

**APPENDIX F**  
**DRAFT REGIONAL SERVICES AGREEMENT**

**DRAFT**  
**REGIONAL WASTEWATER TREATMENT AGREEMENT**

*[Please note that the monetary numbers appearing in this draft agreement are based on the preliminary design and thus have to be revised after detail design, tender closures and completion of construction respectively.]*

This AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2013.

BETWEEN:

THE CITY OF WINKLER  
A Municipal Corporation  
In the Province of Manitoba  
(hereinafter referred to as the "City")  
OF THE FIRST PART

- and -

THE RURAL MUNICIPALITY OF STANLEY  
A Municipal Corporation  
In the Province of Manitoba  
(hereinafter referred to as the "RM")  
OF THE SECOND PART

- WHEREAS:
- a) The City owns and operates wastewater transmission and treatment facilities located within the Province of Manitoba as shown on Schedule A.
  - b) The parties hereto desire to provide environmental stewardship through the delivery of efficient, cost-effective and equitable wastewater transmission and treatment.
  - c) The City and RM desire to enter into a twenty five (25) year wastewater transmission and treatment agreement under which the City will receive Wastewater from the RM and transport the same to the Wastewater Treatment Facility for treatment and discharge.
  - d) City Facilities will provide wastewater transmission and treatment services for Schanzenfeld & Reinfeld, which are outside the City boundaries.

**THEREFORE in consideration of the covenants and agreements contained herein, the parties covenant and agree as follows:**

**1. Definitions**

- “City Facilities”** shall mean those wastewater transmission and treatment facilities owned and operated by the City as they are described on a map attached as Schedule A.
- “City Cost Recovery”** shall mean the cost recovery established for the transmission and treatment portion of wastewater discharged to the City system by the RM as approved by City Council and in accordance with Sewers Use Bylaw as indicated in Schedule B.
- “Connection Point”** shall mean the points of delivery from the RM that connect to the **City Facilities** at Lift Station #8.
- “Contributing Area”** shall mean the areas serviced by the City as outlined in the attached Schedule A.
- “Level of Service”** for each party shall mean:  
Average Dry Weather Flow: City – 10,300 m<sup>3</sup>/day  
RM – 1,150 m<sup>3</sup>/day  
Peak Wet Weather Flow: City – 15,700 m<sup>3</sup>/day  
RM – 2,300 m<sup>3</sup>/day
- “Wastewater”** means the composite of water and water carried wastes from residential, commercial, industrial or institutional premises or any source.
- “Water Quality Parameters”** shall mean **Wastewater** directed to the **City Facilities** by the City and RM and shall be governed by the following Schedules:
- Restricted Wastes Applicable to Sanitary Sewers, attached as Schedule C.
  - Prohibited Wastes, attached as Schedule D.

**2. Duration and Termination**

- 2.1 This Agreement shall commence on the date of this Agreement and shall remain in force until the expiry of 5 years from the date that one party has provided written notice to the other that it wishes to terminate this Agreement (provided that such written notice can not be given prior to January 1, 2035).
- 2.2 The parties agree to begin negotiations no later than January 1, 2035 to discuss future regional **Wastewater** transmission and treatment and the subsequent extension of this Agreement.
- 2.3 Upon full and timely satisfaction of all requirements of this Agreement by the City, the City will be obligated to provide transmission via Lift Station #8 and treatment and disposal services for the RM upon the terms and conditions set forth in this Agreement.

