Radioactive substances; or
- vii) Contaminated medical waste.

“Project Schedule” means the design, construction and commissioning schedule for each of the Facilities;

“PST” means the provincial sales tax imposed under *The Provincial Sales Tax Act* (Saskatchewan);

“Roads” means the existing and new proposed municipal roadways described in Schedule F, leading to and from the MJ Plant, that will be utilized by SaskPower during the Construction Period for the construction of the MJ Plant.

“Road Construction” mean the development of new Roads or the upgrade of existing Roads to accommodate construction of the MJ Plant.

“Sanitary Waste Facilities” means the pipeline, lift station and related infrastructure that transports sanitary waste from the Point of Change of Ownership identified in Schedule D Sanitary Waste Facilities, to the City’s sewage lagoon, further described in Schedule D Sanitary Waste Facilities and as such Schedule may be revised from time to time by mutual agreement of the Parties,

“SaskPower” means Saskatchewan Power Corporation and its successors and permitted assigns;

“Scheduled Maintenance Period” means any period during which any of the City’s Facilities are, pursuant to Section 10.3 or section 10.4(b), shut down in whole for scheduled maintenance;

“Sewage” means sanitary waste produced at the MJ Plant;

“Sewage & Process Fee” means the City’s published variable sewage rate, applied to a volume of 15% of SaskPower’s actual Water consumption at the MJ Plant during a regular billing cycle;

“Sewage Services” means the discharge and transportation of sanitary waste from the Point of Change of Ownership;

“Sewer and Water Utility Bylaw” means the City of Moose Jaw Sewer and Water Utility Bylaw No. 5152 as amended from time to time.

“Sewerline” means the pipeline discharging Sewage from the MJ Plant, that begins at the Point of Change of Ownership and ends at the City’s tie-in location, further described in Schedule D, as such Schedule may be revised from time to time by mutual agreement of the Parties;

“Signed Agreement” means the main body of the Agreement up to the signature page immediately preceding Schedule A;

“Storm Water Facilities” means the infrastructure that accepts and transports the water discharged from the MJ Plant storm water pond, further described in Schedule E, as such may be revised from time to time by mutual agreement of the Parties;

“Supply Period” means the period that commences on the date that the Construction Period ends, and ends on the date that the MJ Plant ceases operation;

“Vegetation” means trees, plants, grasses and all other organisms of vegetable origin (whether living or dead);

“Water” means treated, potable water delivered to the Point of Change of Ownership described in Schedule B;

“Waterline” means the pipeline supplying treated, potable water to the MJ Plant, that begins at the City’s tie-in location at the intersection of 3rd Avenue NE and Fairford St E in Moose Jaw and ends at the Point of Change of Ownership, further described in Schedule B and as such Schedule may be revised from time to time by mutual agreement of the Parties;

“Waterline Completion Date” has the meaning given to it in section 3.1(h);

“Water Quality Variance” means any time during which the quality of the Water falls below the limits specified in the City’s operating permit or the agreement under which the City obtains its potable water from Buffalo Pound Water Treatment Corporation.

“Water Rate” means the City’s published variable rate for Water consumption, set by the City from time to time.

“Water Supply Facilities” means, without limitation, pumping facilities, reservoirs, metering equipment, the Waterline and any other facilities used for the purpose of supplying Water to SaskPower in accordance with and pursuant to this Agreement.

1.2 Schedules

The Schedules to this Agreement are as follows:

Schedule A	- Construction Guidelines
Schedule B	- Water Supply Facilities
Schedule C	- Process Waste Line
Schedule D	- Sanitary Waste Facilities
Schedule E	- Storm Water Facilities
Schedule F	- Road Construction
Schedule G	- City of Moose Jaw Purchasing Policy
Schedule H	- Optional Road

In the event of any conflict between this Signed Agreement and any Schedule, this Signed Agreement shall prevail.

1.3 Headings

The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 Pro-rating and Adjustment for Partial Periods

Except as otherwise expressly indicated herein, where this Agreement refers to full units and the actual operations result in partial units the principle (to which the Parties hereby agree) is to adjust the values on a pro-rata basis to the extent reasonably possible for the purpose of calculating amounts owing under this Agreement.

1.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein and the Parties shall attorn to the courts of the Province of Saskatchewan.

1.6 Interpretation

In this Agreement except as otherwise provided, or unless the context otherwise requires:

- (a) words like “include”, “includes”, “including”, “specifically” or “particularly” or words of similar import when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or other words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (b) any reference to a statute includes amendments thereto, regulations made pursuant thereto, and to any statute or regulation that supplements, supersedes or replaces same;
- (c) words importing one gender include all other genders, words in the singular include the plural and words importing individuals shall include firms and corporations, and, in each case, vice versa;
- (d) if a word is defined in this Agreement, a derivative of that word shall have a corresponding meaning;
- (e) unless otherwise expressly stated in this Agreement, any consent or approval required pursuant to this Agreement shall not be unreasonably withheld, conditioned or delayed;
- (f) Unless the context otherwise requires or unless otherwise specified: (i) if a reference is made to a Schedule the reference is deemed to be to a Schedule forming part of this Agreement; (ii) if a reference is made in the Signed Agreement to an Article, Section, subsection, clause or subclause the reference is deemed to be to an Article, Section, subsection, clause or subclause in the Signed Agreement; and (iii) if a reference is made in a Schedule to an Article, Section, subsection, clause or subclause the reference is deemed to be to an Article, Section, subsection, clause or subclause in such Schedule; and

2. GENERAL OBLIGATIONS

2.1 Effective Date and Term

- (a) This Agreement shall commence on the Effective Date and shall continue until the end of the last day of the Supply Period unless sooner terminated in accordance with the provisions hereof. The payment obligations and indemnity obligations of either Party outstanding at termination or expiration shall continue until paid and shall survive termination or expiration of this Agreement, and additionally those provisions which are expressly stated to survive termination or expiration of this Agreement shall survive as expressly stated.

2.2 Information

- (a) Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with the Operating Requirements.

2.3 Exceptions to Cost-Share

- (a) Notwithstanding anything to the contrary herein contained, the City and SaskPower agree to equally share any Losses, Claims and costs arising from or related to safety incidents, pre-existing site conditions and environmental liabilities related to the construction of the City's Facilities.

3. WATER SUPPLY FACILITIES

3.1 City Obligations

- (a) City shall design (in accordance with direction and parameters provided by SaskPower, including but not limited to that described in Schedule B Waterline Facilities), construct, commission, operate, maintain and control the Water Supply Facilities in a safe, reliable, expeditious and cost-effective manner and in accordance with this Agreement and the Operating Requirements. The City shall be the owner of the Water Supply Facilities.
- (b) City shall not in any way change, add or reduce the design parameters described in Schedule B Waterline Facilities for the Waterline or Water Supply Facilities without the prior consent of SaskPower, such consent not to be unreasonably withheld.
- (c) City shall get the prior approval of SaskPower for the procurement-related evaluation criteria and selection of all contractors, consultants and engineers related to the design, construction and commissioning of the Waterline, subject to Schedule G City of Moose Jaw Purchasing Policy, as amended from time to time.
- (d) City shall get the prior approval of SaskPower for the design of the Waterline.
- (e) City shall comply with all applicable Laws (including in respect of Vegetation, Animals and environmental permitting) related to the Water Supply Facilities or

the impact of the Water Supply Facilities. Any cost, Claim or Losses related to any breach of or non-compliance with Laws as described in the immediately preceding sentence is the sole responsibility of City.

- (f) City shall procure and maintain in full force and effect all necessary permits, certificates, authorizations, licences and approvals required by all applicable Laws to construct and operate the Water Supply Facilities or which are otherwise required for the performance of City's obligations under this Agreement.
- (g) City shall regularly update SaskPower on the progress of the Waterline during the Construction Period, including but not limited to as described in Schedule A Construction Guidelines.
- (h) City shall use commercially reasonable efforts to complete, or cause to be completed, the design, construction and commissioning of the Waterline by or before September 30, 2021.
- (i) City shall provide SaskPower with information related to any Grant Funding received by the City in relation to the development of the property known as the Moose Jaw Industrial Park, where the MJ Plant will be situate.
- (j) City shall provide SaskPower with sufficient documentation, in the opinion of SaskPower, to verify all actual third party Direct Costs for the design, construction and commissioning of the Waterline prior to invoicing SaskPower.
- (k) City shall be responsible for any costs, expenses and charges in relation to the design, construction and commissioning of the Water Supply Facilities, other than SaskPower's proportional share of the Waterline as described in section 3.2(a).

3.2 SaskPower Obligations

- (a) Subject to sections 2.3, 3.1(j), 3.1(k) and 3.2(b) SaskPower shall pay to City as SaskPower's contribution to the design, construction and commissioning cost of the Waterline, 70 per cent (70%) of the actual, reasonable, verified and documented third party Direct Costs paid by City for the design, construction and commissioning of the Waterline consistent with the design parameters described in Schedule B Waterline Facilities. SaskPower will not contribute to any costs, expenses or charges inconsistent or outside the scope of Schedule B Waterline Facilities.
- (b) Prior to application of the cost-share formula in section 3.2(a), Direct Costs will be reduced by that portion of any Grant Funding, as may be attributable to the Waterline servicing the MJ Plant.

- (c) The City shall invoice SaskPower monthly in arrears for SaskPower's proportionate share of the costs described in section 3.2(a).
- (d) SaskPower is not responsible for any costs or expenses associated with the Water Supply Facilities, except as stated in section 3.2(a).
- (e) SaskPower shall, at SaskPower's own expense, design, construct and commission any water systems required that are to be located between the Point of Change of Ownership and MJ Plant. SaskPower shall be solely responsible for managing usage of all water after the Point of Change of Ownership.
- (f) SaskPower will not install any temporary, permanent or potential water connection that allows or may allow backflow of contaminants, pollutants, infectious agents, other materials or substances that may change the Water quality past the Point of Change of Ownership including but not limited to swivels or changeover devices, removable sections, jumper connections and by-pass arrangements.

4. PROCESS WASTE LINE

4.1 SaskPower Obligations

- (a) At its sole cost and expense, SaskPower shall design (in accordance with direction and parameters provided by City in relation to the process water discharge point described in Schedule C Process Waste Line and in accordance with the City's existing operating permits), construct, commission, operate, maintain and control the Process Waste Line in a safe, reliable and expeditious manner and in accordance with this Agreement and the Operating Requirements. SaskPower shall be the owner of the Process Waste Line.
- (b) SaskPower shall not in any way change, add or reduce the design parameters for the Process Waste Line discharge point without the prior consent of City, such consent not to be unreasonably withheld.
- (c) SaskPower shall comply with all applicable Laws (including in respect of Vegetation, Animals and environmental permitting) related to the Process Waste Line or the impact of the Process Waste Line. Any cost, Claim or Losses related to any breach of or non-compliance with Laws as described in the immediately preceding sentence is the sole responsibility of SaskPower.
- (d) SaskPower shall procure and maintain in full force and effect all necessary permits, certificates, authorizations, licences and approvals required by all applicable Laws to construct and operate the Process Waste Line or which are

otherwise required for the performance of SaskPower's obligations under this Agreement.

- (e) SaskPower will not allow, suffer or permit any Prohibited Waste to enter the City's lagoon.

4.2 City Obligations

- (a) City shall, at City's own expense, design, construct and commission any facilities, equipment or systems required after the process water discharge point identified in Schedule C Process Waste Line.
- (b) City will assist SaskPower in securing easements for the Process Waste Line, at SaskPower's reasonable request. For further certainty, SaskPower shall be responsible for any costs relating to obtaining easements for the Process Waste Line, but SaskPower shall not be obligated to pay or compensate the City for easements on City property or existing rights of way.

5. SANITARY WASTE FACILITIES

5.1 City Obligations

- (a) City shall design (in accordance with direction and parameters provided by SaskPower, including but not limited to that described in Schedule D Sanitary Waste Facilities), construct, commission, operate, maintain and control the Sanitary Waste Facilities in a safe, reliable, expeditious and cost-effective manner and in accordance with this Agreement and the Operating Requirements. The City shall be the owner of the Sanitary Waste Facilities.
- (b) City shall not in any way change, add or reduce the design parameters for the Sanitary Waste Facilities without the prior consent of SaskPower, such consent not to be unreasonably withheld.
- (c) City shall get the prior approval of SaskPower for the procurement-related evaluation criteria and selection of all contractors, consultants and engineers related to the design, construction and commissioning of the Sanitary Waste Facilities, subject to Schedule G City of Moose Jaw Purchasing Policy, as amended from time to time.
- (d) City shall get the prior approval of SaskPower for the design of the Sanitary Waste Facilities.
- (e) City shall comply with all applicable Laws (including in respect of Vegetation, Animals and environmental permitting) related to the Sanitary Waste Facilities

or the impact of the Sanitary Waste Facilities. Any cost, Claim or Losses related to any breach of or non-compliance with Laws as described in the immediately preceding sentence is the sole responsibility of City.

- (f) City shall procure and maintain in full force and effect all necessary permits, certificates, authorizations, licences and approvals required by all applicable Laws to construct and operate the Sanitary Waste Facilities or which are otherwise required for the performance of City's obligations under this Agreement.
- (g) City shall regularly update SaskPower on the progress of the Sanitary Waste Facilities during the Construction Period, including but not limited to as described in Schedule A Construction Guidelines.
- (h) City shall use commercially reasonable efforts to complete, or cause to be completed, the design, construction and commissioning of the Sanitary Waste Facilities by or before September 30, 2021.
- (i) City shall provide SaskPower with sufficient documentation, in the opinion of SaskPower, to verify all actual third party Direct Costs for the design, construction and commissioning of the Sanitary Waste Facilities prior to invoicing SaskPower.
- (j) City shall be responsible for all costs, expenses and charges in relation to the design, construction and commissioning of the Sanitary Waste Facilities and SaskPower shall reimburse the City in accordance with section 5.2(a) herein.

5.2 SaskPower Obligations

- (a) Subject to sections 2.3, 5.1(i), 5.1(j) and section 5.2(b) SaskPower shall pay to City as SaskPower's contribution to the design, construction and commissioning cost of the Sanitary Waste Facilities, one-hundred per cent (100%) of the actual, verified and documented third party Direct Costs paid by City for the design, construction and commissioning of the Sanitary Waste Facilities consistent with the design parameters described in Schedule D Sanitary Waste Facilities. SaskPower will not contribute to any costs, expenses or charges inconsistent or outside the scope of Schedule D Sanitary Waste Facilities.
- (b) Prior to the application of the cost-share formula in section 5.2(a), Direct Costs will be reduced by that portion of any Grant Funding as may be attributable to the Sanitary Waste Facilities servicing the MJ Plant.
- (c) The City shall invoice SaskPower monthly in arrears for SaskPower's proportionate share of the costs described in section 5.2(a).

- (d) SaskPower shall, at SaskPower's own expense, design, construct and commission any facilities required to facilitate the discharge of sanitary waste that are to be located between the Point of Change of Ownership and MJ Plant.
- (e) SaskPower shall be solely responsible for managing usage of all sanitary waste up to the Point of Change of Ownership. SaskPower agrees that it will consult with the City with respect to any surge or storage capacity that may be necessary to support SaskPower's operations in the event that any service interceptions occur, provided that SaskPower will retain final decision making authority in relation to the surge and storage capacity at SaskPower's facilities.
- (f) SaskPower will not allow, suffer or permit any Prohibited Waste to enter the Sanitary Waste Facilities.

6. STORM WATER DRAINAGE

6.1 City Obligations

- (a) City shall design (in accordance with direction and parameters provided by SaskPower, including but not limited to that described in Schedule E Storm Water Facilities), construct, commission, operate, maintain and control the Storm Water Facilities in a safe, reliable, expeditious and cost-effective manner and in accordance with this Agreement and the Operating Requirements. The City shall be the owner of the Storm Water Facilities.
- (b) City shall not in any way change, add or reduce the design parameters for the Storm Water Facilities without the prior consent of SaskPower, such consent not to be unreasonably withheld.
- (c) City shall get the prior approval of SaskPower for the procurement-related evaluation criteria and selection of all contractors, consultants and engineers related to the design, construction and commissioning of the Storm Water Facilities, subject to Schedule G City of Moose Jaw Purchasing Policy, as amended from time to time.
- (d) City shall get the prior approval of SaskPower for the design of the Storm Water Facilities.
- (e) City shall comply with all applicable Laws (including in respect of Vegetation, Animals and environmental permitting) related to the Storm Water Facilities or the impact of the Storm Water Facilities. Any cost, Claim or Losses related to any breach of or non-compliance with Laws as described in the immediately preceding sentence is the sole responsibility of City.
- (f) City shall procure and maintain in full force and effect all necessary permits, certificates, authorizations, licences and approvals required by all applicable

Laws to construct and operate the Storm Water Facilities or which are otherwise required for the performance of City's obligations under this Agreement.

- (g) City shall regularly update SaskPower on the progress of the Storm Water Facilities during the Construction Period, including but not limited to as described in Schedule A Construction Guidelines.
- (h) City shall use commercially reasonable efforts to complete, or cause to be completed, the design, construction and commissioning of the Storm Water Facilities by or before September 30, 2021.
- (i) City shall provide SaskPower with sufficient documentation, in the opinion of SaskPower, to verify all actual third party Direct Costs for the design, construction and commissioning of the Storm Water Facilities prior to invoicing SaskPower.
- (j) City shall be responsible for all costs, expenses and charges in relation to the design, construction and commissioning of the Storm Water Facilities and SaskPower shall reimburse the City in accordance with section 6.2(a) herein.

6.2 SaskPower Obligations

- (a) Subject to section 2.3, 6.1(i), 6.1(j) and section 6.2(b), SaskPower shall pay to City as SaskPower's contribution to the design, construction and commissioning cost of the Storm Water Facilities, one-hundred per cent (100%) of the actual, verified and documented third party Direct Costs paid by City for the design, construction and commissioning of the Storm Water Facilities consistent with the design parameters described in Schedule E Storm Water Facilities. SaskPower will not contribute to any costs, expenses or charges inconsistent or outside the scope of Schedule D Storm Water Facilities.
- (b) Prior to application of the cost-share formula in section 6.2(a), Direct Costs will be reduced by that portion of any Grant Funding as may be attributable to the Storm Water Facilities servicing the MJ Plant.
- (c) The City shall invoice SaskPower monthly in arrears for SaskPower's proportionate share of the costs described in section 6.2(a).
- (d) SaskPower will complete all site grading of its lands as is reasonably required by the City's engineers and applicable Laws that ensures proper overland surface drainage of water. SaskPower site drainage plans must be approved by the City's engineers prior to site grading work being completed. SaskPower will give reasonable notice to the City upon completion of site grading such that the City's engineers may inspect and approve site grading.