### 3. Connection Point/Contributing Areas

- 3.1 The parties agree that the **Contributing Area** cannot be unilaterally altered by one party. All changes to the **Contributing Area** must be by mutual consent. No party shall unreasonably withhold approval of a change in the **Contributing Area**.
- 3.2 There are essentially two service areas: an “Outside Service Area” which are the two villages of the RM, ie Schanzenfeld and Reinfeld, which are properties located outside of the City boundaries, and the “Inside Service Area” which are those properties located within the City boundaries.
- 3.3 RM Facilities
- 3.3.1 The RM may cause, and the City shall permit, **Wastewater** from the RM **Contributing Area** to flow into the **City Facilities** at the **Connection Point**.
- 3.3.2 The RM may construct, or may cause to be constructed, **Wastewater** transmission facilities for this purpose within the boundaries of the City.
- 3.3.3 Ownership of all facilities so constructed shall remain with the RM.
- 3.3.4 All facilities constructed by, or on behalf of the RM, within the boundaries of the City, pursuant to this Agreement, shall be constructed in compliance with the City Design and Construction Standards, applicable at the time of construction, whether such standards be enacted by Bylaw, Department Policy or otherwise.
- 3.4 City Facilities
- 3.4.1 The City may construct, or retrofit or upgrade **Wastewater** transmission facilities to connect the RM Facilities.
- 3.4.2 Ownership of all facilities so constructed, retrofitted or upgraded, shall remain with the City.

### 4. Schedules and Servicing Standards

- 4.1 The following Schedules are an integral part to this agreement:
- Schedule A – Contributing Area
  - Schedule B – Cost Recovery
  - Schedule C – Restricted Wastes Applicable to Sanitary Sewers
  - Schedule D – Prohibited Wastes
  - Schedule E – Flow Metering
  - Schedule F – Wastewater Source Control
  - Schedule G – Arbitral Procedure
- 4.2 The amendment of schedules in this Agreement shall be at the administrative level, defined as the “City Manager” for the City and the “Chief Administrative Officer” for the RM.
- 4.3 Peak **Wastewater** flows discharged from the RM’s facilities to the City’s shall be in compliance with the **Level of Service**.
- 4.4 The **Wastewater** flows from the RM may not exceed twice the peak wet weather flow as indicated under the **Level of Service**.

- 4.5 Should the **Wastewater** flows from the RM exceed twice the peak wet weather flow, the rate as determined by the rate formula will be multiplied by a factor of two (2) for the quarter under consideration.
- 4.6 The City and the RM shall be liable to each other for all peak weather flows that substantially exceed the **Level of Service** and causes damages, expense and loss to **City Facilities** on account of physical damage caused by **Wastewater** flows.
- 4.7 The **Level of Service** shall be reviewed at least every 5 years, starting 5 years after commissioning, and amended as mutually agreed.
- 4.8 The City will operate the Wastewater Treatment Facility in conformity with the Environment Act License to be issued or issued by Manitoba Conservation and Water Stewardship. Within such requirements, the City shall retain full discretion to determine the method and manner of its operation of the Wastewater Treatment Facility.
- 4.9 The City shall submit to the RM on or before March 1 of each year, a report showing: (a) the aggregate annual flow data to the Wastewater Treatment Plant, including a breakdown of flow generated by all City Users and the flow generated by all RM Users for the previous calendar year ended December 31; and (b) the annual operation and maintenance costs of the Wastewater Treatment Plant for the same period. Additionally, the City shall copy the RM on any correspondence received from or sent to Manitoba Conservation and Water Stewardship.

## 5. Joint Planning and Future Expansion

- 5.1 All **City Facilities** planned and constructed by the City shall be supportive of municipal growth in the **Contributing Area**.
- 5.2 The City shall design and construct facilities to accept growth in flows in the **Contributing Area**, as long as that growth is at the **Level of Service**.
- 5.3 The parties shall meet annually to discuss relevant planning principles including:
  - 5.3.1 The parties will together plan, review, and update capital programs that impact the facilities jointly used.
  - 5.3.2 Timing of capital projects will support the needs of both parties within the **Contributing Area**.
  - 5.3.3 Planned projects will have a funding program in place in advance of the need.
  - 5.3.4 Planning principles can be negotiated by mutual agreement of both parties at any time.
- 5.4 The parties shall meet annually to discuss relevant **Wastewater** source control, flows and other operational planning issues.
- 5.5 The parties agree to maintain a Coordinating Committee comprised of two elected officials. Membership will be confirmed annually by each party. The Coordinating Committee shall meet at the call of either party.
- 5.6 In the event that an Expansion Project or a Capital Improvement Project is required, the cost sharing will be determined on the same basis as indicated under Schedule B. It shall apply to any capital project or projects required to be undertaken to expand, replace or make necessary repairs to the Wastewater Transmission and Treatment Facilities, including

but not limited to: improvements required when the facilities exceed 85% of its hydraulic or organic capacity or:

- Manitoba Conservation & Water Stewardship requiring the facilities to be replaced or modified,
- functional obsolescence of the facilities, or
- necessary repairs to the facilities.