7. ROAD CONSTRUCTION

7.1 SaskPower Road Construction

- (a) At its sole cost and expense, SaskPower will perform or cause to be performed, the Road Construction to accommodate construction of the MJ Plant. The scope of the Road Construction will, subject to section 7.1(b) herein, be at the discretion of SaskPower, not expected to exceed a total cost to SaskPower of one million five hundred thousand dollars (\$1,500,000).
- (b) SaskPower shall get the prior approval of the City for the design of the Road Construction.
- (c) To the extent SaskPower receives the benefit of a contractual warranty from contractors in relation to the Road Construction, SaskPower will make commercially reasonable efforts to either have such warranty assigned to the City or to cooperate with the City to submit any applicable warranty claims to the contractor, subject to the contractual terms in place with the contractor.

7.2 Baseline

- (a) Within fifteen (15) days of completion of the Road Construction, the City, SaskPower and the Rural Municipality of Moose Jaw (if any Roads fall within the jurisdiction of the Rural Municipality of Moose Jaw) will conduct a joint assessment of the Roads for the purpose of determining the baseline conditions which are present on, in or under the Roads prior to commencement of the Construction Period and against which impacts of construction activities will be assessed (the "Baseline Conditions") upon completion of the Construction Period. SaskPower and the City will evidence in writing their mutual agreement as to the Baseline Conditions identified in the aforesaid Roads assessment. Notwithstanding, the Baseline Conditions will not apply to Corstorphine Avenue.

7.3 Impact Assessment

- (a) If SaskPower causes any material deleterious impact to the Roads, not including Corstorphine Avenue, during the Construction Period such that and to the extent that such Roads, not including Corstorphine Avenue, falls below the Baseline Conditions, then SaskPower will, at its expense, perform all necessary repairs or maintenance to remediate such impact, provided, however, that:
 - i. SaskPower is relieved of responsibility for the costs of repairs or maintenance pursuant to Section 7.3(a) to the extent that any damage or discrepancy is caused by: (i) normal wear and tear of the Roads; (ii) pre-existing defects or deficiencies in the Roads; (iii)

damage caused by other users of the Roads besides SaskPower and persons for whom it is responsible;

- ii. The City shall, at its option, either: (i) perform the repairs or maintenance to the Roads required pursuant to Section 7.3(a) and be entitled to reimbursement by SaskPower for its actual reasonable costs of doing so; or (ii) elect to have SaskPower perform such repairs or maintenance at its cost;
 - iii. Where the City, pursuant to Section 7.3(a)(ii) elects to self-perform the Roads repairs or maintenance required pursuant to Section 7.3(a), then: (i) SaskPower and the City will jointly review and approve, acting reasonably, the specifications for any contracts awarded by the City to third parties for Roads repair and maintenance; and (ii) SaskPower shall approve in advance the cost estimates of any such Roads repair and maintenance performed by the City;
- (b) Where the City, pursuant to Section 7.3(a)(ii) elects to have SaskPower perform the Roads repairs or maintenance required pursuant to Section 7.3(a), then: (i) SaskPower and the City will jointly review and approve, acting reasonably, the specifications for any contracts awarded by SaskPower to third parties for Roads repair and maintenance; (ii) the City may supervise, at its expense, all Road repair and maintenance work undertaken by or on behalf of SaskPower; and (iii) SaskPower will be responsible for the remediation of any defects or deficiencies in its Roads repair and maintenance carried out pursuant to Section 7.3(a) that arise or are discovered within six (6) months after the end of the Construction Period.
- (c) Following completion of the Construction Period, SaskPower shall have no further obligations in respect of the costs of Roads repair and maintenance set out in Section 7.3(a); other than as set forth in Section 7.3(b)(iii).

7.4 Maintenance

- (a) During the Construction Period and the Supply Period, the City will be responsible for general maintenance of the Roads, including but not limited to, snow removal, dust control and grading of the Roads.
- (b) During the Construction Period, if in SaskPower's opinion, additional grading, snow removal or dust control activities are required on the Roads to accommodate construction activities at the MJ Plant, then SaskPower may supplement such activities at its own cost, to a standard consistent with

applicable road maintenance standards developed by the Ministry of Highways for similar roads.

- (c) During the Supply Period, the City shall, in consultation with SaskPower, take steps to bring a report to the City of Moose Jaw City Council to close those roadway portions of Corstorphine Avenue as may be agreed to by the City and SaskPower. Once such portions of Corstorphine Avenue have been closed as contemplated in this section 7.4(c), the City shall provide SaskPower with a license to access and use portions of Corstorphine Avenue during the Supply Period, the terms and conditions of such license to be as follows (i) portions of Corstorphine Avenue shall be used solely by SaskPower, its agents and contractors, (ii) SaskPower shall undertake any grading, snow removal or dust control activities required on Corstorphine Avenue at SaskPower's own cost and expense, and (iii) such other reasonable terms and conditions that the parties may agree to.
- (d) For greater certainty, the City shall not be obligated to perform regular road maintenance on Corstorphine Avenue once such roadway has been closed from being used by the public in accordance with section 7.4(c).

7.5 Optional Road Construction

- (a) If the City receives Grant Funding, and a portion of such Grant Funding is applied towards the cost-share arrangements for the City's Facilities pursuant to sections 3.2(b), 5.2(b) or 6.2(b) herein, then SaskPower shall contribute an amount up to but not exceeding the Optional Road Funding Cap, toward the Direct Costs incurred by the City to design and construct the Optional Road, subject to prior satisfaction of the conditions described in section 7.5(b) ("Optional Road Funding").
- (b) SaskPower's obligation pursuant to section 7.5(a) is conditional upon the prior satisfaction of the following:
 - (i) SaskPower will only contribute to the City's actual, reasonable, verified and documented Direct Costs paid by the City for the design and construction of the Optional Road. Direct Costs will be reduced by any Grant Funding attributable to the Optional Road prior to any contribution by SaskPower for the Optional Road Funding;
 - (ii) City shall provide SaskPower with sufficient documentation, in the opinion of SaskPower, to verify all actual third party Direct Costs for the design and

construction of the Optional Road prior to invoicing SaskPower for any portion of the Optional Road Funding. SaskPower's obligation to pay any invoice is subject to receipt of satisfactory documentation to verify all actual third party Direct Costs;

- (iii) Under no circumstances will the Optional Road Funding exceed the Optional Road Funding Cap; and
- (iv) Direct Costs for the Optional Road must be incurred and invoiced by the City prior to January 1, 2025. Any Direct Costs incurred or invoiced by the City after January 1, 2025 will not be eligible for the Optional Road Funding;

SaskPower will not contribute any amount to the City for Optional Road Funding unless all of these conditions are satisfied in advance.

- (c) Subject to the prior satisfaction of all conditions contained in section 7.5(b), if on completion of construction, to SaskPower's reasonable satisfaction, of the Optional Road, the amount paid by SaskPower to the City for Optional Road Funding is less than the Optional Road Funding Cap, then upon written request by the City, the Optional Road Funding may be expanded to include other roads in the Moose Jaw Industrial Park, which will be incorporated into Schedule H Optional Road and will remain subject to satisfaction of all of the conditions contained in section 7.5(b). In no event will SaskPower's obligation related to Optional Road Funding exceed the Optional Road Funding Cap.

8. LAND AND PERMITTING

8.1 Building and Development Permits

- (a) City will promptly apply for or issue any development permits and/or building permits required for the Facilities.
- (b) The Parties recognize that good communication, prompt responses and complete documentation will be essential to achieve the construction schedule for the Facilities and undertake and agree to work co-operatively to identify and address any issues that arise with respect to the permit approval process.
- (c) City shall be responsible, at its sole cost, to obtain the necessary easement rights required to construct each of the City's Facilities under this Agreement.
- (d) City shall transfer to SaskPower, easement rights related to the Process Waste Line, if applicable.

8.2 Underground Facilities

- (a) City shall be responsible for and shall pay all costs incurred with the preparation of compliance documentation, reporting, and any other costs associated with maintaining the status of being a participating subscriber in Sask 1st Call.

8.3 Taxes and Grants-in-Lieu

- (a) City acknowledges that SaskPower is exempt from municipal taxes of whatever nature and description in relation to the Facilities or the MJ Project pursuant to Section 4 of *The Power Corporation Act*.
- (b) SaskPower shall not be required to pay City any grants-in-lieu of taxes in relation to the Facilities or MJ Plant.

9. CONSTRUCTION AND COMMISSIONING

9.1 Construction Procedures

- (a) The Parties shall comply with the terms and conditions of Schedule A Construction Guidelines to this Agreement.

10. OPERATION AND MAINTENANCE

10.1 Oversight Committee

- (a) SaskPower and City shall strike a committee (the "Oversight Committee") within sixty (60) days after the Effective Date, consisting of one regular member from each Party and one alternate member from each Party. An alternate member may act in the place of a regular member in the event that the regular member is unable to act. Each of the Parties shall appoint, and shall notify the other, of the identity of its regular and alternate members. Each Party shall make reasonable efforts to maintain continuity of its members on the Oversight Committee and during the Construction Period, neither Party shall replace its members on the Oversight Committee without the consent of the other Party.
- (b) The Oversight Committee shall meet at locations and times to be agreed to, upon the request of either Party. The Oversight Committee shall meet in person at least once each calendar month during the Construction Period and once each calendar year during the Supply Period. Quorum for any Oversight Committee meeting requires two Oversight Committee members.
- (c) The Oversight Committee shall be a forum for the Parties to discuss matters which arise in connection with this Agreement and shall be charged with attempting to resolve disputes referred to it pursuant to Section 16.1(a) of this Agreement.
- (d) The decisions of the Oversight Committee shall be unanimous.

- (e) Each Party shall be responsible for the expenses incurred by its members of the Oversight Committee. Any and all other expenses incurred by the Oversight Committee shall be shared equally by SaskPower and City unless otherwise mutually agreed to in writing.
- (f) The Parties agree that nothing in this Section 10.1 shall be construed as relieving either of the Parties from performing and carrying out any of their covenants, obligations and agreements herein contained, nor shall it be construed as excluding any remedy available to either of the Parties pursuant to this Agreement or at law regarding any matter referred to the Oversight Committee hereunder.
- (g) The Parties agree to cooperate as reasonably required to provide the Oversight Committee any information requested by it for the purposes of this Agreement.

10.2 Maintenance and Replacement

- (a) The City shall be responsible, at its cost, to operate, replace, repair and maintain the City's Facilities during the Supply Period in accordance with Good Utility Practice.
- (b) SaskPower shall be responsible, at its cost, to operate, replace, repair and maintain the Process Waste Line during the Supply Period in accordance with Good Utility Practice.

10.3 Scheduled Maintenance Periods

- (a) Before July 1 of each year during the Supply Period, the Oversight Committee shall develop a proposed schedule of maintenance for the Facilities for whatever ensuing time period the Oversight Committee determines to be appropriate and which is consistent with Good Utility Practice. For greater certainty, the Oversight Committee shall also consider any proposed schedule of maintenance for the Buffalo Pound Water Treatment Plant if such will impact the Facilities.
- (b) A Scheduled Maintenance Period for the City's Facilities shall not exceed more than two (2) days in duration and there will not be more than one (1) Scheduled Maintenance Period during any thirty (30) day period.

10.4 City Outages

- (a) Subject to section 10.4(b), if at any time the City determines, acting in accordance with Good Utility Practice, that any of the City's Facilities require an Outage, City shall notify SaskPower in advance of the nature and likely duration of such anticipated Outage and, if reasonably practicable having regard to the timing required to effect such Outage, work with SaskPower to schedule maintenance as required.

- (b) Subject to section 10.3(b), if the City provides SaskPower with the notice described in section 10.4(a), at least 30 days prior to an Outage, then such Outage will be treated for the purposes of this Agreement, as a Scheduled Maintenance Period as described in section 10.3.
- (c) As soon as reasonably practicable after the occurrence of an unplanned Outage, or as soon as reasonably practicable prior to a planned Outage, City shall provide SaskPower with and in reasonable detail, the reasons for, nature of, proposed start time (where possible) of, and anticipated duration, of the Outage.
- (d) City shall provide SaskPower with prompt updates to any changes in the duration of an Outage. City shall advise SaskPower as soon as reasonably possible prior to an Outage ending, as to the anticipated time that an Outage will end.
- (e) City shall use best efforts to return the City's Facilities to operation as quickly as possible.

10.5 City Facility Service Interruptions – Water Quality

- (a) Subject to the terms of this Agreement, the City will supply SaskPower with access at the Point of Change of Ownership to Water of a quality that meets the limits specified within the City's operating permit, in effect as of the date hereof. SaskPower acknowledges and agrees that the City makes no representation and expressly disclaims any guarantee of the quality of Water, except as expressly stated in this Agreement.
- (b) If at any time the City experiences a Water Quality Variance, the City, upon discovering such Water Quality Variance shall:
 - (i) as soon as is reasonably possible give SaskPower written notice describing the particulars of the Water Quality Variance, including but not limited to the nature of the occurrence and the expected duration of the Water Quality Variance, and continue to furnish timely regular updates with respect thereto during the period of the Water Quality Variance; and
 - (ii) use its best efforts to restore the quality of the Water to limits set forth the City's operating permit as soon as reasonably possible.
- (c) SaskPower acknowledges and agrees that (i) the City will not be responsible for controlling, adjusting, or compensating SaskPower for any quality variations that may occur in the composition of the Water and (ii) the City will not be responsible for any cost or expense that may be required to further treat Water to be used by SaskPower, provided the City has complied with its notice obligations under this section 10.5.

11. WATER SUPPLY, SEWAGE & PROCESS WASTE DISCHARGE

11.1 Title During the Construction Period and the Supply Period

- (a) During the Construction Period and the Supply Period title to, and risk and control of, Water delivered or being delivered to SaskPower shall pass from City to SaskPower at the Point of Change of Ownership.
- (b) During the Construction Period and the Supply Period title to, and risk and control of, Sewage and Process Waste delivered or being delivered to City shall pass from SaskPower to City at the Point of Change of Ownership.

11.2 Purchase and Sale Obligations - Water

During the Construction Period and the Supply Period:

- (a) City shall supply and sell and SaskPower shall receive and purchase, such of the Water from the Water Supply Facilities as may be requested from time to time by SaskPower.
- (b) City shall, at SaskPower's request, subject to the terms of this Agreement, provide a continuous supply of Water to SaskPower to the Point of Change of Ownership in such quantity on a daily basis as SaskPower may require, provided however that City cannot be required to provide more than 500 m³ per day of Water, unless any excess amount can be supplied by City without preventing City from satisfying its other commitments to supply water in which case such excess may be provided by City at SaskPower's request.
- (c) SaskPower shall have no obligation to purchase or take delivery of any minimum amount of Water.

11.3 Priority

- (a) City shall proactively notify SaskPower of any concerns or potential issues related to the reliability of Water supply or Water shortage as soon as reasonably possible.
- (b) City shall treat the Water to be supplied to SaskPower for use at the MJ Plant as part of the supply to critical centres, having priority over residential, commercial and industrial customers, subject only to hospitals and other emergency service centres.

11.4 Sewage & Process Waste Services

During the Construction Period and the Supply Period, subject to the terms of this Agreement:

- (a) City shall continuously supply Sewage Services and Process Waste Services to SaskPower at the MJ Plant in such quantity on a daily basis as SaskPower may require.

12. TARIFFS AND CHARGES

12.1 Tariffs

- (a) Subject to the provisions of this Agreement, SaskPower agrees to pay the Water Rate to the City for the consumption of Water at the MJ Plant, based on the metered flowrate of Water actually used by the MJ Plant.
- (b) Subject to the provisions of this Agreement, SaskPower agrees to pay the Sewage & Process Fee to the City for Sewage Services and for the discharge of Process Waste into the City's lagoon.
- (c) SaskPower agrees to pay the monthly connection fee applied by the City to its customers' Water and Sewer accounts, as determined by the City's applicable bylaws.
- (d) Any amount payable by SaskPower to the City under this Agreement, with the exception of utility payments payable by SaskPower to the City for Water, Sewage and Process Waste, may be set-off by SaskPower against all amounts necessary to reimburse, indemnify or protect SaskPower from any loss or damage resulting from or attributable to the City's breach of this Agreement, or to reimburse SaskPower for any amounts otherwise due and payable by the City to SaskPower under or arising from this Agreement.
- (e) If at any time during the Construction Period or the Supply Period, the City begins to offer a lower rate or rates for the consumption of Water and/or for Sewage Services to industrial or commercial customers, or otherwise offers a discounted rate to high-volume customers, SaskPower shall be entitled to pay such lower rate or rates.
- (f) City's obligations and liabilities and SaskPower's rights pursuant to this Section 12 shall survive termination or expiration of this Agreement.

13. METERING, BILLING AND PAYMENT

13.1 Metering

- (a) City shall supply, install, maintain, and pay for all metering equipment, including flow meters, gauges, monitors, data acquisition and communications equipment,

and associated equipment (collectively, the “Metering Equipment”) which shall be utilized to measure and record the volumes of Water use and discharge of Process Waste at the MJ Plant. The Metering Equipment shall be installed within the potable water building at the MJ Plant. City shall comply with all Laws regarding the supply, installation and maintenance of the Metering Equipment. City shall comply with SaskPower safety policies and procedures when installing or maintaining Metering Equipment at the MJ Plant. The parties agree that the Sewer and Water Utility Bylaw will apply to the inspection, repair and replacement of the Metering Equipment, except to the extent inconsistent with this Agreement, in which case, the terms of this Agreement will take priority.

- (b) If either party has reason to believe that the Metering Equipment may be out of service or in error, the parties shall cooperate to calculate estimated readings utilizing readings from previous periods when the circumstances of the Water use were similar, and the parties agree to follow the testing procedure described in the Sewer and Water Utility Bylaw, provided that either party shall have the right to pursue the dispute resolution procedures outline in Article 16 herein should there be failure to agree on such estimated readings.

13.2 City’s Metering Statement and Billing Statement for Water and Sewage

- (a) City shall prepare and render to SaskPower a regular metering statement and billing statement regarding Water and Sewage from time to time in accordance with City’s typical billing cycle.
- (b) At SaskPower’s prior request, the City will supply SaskPower with the raw meter data for the Metering Equipment for a period of up to twenty-four (24) months prior to the request.
- (c) Each metering statement and billing statement shall, among other things, contain the following information for the billing period:
 - (i) The connection fee, if applicable, for Water and Sewage Services;
 - (ii) The volume charge for Water and Sewage Services/discharge of Process Waste, each as calculated in accordance with this Agreement;
 - (iii) the amount of the actual or estimated consumption on which the charges were calculated;
 - (iv) any other charges due and payable; and
 - (v) any adjustments, credits or other amounts required to be made in accordance with this Agreement.