5.7 The parties acknowledge and agree that expansion of the transmission and treatment facilities shall refer to any capital project required to increase the capacity of the facilities, based on growth within the service areas or any area annexed to the City on any date following the effective date of this Agreement. The City and the RM shall share the costs of any expansion based on their respective share of flows and organic loads on the basis as indicated under Schedule B, by comparing the rate of growth within the service area which occurs after the date of mutual execution of this Agreement.

5.8 The City owns, operates and maintains the transmission and treatment facilities at its sale cost and expense, for the benefit of the City and RM, in accordance with applicable standards, policies, rules and regulations of the City which may be amended from time to time. The City will retain complete ownership and control of the facilities at the completion of any required expansion or capital improvement project, and shall continue to be solely responsible for the maintenance and operation thereof.

5.9 By execution of this Agreement, the Parties acknowledge that on expansion or capital improvement project may be required at some point in the future.

5.10 The City shall have full authority of all designs, construction criteria, processes and detail of any expansion or capital improvement project.

## 6. Sampling/Metering Station

6.1 The City shall construct and maintain **Wastewater** sampling and a metering station at the **Connection Point**. The **Wastewater** sampling and metering station shall be constructed and maintained so as to be reasonably safe for the entry of personnel; and so as to comply with all applicable safety legislation, regulations, bylaws or orders of any governmental body or agency possessed of relevant jurisdiction.

6.2 Both the City and the RM, together with their employees and agents, shall have access to the **Wastewater** sampling and metering station.

6.3 All **Wastewater** flows shall be continuously metered as shown in Schedule E at the sampling station referred to in Clause 6.1 herein.

## 7. Permitted Waste

7.1 Neither party may discharge or cause or permit to be discharged into the sewer system any substance which will or may:

7.1.1 have an adverse affect upon the **City Facilities**;

7.1.2 adversely affect the proper, safe, and efficient operation of the **City Facilities**;

7.1.3 impair or interfere with any transmission and treatment process, or any part thereof;  
or

- 7.1.4 be or become a hazard or a threat to persons, animals, personal property or real property
- 7.2 The RM shall not release or permit the release of any matter containing a hazardous waste into a sanitary sewer. "Hazardous waste" means any hazardous substance disposed of or to be disposed of as waste, as set out in Provincial regulations.
- 7.3 Wastewater monitoring and enforcement shall be governed by the **Wastewater** Source Control, attached and forming Schedule F.

**8. Rates and Payment Due Date/Interest**

- 8.1 Rates and Payments are defined in Schedule B.
- 8.2 All rates and other payments to be made to the City shall be due and payable by the RM to the City thirty (30) days following the date upon which an invoice for such payment is received. Interest upon any amounts remaining due and unpaid beyond the said thirty (30) days shall be calculated and paid at 3% per annum compounded annually on any outstanding balance.

**9. Dispute Resolution**

9.1 Negotiation and Meditation

- 9.1.1 The City and the RM agree to use their best efforts to resolve any disputes arising between them as efficiently and cost effectively as possible.
- 9.1.2 At all relevant times, the City and the RM shall:
  - 9.1.2.1 make bona fide efforts to resolve all disputes by amicable negotiations, and
  - 9.1.2.2 provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.
- 9.1.3 The City and the RM agree that any efforts to resolve their dispute by amicable negotiation or with the assistance of a mediator, does not suspend the expiration of any time limitation for taking any act under the Agreement unless the parties have specifically agreed in writing to waive or vary that time requirement.