13.3 Payment Date

The Parties agree that the net amount payable in each of the billing statements rendered by the City, pursuant to Section 13.2, , shall be due and payable by the Party required to make such payment on the date that is the later of (i) the date that is thirty (30) days after the billing statement is rendered and (ii) if the date in (i) is not a Business Day then on the next Business Day, unless the billing statements were issued late in which case the payment date will be extended by one (1) Business Day for each Business Day the billing statement was late. Payments due and owing hereunder shall be paid by electronic funds transfer to a bank account designated to City by SaskPower, or to SaskPower by City, as the case may be. SaskPower shall pay interest at a rate of 1% compounded monthly on all utility accounts over 30 days, unless there is a dispute regarding any part of a billing statement as described in section 13.5.

13.4 Estimates

At the beginning of each calendar year the Parties will use best efforts to agree on a good faith estimate of the projected total usage for Water and Sewage Services by SaskPower during that calendar year to determine an equalized amount payable monthly to the City under the Water Installment Payment Plan Service. SaskPower agrees to pay the equalized amount in each month of the calendar year in accordance with section 13.3. At the end of each calendar year, the City will reconcile the Water and Sewer Services accounts to the actual water consumption based upon the actual meter reading and will adjust, and refund or charge, as the case may be, the correct amount payable based on actual usage.

13.5 Error in Billing Statement or Disagreement as to Amount of Water Supplied

- (a) In the event that an error is found in any billing statement rendered, the necessary adjustment shall be made in the next billing statement. In the event a Party disputes, in good faith, any part of a billing statement (including as to the volume of Water actually received or Sewage actually discharged by SaskPower at the Point of Change of Ownership), such dispute shall be resolved in accordance with the provisions of Article 16. Any payments that result from the resolution of such disputes shall be provided for in the next billing statement following the date of such resolution. Absent manifest error in a billing statement, the Party required to make a payment shall nevertheless pay to the other the amount due as set forth in the billing statement within the time limit specified in Section 13.3.
- (b) Either Party may give written notice to the other Party of an error, omission or disputed amount on a statement within twenty-four (24) months after the statement was first issued together with reasonable detail to support its claim. Except in the case of willful misstatement or concealment, a previously issued statement shall be deemed accurate twenty-four (24) months after it has been issued, unless a Party has issued a written notice of dispute to the other Party in respect of such statement within such twenty-four (24) month period. The

rights, obligations and liabilities pursuant to this Section 13.5 shall survive the termination or expiration of this Agreement.

13.6 Continuous Service

- (a) Except as specifically authorized in this Agreement, the City will continue to supply SaskPower with the services described in this Agreement, notwithstanding any dispute between the parties hereunder.

14. INSURANCE

14.1 Obligations

- (a) City shall maintain the following insurance (and provide SaskPower with a certificate of insurance certifying that the coverage is in effect):

Commercial general liability insurance coverage (including products and completed operations coverage) of \$2,000,000 per occurrence and automobile liability insurance coverage of \$2,000,000 third party liability.

- (b) SaskPower shall maintain the following insurance (and provide the City with a certificate of insurance certifying that the coverage is in effect):

Commercial general liability insurance coverage (including products and completed operations coverage) of \$2,000,000 per occurrence and automobile liability insurance coverage of \$2,000,000 third party liability.

14.2 Terms of Insurance

- (a) The insurance obtained by City pursuant to this Agreement shall be provided in accordance with the following terms and conditions:

- (i) City must provide SaskPower with a duly authorized certificate of insurance certifying that the coverage required by this schedule is in effect and all policies will endeavor to provide SaskPower at least thirty (30) days' written notice of cancellation; and

- (ii) City will be responsible for and shall pay all deductibles, penalties, and adjustments for insurance provided pursuant to this schedule, which expense shall, for greater certainty, be at the cost to City and not reimbursed by SaskPower.

- (b) The insurance obtained by SaskPower pursuant to this Agreement shall be provided in accordance with the following terms and conditions:

- (i) SaskPower must provide the City with a duly authorized certificate of insurance certifying that the coverage required by this schedule is in effect and all policies will endeavor to provide the City at least thirty (30) days' written notice of cancellation; and
- (ii) SaskPower will be responsible for and shall pay all deductibles, penalties, and adjustments for insurance provided pursuant to this schedule, which expense shall, for greater certainty, be at the cost to SaskPower and not reimbursed by the City.

14.3 Obligation to Rebuild

- (a) In the event of any damage to the Facilities, City will, at its own expense (except to the extent that the other Party is liable for such expense or is required to indemnify the Party for such expense pursuant to the terms of this Agreement), and with reasonable promptness, subject to its statutory obligations and applicable Laws, repair, restore or rebuild the Facilities to the extent necessary so that City shall be able to deliver Water, Sewage or other services to SaskPower in the manner required by this Agreement.

15. FORCE MAJEURE

15.1 Events of Force Majeure

For the purposes of this Agreement, "Force Majeure" means, subject to the exclusions set forth in Section 15.2, any event or circumstance not within the control of the Party invoking Force Majeure and, to the extent not within that Party's control, includes:

- (a) hurricanes, tornados, earthquakes, landslides, floods, washouts, natural catastrophes or major storms;
- (b) fires or explosions;
- (c) strikes, lockouts or other labour disturbances;
- (d) civil disturbances, sabotage, war, acts of terror, blockades, insurrections, vandalism, riots, epidemics or pandemics;
- (e) restraints by Government Authorities, not including the City, including but not limited to any restriction or re-allocation of water rights licenses and any restrictions or limitations on the availability of raw water from Buffalo Pound Lake as a result of actions or omissions by Government Authorities other than the City;

- (f) the order of any court or the directive or ruling of any Government Authority other than the City or administrative body; or
- (g) inability to obtain or delay in obtaining or revocation or amendment of any permit, authorization or approval of any Government Authority other than the City required to perform or comply with any obligation under this Agreement, unless the inability, delay, revocation or modification of any such necessary permit, authorization or approval was caused by the breach or violation of the terms thereof or consented to by the Party invoking Force Majeure.

15.2 Non-Availability of Force Majeure

A Party shall not be entitled to invoke Force Majeure or otherwise obtain the benefits of the provisions of this Article 15 under any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure in whole or in material part by its willful act, gross negligence or negligence;
- (b) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by restraint by any Government Authority other than the City or the order of any court and any such restraint or order was the result of a breach by the Party claiming suspension of the term of a permit, license, certificate or other authorization granted by a Government Authority other than the City or regulatory body having jurisdiction or of any applicable Laws
- (c) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by the Party invoking Force Majeure having failed to use all commercially reasonable efforts in accordance with Section 15.3 to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply with such covenants or obligations;
- (d) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by economic hardship, lack of funds or other financial cause for whatever reason affecting the Party invoking Force Majeure or any other Person;
- (e) if the failure to supply Water is due to an Outage, other than an Outage caused by one of the specifically enumerated events or circumstances specified in Sections 15.1(a) through (g), inclusive; or
- (f) if the failure to perform or comply with any of the covenants or obligations herein imposed upon it was caused by the acts or omissions of any direct or

indirect vendor, supplier or contractor of such Party, unless such acts or omissions are themselves caused by reason of Force Majeure, but subject always to the limitations set forth in this Article 15.

15.3 Effect of Force Majeure

- (a) Subject to the provisions of this Section 15.3, Section 15.4 and Section 15.5, if, by reason of Force Majeure either Party is unable, wholly or partially, to perform or comply with its covenants and obligations hereunder, then the Party so affected by Force Majeure shall be relieved of its obligations or liability to the extent contemplated by this Article 15 for failing to perform or comply during the continuance and to the extent of the inability so caused from and after the happening of the event of Force Majeure, provided that the Party invoking Force Majeure gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of such inability and reasonably full particulars of the cause thereof. If notice is not promptly given, then the Party suffering the Force Majeure shall only be relieved from such performance or compliance from and after the giving of such notice. City shall give notice of any Force Majeure affecting City's ability to supply Water by issuing a formal written notice in accordance with Section 23.3.
- (b) The Party invoking Force Majeure shall use all commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply with its covenants and obligations hereunder, provided that the settlement of strikes or lock outs shall be wholly within the sole and unfettered discretion of the Party involved. The Party invoking Force Majeure shall give prompt notice of when the period for which it had invoked Force Majeure has ceased by issuing a formal written notice in accordance with Section 23.3.

15.4 Extended Force Majeure

- (a) Either Party may, in its sole and unfettered discretion, terminate this Agreement by notice to the other Party if the other Party invokes Force Majeure in accordance with this Article 15 for three hundred sixty-five (365) or more consecutive days provided notice is given within ninety (90) days after the right of termination arises.

15.5 Priority

- (a) Notwithstanding anything to the contrary in this Agreement, an event of Force Majeure shall not relieve the City of its obligations under section 11.3.

16. DISPUTE RESOLUTION

16.1 Amicable Resolution

- (a) Any dispute between the Parties which arises in connection with this Agreement shall be referred to the Oversight Committee. In the event a decision of the Oversight Committee cannot be arrived at within a reasonable time from the date the matter was referred to the Oversight Committee, but in no event later than thirty (30) days from such date, either of the Parties may refer the matter to the respective senior officers of SaskPower and City, or their respective designates, who shall endeavor to resolve the dispute. In the event a unanimous decision cannot be arrived at by such senior officers, within a reasonable time from the date the matter was referred to them, but in no event later than thirty (30) days from such date, either of the Parties may resort to litigation unless the Parties agree to arbitration as contemplated by Section 16.2.
- (b) Each Party shall designate a senior officer to address disputes as set forth in Section 16.1(a) and provide the name and contact information of such senior officer within five (5) days after a matter being referred to the respective senior officers.

16.2 Arbitration

Any dispute, claim or difference of opinion relating to this Agreement or any relationship associated with this Agreement that is not resolved pursuant to Section 16.1 shall be referred to the Courts of Saskatchewan; except that, with the agreement of the Parties, the matter may be referred to arbitration and finally resolved by arbitration in accordance with *The Arbitration Act, 1992* (Saskatchewan), in which case the provisions set out in this Article 16 will apply. In arriving at a determination of whether a matter should be resolved by arbitration, the Parties will seek (but will not be bound by) guidance from the Oversight Committee on whether the subject of such matter would be properly the subject of an arbitration proceeding.

16.3 Notice of Arbitration and Appointment

In the event that the Parties agree that arbitration will be used to resolve a dispute, the Parties shall appoint a single arbitrator. Should the Parties be unable to agree upon a single arbitrator within thirty (30) days after their agreeing to submit a matter for arbitration, then either Party may select its own arbitrator and may serve notice upon the other Party to select an arbitrator. Upon receipt of such notice the other Party shall have ten (10) days in which to appoint an arbitrator. The two arbitrators thus selected shall appoint a third arbitrator within ten (10) days after the appointment of the second arbitrator, and the three (3) arbitrators shall constitute a board of arbitrators which shall determine the matter. If either Party shall fail to name an arbitrator within ten (10) days after receipt of a demand to do so, the second arbitrator shall be appointed by

any Justice of the Court of Queen's Bench of Saskatchewan. If the two (2) arbitrators shall fail to appoint the third arbitrator within the prescribed time, then upon written application by either side such third arbitrator shall be appointed by any Justice of the Court of Queen's Bench of Saskatchewan.

16.4 Qualification

Any arbitrator selected pursuant to Section 16.3 must be qualified by education, training and experience to pass upon the particular question in dispute.

16.5 Timing of Decision

The single arbitrator or the board of arbitrators selected or appointed pursuant to Section 16.3 shall promptly proceed to hear and determine the question in dispute. The decision of the single arbitrator or the majority of the board of arbitrators, as the case may be, shall be communicated to the Parties not later than 30 (thirty) days after the close of argument in the arbitration, subject to any reasonable delay due to unforeseen circumstances or as otherwise agreed to by the Parties.

16.6 References to Court

Every submission to arbitration pursuant to Section 16.3 shall contain a provision requiring the arbitrator or board of arbitrators, if so requested by either Party, to state in the form of a special case for the opinion of the Court of Queen's Bench of Saskatchewan any question of law arising in the course of the reference.

16.7 Decision

The decision of the single arbitrator or of the majority of the board of arbitrators, as the case may be, in an arbitration pursuant to Section 16.3 shall be drawn up in writing and signed and shall, notwithstanding anything to the contrary contained in *The Arbitration Act, 1992* (Saskatchewan), as amended or replaced, be final and binding upon the Parties and all Persons claiming through or under them as to any question or questions so submitted to arbitration, and the Parties shall perform and comply with the terms and conditions thereof. Judgment upon the award rendered by the single arbitrator or the majority of the board of arbitrators, as the case may be, may be entered in any court having jurisdiction and thereupon execution or other legal process may issue thereon.

16.8 Costs

Unless otherwise agreed by the Parties, or otherwise determined by the arbitrator or the board of arbitrators, each Party shall bear the costs it incurs in connection with an arbitration pursuant to Section 16.3 and all other costs of the arbitration, including the compensation and expenses of the single arbitrator or the board of arbitrators (unless

otherwise determined by the single arbitrator or the majority of the board of arbitrators), shall be borne equally by the Parties.

16.9 Applicable Law

In all respects not provided for elsewhere in this Article 16, the provisions of *The Arbitration Act, 1992* (Saskatchewan), as amended or replaced, shall apply to any arbitration undertaken hereunder.

16.10 Performance and Payments

Unless and to the extent that either Party reasonably believes that continued performance presents a safety concern or would result in material damage to equipment or such Party's respective facilities, all performance required hereunder by the Parties under this Agreement shall continue during the dispute resolution proceedings contemplated by this Article 16. No payments due or payable shall be withheld on account of a pending dispute or during the resolution of a dispute, provided that in the case of any such proceedings pertaining to amounts payable under this Agreement any payments or reimbursements required as a result of the proceedings shall be effective as of a date to be determined in such proceedings, and the amount of the payment or reimbursement shall be specified in writing by City in the then current billing statement delivered in accordance with Section 13.2.

17. DEFAULT AND TERMINATION

17.1 Default

Without limiting a non-defaulting Party's rights of termination set out in this Agreement (including pursuant to Section 15.4 and this Article 17), if a Party is in default in respect of any of its material obligations under the Agreement, the Party not in default may give a notice of default and may discontinue performance of its obligations thirty (30) days after giving a notice of default if the Party in default has not remedied the default if reasonably remediable within such thirty (30) day period or, if not reasonably remediable within such thirty (30) day period, fails to commence within such thirty (30) day period to take steps to remedy such default and to proceed diligently and as expeditiously as reasonably possible to do so. If performance is discontinued, it shall be resumed as soon as the default is remedied and the Party that was in default gives notice to that effect, provided this Agreement was not already terminated pursuant to Section 15.4.

17.2 Discontinuance by Non-Defaulting Party

The discontinuance of the performance of any of its obligations by a Party not in default that is entitled to discontinue the performance of its obligations under Section 17.1 shall:

- (a) be in addition to any other remedy available to such Party;
- (b) not relieve the Party in default from the performance of the covenants, provisions and conditions contained in this Agreement;
- (c) not relieve the Party in default from the payment of any sums payable under this Agreement;
- (d) not be deemed to be an abrogation or rescission of this Agreement by the Party not in default; and
- (e) not affect the validity of the terms of this Agreement.

17.3 Termination for Cause

A Party not in default of any of its material obligations under the Agreement may, at its sole and unfettered discretion and without limitation to any other remedies it may have, immediately terminate this Agreement by giving the other Party a notice of termination if:

- (a) the other Party is in default of a material obligation of this Agreement, and does not remedy that default within thirty (30) days after having received a notice of default pursuant to Section 17.1 or, if not reasonably remediable within such thirty (30) day period, fails to commence within thirty (30) days to take steps to remedy such default and to proceed (and continue to proceed) diligently and as expeditiously as reasonably possible to do so; or
- (b) the other Party:
 - (i) is bankrupt or insolvent or has committed or suffered any act of bankruptcy or insolvency; or
 - (ii) has made any general assignment for the benefit of its creditors; or
 - (iii) has liquidated itself under the direction of a court or otherwise; or
 - (iv) has commenced proceedings or the passing of an effective resolution for the dissolution, liquidation or winding up of itself.

17.4 Rights and Remedies

Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties specified in this Agreement are cumulative and are not exclusive of any other rights or remedies which the Parties would otherwise have at law or in equity.

18. INDEMNITY, LIABILITY AND DAMAGES

18.1 Indemnity

- (a) Each Party (the "Indemnitor") shall and does hereby indemnify and hold harmless, and at the sole option of the other Party defend, the other Party and its affiliates, directors, officers, employees, agents, contractors, subcontractors, assigns and successors and each of them (collectively, the "Indemnitees"), from and against any and all damages, losses, expenses, or costs incurred by the other Party arising out of, either directly or indirectly, the negligence of the Indemnitor in the performance or non-performance of any of its obligations hereunder.
- (b) City does hereby indemnify and hold harmless SaskPower and its Affiliates, directors, officers, employees, agents, contractors, subcontractors, assigns and successors and each of them in respect of all damage to and Claims against SaskPower directly or indirectly attributed to the operation of the City's Facilities including the delivery of Water, Sewage Services and Process Waste services to SaskPower , other than where and to the extent such damage and Claims are as a result of the negligence or wilful misconduct of SaskPower or its Affiliates, directors, officers, employees, agents, contractors, subcontractors.
- (c)

The Indemnitor's and City's obligations pursuant to this Section 18.1 shall survive termination or expiration of this Agreement.

18.2 Consequential Damages

Notwithstanding any provision of this Agreement, neither Party shall be liable hereunder or under any cause of action whatsoever (founded on contract, tort, gross negligence, negligence, strict liability, indemnity or any other basis) to the other Party for such other Party's consequential damages. These exclusions shall survive the expiration or termination of this Agreement. For greater certainty, nothing in this Section 18.2 is intended to limit a Party's responsibility for direct damages arising out of a breach by such Party of its obligations under this Agreement, including without limitation, SaskPower's responsibility for payment of the tariffs payable to City under this Agreement and City's responsibility to supply Water or Sewage Services under this Agreement. Nothing in this Section 18.2 affects or derogates from SaskPower's right, entitlement and ability to claim and recover consequential damages and any other damages under any insurance maintained by SaskPower.

19. END OF TERM ARRANGEMENTS

19.1 Decommissioning

City retains sole responsibility for the decommissioning of the Facilities and the remediation of any lands impacted by the Facilities and all associated costs and expenses, provided however that such responsibility extends only to the Point of Change of Ownership. City's obligations and liabilities pursuant to this Section 19.1 shall survive termination or expiration of this Agreement.

19.2 Agreement Post-Supply Period

The Parties agree to meet no later than seven (7) years before the end of the Supply Period to discuss the Parties potentially agreeing to extend this Agreement or to enter into a new agreement following the end of the Supply Period, for the ongoing supply of Water and Sewage Services by City to SaskPower for the MJ Plant.

20. CONFIDENTIALITY

20.1 Definition

In this Article 20, "Confidential Information" means the terms and conditions of this Agreement and all knowledge and information concerning the technical, commercial and business operations of each Party, or third party confidential or proprietary information in the custody and control of either Party, which may be acquired by the other Party in the course of negotiation or performance of this Agreement. Notwithstanding anything contained in Sections 20.1 through 20.8, City may be required to disclose Confidential Information pursuant to *The Cities Act* (Saskatchewan) and *The Local Authority Freedom of Information and Protection of Privacy Act* (Saskatchewan) provided that this is not considered a waiver of notice and that City exercises good faith efforts to follow the procedures pursuant to such Act with respect to third party information including, if appropriate and permitted in the circumstances, providing SaskPower with the opportunity to make representations as to why access should not be permitted.

20.2 Obligation to Maintain Confidentiality

- (a) Each Party shall keep all Confidential Information of the other Party strictly confidential and shall only disclose Confidential Information as is required or permitted elsewhere in this Agreement.
- (b) Except as set out elsewhere in this Article 20, without the prior written consent of the other Party, each Party shall not divulge to any third party any Confidential Information.

20.3 Survival and Scope of Confidentiality Obligations

The obligations of each Party under this Article 20 will survive for a period of two (2) years following the termination or expiration of this Agreement and (ii) do not apply to Confidential Information that the recipient Party demonstrates was:

- (a) at the time of its receipt by the recipient Party or thereafter (but prior to its disclosure to a third party), public information or information known generally in the trade due to a reason other than the failure of the recipient Party to comply with this Article 20; or
- (b) in its lawful possession and not supplied by the disclosing Party, prior to the recipient Party's initial receipt hereunder; or
- (c) acquired lawfully by the recipient Party from a third party not under any obligation of confidentiality to the disclosing Party; or
- (d) required by any applicable Laws to be disclosed, provided that: (i) prior to such disclosure, the recipient Party gives notice to the disclosing Party with the full particulars of the proposed disclosure; (ii) the recipient Party only discloses such Confidential Information as it is advised by legal counsel is legally required to be disclosed; and (iii) the recipient Party takes reasonable steps to obtain assurances that confidential treatment will be afforded to the Confidential Information disclosed.

20.4 Need to Know

- (a) Only the employees, servants, agents, advisors, consultants, Affiliates or contractors of each Party or lenders to and potential lenders to or investors in and potential investors in or rating agencies to such Party who have a need to receive Confidential Information for the performance of the Party's obligations under this Agreement or for such Party's internal business use may have access to Confidential Information and, each Party shall cause each such employee, servant, agent, advisor, consultant, Affiliate, contractor lender, potential lender, investor or potential investor to hold Confidential Information under the same or substantially similar obligations of confidentiality imposed by this Article 20. For greater certainty, each Party shall be liable to the other Party for any disclosure of Confidential Information contrary to this Agreement by anyone to whom such Party discloses Confidential Information.
- (b) Notwithstanding the obligations of confidentiality reflected hereunder, SaskPower acknowledges and agrees that City may disclose Confidential Information to the extent required by securities laws or stock exchange disclosure rules applicable to City or any of its Affiliates and, provided it uses reasonable efforts to ensure the Confidential Information remains confidential, to any lender, prospective lender, underwriter, prospective underwriter and to any of their legal advisors in connection with any financing or proposed financing by it or any of its Affiliates.

20.5 SaskPower Exception

Notwithstanding the obligations of confidentiality hereunder, SaskPower may disclose:

- (a) City's name and the annual amount (if any) paid to it by SaskPower under all agreements (as required by Crown Investments Corporation of Saskatchewan (or its successor government department, agency or organization) for the purposes of publishing its annual payee disclosure report);
- (b) any Confidential Information to the Saskatchewan Provincial Auditor for the purposes of complying with *The Provincial Auditor Act* (Saskatchewan), or replacement legislation or to SaskPower's internal or external auditors for the purpose of obtaining proper and complete audits of SaskPower's business and accounting practices provided that prior to disclosure, SaskPower informs the Saskatchewan Provincial Auditor that such information is confidential and has been supplied to SaskPower in confidence and any markings of confidentiality apparent on such information remain;
- (c) any Confidential Information as directed by Crown Investments Corporation of Saskatchewan (or its successor government department, agency or organization) or any committee or advisory body of the Saskatchewan Legislature or Cabinet, including the Saskatchewan Rate Review Panel provided that prior to disclosure, SaskPower informs Crown Investments Corporation of Saskatchewan that such information is confidential and has been supplied to SaskPower in confidence and any markings of confidentiality apparent on such information remain; and
- (d) any Confidential Information as may be required pursuant to *The Freedom of Information and Protection of Privacy Act* (Saskatchewan) provided that this is not considered a waiver of notice and that SaskPower exercises good faith efforts to follow the procedures pursuant to such Act with respect to third party information including, if appropriate and permitted in the circumstances, providing City with the opportunity to make representations as to why access should not be permitted.

SaskPower's rights under this Section 20.5 shall survive the termination or expiration of this Agreement but any obligations imposed on SaskPower pursuant to this Section 20.5 shall only survive to the extent provided for in Section 20.3.

20.6 Notice and Mitigation

In the event the recipient Party becomes aware of a disclosure of Confidential Information that fails to comply with this Agreement, the recipient Party shall promptly:

- (a) give notice to the disclosing Party with the full particulars of the disclosure; and
- (b) take all reasonable steps to mitigate the effects of such disclosure.

20.7 Storage of Personal Information

Notwithstanding any other provision of this Agreement, no Personal Information of any SaskPower personnel or customers acquired by City in the course of the negotiation or performance of this Agreement may be processed or stored outside of Canada by City, or any subcontractor of City, or a third party processor-service provider of City, without the express written consent of SaskPower, which consent may be withheld for any reason.

20.8 Public Announcements

Neither Party shall make any public announcements or issue any press releases regarding this Agreement without the prior written consent of the other.

- (a) The Parties will work together jointly in delivery of any and all media releases and public information.
- (b) Where public consultations are required in relation to MJ Plant, SaskPower, as owner and operator, will lead such discussions and City will reasonably cooperate, assist and support such consultation processes.
- (c) SaskPower's website (www.saskpower.com) will provide information regarding the MJ Project and questions and answers will be updated throughout the process.

21. TAXES

21.1 Taxes

- (a) The tariffs payable pursuant to this Agreement and other amounts payable by either Party hereunder are exclusive of GST and PST or any other sales or value added taxes imposed by Canada or the Province of Saskatchewan. Each Party shall furnish the other Party with billing statements issued pursuant to Section 13.2 and any other information as may be required by applicable Laws as may be required to permit the recipient to recover GST payable by claiming an input tax credit.
- (b) Water, Sewage Service and Process Waste services purchased by SaskPower hereunder is for use in connection with the production of electrical energy.

22. AUDIT

- (a) Upon reasonable prior notice and during ordinary office hours, each Party shall have the right, for a period not exceeding twenty-four (24) months following the delivery of any statement, report, computation or demand made under or pursuant to this Agreement, to audit those records, charts and other technical

records (in mechanical or electronic form) of the other Party at the other Party's principal offices to the extent necessary to verify the accuracy of such statement, report, computation or demand. The Party being audited shall cooperate as reasonably required. Any error or discrepancy in records, charts or other technical records, or in statements prepared based on such material, discovered pursuant to such audit shall be promptly reported in writing to the Party audited, and proper adjustment thereof shall be made on the next applicable statement prepared after final determination of the correct quantities or amounts involved, provided that no adjustment shall be made to correct an error or discrepancy, or in respect of any other amount claimed pursuant to this Agreement, unless the adjustment is requested in writing not later than four (4) months following the completion of the audit giving rise to the request for adjustment.

- (b) Each Party shall keep a record of all statements and charges and necessary data to support such statements and charges made under this Agreement. All such records shall be maintained for a minimum of six (6) years from the date of their preparation. Any such records made by a Party shall remain its property but, upon reasonable notice, the Party shall make available for review in its principal offices those records requested by the other Party, together with calculations therefrom.
- (c) The rights and obligations of the Parties pursuant to this Section 22 shall survive termination or expiration of this Agreement.

23. GENERAL

23.1 Representations, Warranties and Covenants

Each Party makes the following representations, warranties and covenants:

- (a) Such Party:
 - (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was organized, formed, or incorporated;
 - (ii) is qualified to do business;
 - (iii) has the power and authority to:
 - (A) own its properties;
 - (B) carry on business as now being conducted;
 - (C) enter into this Agreement;
 - (D) carry out the transactions contemplated hereby; and

- (E) perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- (b) This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).
- (c) The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.
- (d) Such Party has sought or obtained, or, in accordance with this Agreement will seek to obtain, each consent, approval, authorization, order, or acceptance by any Government Authority in connection with the execution, delivery and performance of this Agreement by such Party that are required by applicable Laws.

23.2 The City represents, warrants and covenants with SaskPower that the City has sufficient capacity and capability within the Water Supply Facilities to provide SaskPower with the supply of Water as provided in this Agreement.

23.3 Notices

Any notices or statements to be delivered or given by either Party to this Agreement must, unless otherwise permitted, be in writing and shall be delivered to the address and to the individual indicated below:

To SaskPower, in respect of metering and billing statements and matters that the Oversight Committee determines are operational in nature:

Saskatchewan Power Corporation
Queen Elizabeth Power Station
PO BOX 1748
Saskatoon, S7M 5V5
Attention: Director, Western Plants
Fax: 306-934-7969

with a copy to:

Saskatchewan Power Corporation
2025 Victoria Avenue
Regina, Saskatchewan
S4P 0S1

Attention: General Counsel
Fax: 306-566-3523

with a copy to:

Saskatchewan Power Corporation
2025 Victoria Avenue
Regina, Saskatchewan
S4P 0S1
Attention: Director, Engineering Services
Fax: 306-566-3219

To City:

City of Moose Jaw
228 Main Street North
Moose Jaw, Saskatchewan
S6H 3J8
Attention: City Solicitor
Fax: 306-694-4528

Either Party may give notice to the other Party hereto in the manner herein provided of a change of address or designation of individual. Any notices personally delivered or delivered by facsimile shall be deemed given when so delivered; and any notices mailed shall be deemed to have been given on the third Business Day after being mailed by registered mail, provided if there is any disruption in postal service, they shall be deemed to have been given and received on the day of actual delivery.

23.4 Entire Agreement

The Parties agree that the Agreement and all schedules and appendices thereto contain the whole agreement between the Parties relating to the subject matter hereof and that there is no representation, warranty, collateral agreement or condition, statutory express or implied, written or oral, including any warranties of merchantability of fitness for purpose, affecting this Agreement other than as expressed in the agreements referenced above.

23.5 Waiver

The Parties agree that any waiver of or non-action with respect to any breach or default of any of the terms or conditions of this Agreement shall not be construed as a waiver of any subsequent or other breach or default.

23.6 Assignment

There shall be no assignment, grant or other disposition of this Agreement, directly or indirectly, by any means whatsoever (including, without limitation, by mortgage, encumbrance, hypothec, grant of security interest, subcontract, sale, merger, consolidation or a Change in Control of a Party, whether voluntary or involuntary), in whole or in part, for the duration of this Agreement except where the consent of the other Party is obtained and where the assignee agrees in writing to be bound by all obligations and liabilities of the assignor under this Agreement.

23.7 Amendment

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by authorized representatives of each of the Parties.

23.8 Currency

References in this Agreement to costs or dollars are to be expressed in Canadian currency.

23.9 Severability

The Parties agree that if any covenant, obligation or agreement of either Party in this Agreement or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent possible.

23.10 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

23.11 Counterpart Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

[Signature Page Follows]

SASKATCHEWAN POWER CORPORATION

By:

Name, Title: Howard Matthews, Vice-President, Power Production

Date



CITY OF MOOSE JAW

By:

Name, Title

Date

Name, Title

Date

SCHEDULE A – CONSTRUCTION GUIDELINES

1. ENGINEERING, PROCUREMENT AND CONSTRUCTION OF THE FACILITIES

1.1 General and Design Requirements for the Facilities

- (a) During the Construction Period, SaskPower shall:
 - (i) have complete control over the proper performance of the work related to the construction of the Process Water Facilities and the Road Construction and all Persons involved in such work, including subcontractors, if any, and shall be entirely responsible for the compliance with this Agreement by all such Persons;
 - (ii) be responsible for the Process Water Facilities and the Road Construction satisfying the requirements set out in this Agreement and in every other manner conforming with this Agreement, including the Operating Requirements;
 - (iii) properly perform and complete the construction of the Process Water Facilities and the Road Construction with diligence, skill and care within the time set forth in this Agreement;
 - (iv) pay and satisfy or cause to be paid and satisfied all proper invoices, claims and accounts of subcontractors, and any and all other Persons employed, directly or indirectly, by SaskPower or its subcontractors in connection with the Process Water Facilities and the Road Construction;
 - (v) pay and satisfy, or cause to be paid and satisfied, all amounts owing to City by SaskPower under this Agreement, whether by way of reimbursement, indemnity, or otherwise; and
 - (vi) do and fulfill all things indicated or reasonably contemplated by this Agreement.
- (b) During the Construction Period, City shall:
 - (i) have complete control over the proper performance of the work related to the construction of the City's Facilities and all Persons involved in such work, including subcontractors, if any, and shall be entirely responsible for the compliance with this Agreement by all such Persons;
 - (ii) be responsible for the City's Facilities satisfying the requirements set out in this Agreement and in every other manner conforming with this Agreement, including the Operating Requirements;

- (iii) properly perform and complete the construction of the City's Facilities with diligence, skill and care within the time set forth in this Agreement;
 - (iv) pay and satisfy or cause to be paid and satisfied all proper invoices, claims and accounts of subcontractors, and any and all other Persons employed, directly or indirectly, by City or its subcontractors in connection with the City's Facilities;
 - (v) pay and satisfy, or cause to be paid and satisfied, all amounts owing to SaskPower by City under this Agreement, whether by way of reimbursement, indemnity, or otherwise;
 - (vi) ensure that the construction of the City's Facilities does not unreasonably disrupt or unreasonably interfere with normal operation of SaskPower's business; and
 - (vii) do and fulfill all things indicated or reasonably contemplated by this Agreement;
- (c) each of the Parties acknowledges and agrees that:
- (i) all drawings and specifications prepared by or on behalf of the City in relation to the City's Facilities, must comply with this Agreement;
 - (ii) unless otherwise stated in this Agreement, all equipment and materials incorporated into the Facilities must be of good quality, new and undamaged;
 - (iii) the Facilities, including all drawings, specifications and all workmanship must be in accordance with the Operating Requirements; and
 - (iv) the Facilities must substantially conform to the requirements of this Agreement and be fit and suited for their respective intended purpose.

1.2 Investigations

- (a) Each party warrants to the other party in relation to each of the Facilities for which it is responsible during the Construction Period, that the party of the first party:
- (i) carefully examined and satisfied itself as to the location of and all conditions relating to the Facilities including accessibility, general character, surface conditions, sub-surface conditions, utilities, roads, uncertainty of seasonal weather and all other physical, topographical or geographical conditions;

- (ii) carefully examined all information relevant to the risks, contingencies and other circumstances having an effect on its obligations under this Agreement which is obtainable by making reasonable inquiries;
- (iii) carefully examined and satisfied itself as to all Laws applicable to the Facilities that might affect its obligations under this Agreement regarding the construction of the Facilities; and
- (iv) entered into this Agreement based upon its own investigations, examinations and determinations, including assessments of any risks that could have an effect on its obligations under this Agreement.

1.3 Risk of Loss During the Construction Period

- (a) At all times during the Construction Period, City shall bear the risk of loss and damage to and be responsible for the City's Facilities and all tools, equipment and materials used in the construction of the City's Facilities.
- (b) At all times during the Construction Period, SaskPower shall bear the risk of loss and damage to and be responsible for the Process Water Facilities and the Road Construction and all tools, equipment and materials used in the construction of the Process Water Facilities and the Road Construction.

1.4 Protection of Property

- (a) During the Construction Period, should the City, or any person acting at the direction or request of City, or any person for whom City is responsible, damage the Facilities or SaskPower's property, City shall reimburse, indemnify and save harmless SaskPower for any costs reasonably and necessarily incurred by SaskPower to make good such damage. City's obligations and liabilities pursuant to this Section 1.4(a) of this Schedule A shall survive termination or expiration of this Agreement.

2. PROGRESS REPORTING AND DELAYS

2.1 Project Schedule

- (a) The City shall provide to SaskPower for its prior approval, a project schedule for each of the City's Facilities, taking into consideration all completion dates for the City's Facilities agreed to herein.
- (b) The City shall perform the work for which it is responsible hereunder continuously and with due diligence in accordance with the Project Schedule agreed to with SaskPower, as may be adjusted from time to time in accordance

with this Agreement, so that each schedule milestone will be timely achieved. For greater certainty, the balance of this subsection 2.1(b) of this Schedule A does not in any way modify the time by which the completion dates must be achieved. The Project Schedule shall be periodically (but at least monthly) updated and delivered to SaskPower, for SaskPower's review and comment. If the Project Schedule shows an expected delay in achieving any completion date agreed to herein, by more than ten (10) days after the completion date, the City shall provide an explanation for the delay and submit a plan (in a level of detail reasonably requested by SaskPower) to remedy such delay to achieve the completion date. If a delay cannot be recovered with commercially reasonable efforts, the City's plan shall demonstrate that the City has control of the delay and has mitigated against further delays.

2.2 Periodic Project Reports

During the Construction Period, the City shall provide to SaskPower monthly brief written status reports on the construction and installation of the City's Facilities. The status report shall include such information and be in such form as may be reasonably required by SaskPower, including as to the progress of construction and a progress update for the following requirements:

- (i) the Project Schedule;
- (ii) an overview of any issues that may materially impact project schedule or scope;
- (iii) an update on any material landowner issues; and
- (iv) the projected date by which the City's Facilities will be substantially completed.

2.3 Verification of Project Reports

SaskPower, shall have, at any time and from time to time during the Construction Period, upon reasonable prior notice to the City and after complying with all site safety and security requirements, the right to access, itself or by or through its designated employees or agents, at its own risk, the City's Facilities and all supporting project documentation, including but not limited to contractor and subcontractor schedules, plans, change orders and other project documentation, for the purpose of verifying the project reports given pursuant to Section 2.1 of this Schedule A and the City's compliance with the terms of this Agreement.

2.4 Construction Meetings

The City will provide reasonable prior notice to SaskPower of all construction meetings with contractors and subcontractors in relation to the construction of the City's

Facilities. SaskPower will have the option to attend any construction meetings between the City and its contractors or subcontractors in relation to the construction of the City's Facilities during the Construction Period.

2.5 Time for Review/Approval

If either party is provided a review or approval right under this Agreement, the party will use best efforts to do so within two (2) calendar weeks of its receipt of all relevant documentation necessary for the review or approval.

SCHEDULE B – DESCRIPTION OF WATER SUPPLY FACILITIES

SCHEDULE C – PROCESS WASTE LINE

SCHEDULE D – SANITARY WASTE FACILITIES

SCHEDULE E – STORM WATER FACILITIES

SCHEDULE F – ROAD CONSTRUCTION