9.2 Notice of Dispute

- 9.2.1 If a party determines that the dispute will not be resolved through negotiation and mediation pursuant to Clause 9, then they may provide a notice to the other party either:
  - 9.2.1.1 requiring the dispute to proceed to a Referee pursuant to Clause 9, or
  - 9.2.1.2 requiring the other party (the "Receiving Party") to provide, within 7 days a written notice requiring the dispute to proceed to a Referee. In the event that the Receiving Party does not provide a written notice to proceed to a Referee within 7 days, the dispute shall be at an end for all purposes.
- 9.2.2 If notice is given to proceed to a Referee in accordance with Clause 9.2.1, the parties shall appoint a Referee for review of the decision according to Section 9.3, with a Referee agreeable to both parties.

### 9.3 Referee's Review

- 9.3.1 Each party shall put forth one candidate each for the Referee position. The parties shall then agree to select one of the candidates. If no agreement can be reached, each party shall submit one additional candidate for consideration. This process shall continue until the parties agree to the selection of the Referee. The selection of the Referee shall be completed in a period of thirty (30) days or the dispute shall be at end for all purposes.
- 9.3.2 Within fifteen (15) working days after the Referee provides notice to the parties that the Referee is prepared to commence the review, the party providing the notice to proceed to the Referee (the "Applicant") shall deliver to the Referee and the disputing party (the "Disputant"):
- 9.3.2.1 a written summary of the facts, information and arguments, and
  - 9.3.2.2 copies of all the documents on which the Disputant intends to rely.
- 9.3.3 Within fifteen (15) working days after the Disputant receives the submissions referred to in Clause 9.3.2, the Disputant shall deliver to the Referee and the Applicant:
- 9.3.3.1 a written summary of the facts, information and arguments, and
  - 9.3.3.2 copies of all the documents on which the Disputant intends to rely.
- 9.3.4 Within thirty (30) working days of receipt of the Disputant's documentation, the Applicant shall have an opportunity to retract the referral to the Referee prior to the Referee giving a decision on the matter. Even if the Applicant retracts its referral, the Disputant or the Applicant may be responsible for costs and expenses incurred, which decision is at the Referee's discretion.
- 9.3.5 The Referee may:
- 9.3.5.1 require the parties to supply the Referee with any further written explanations or documentation the Referee considers necessary, giving each party an opportunity to respond;
  - 9.3.5.2 on written application made before the Referee makes its decision, allow a party to submit additional written information or documentation which was not available when the original submission was made under Clauses 9.3.2 and 9.3.3, giving the other party an opportunity to respond; or
  - 9.3.5.3 on written application, extend the time for making a submission under Clauses 9.3.2 or 9.3.3 in circumstances the Referee considers appropriate.
- 9.3.6 The Referee shall conduct a review, with an oral hearing of the dispute, taking into account:
- 9.3.6.1 the submissions of the parties pursuant to Clauses 9.3.2 and 9.3.3; and
  - 9.3.6.2 any information obtained under Clause 9.3.5, and the terms of the Agreement.
- 9.3.7 Not later than thirty (30) working days after receipt of the last documentary submission under Clause 9.3.5, the Referee shall make a written decision, with reasons, which may confirm or vary the decision of the disputing party or substitute



another decision. The Referee's decision is final and binding on the parties unless the decision is referred to Arbitration within the time permitted in Clause 9.4.

9.3.8 The Referee's decision may require the Disputant or the Applicant to pay for all or a portion of the costs and expenses of the Referee review. Such costs and expenses shall include, but are not limited to, the costs of the parties in preparing their submissions for the Referee. Unless the Referee orders otherwise, the parties shall bear equally the costs and expenses of any review by the Referee under Section 9.3.

9.3.9 By giving written notice to the other party not later than five (5) working days after the Referee has given a decision to the parties, either party may refer the decision of the Referee to arbitration under Clause 9.4.

#### 9.4 Arbitration

9.4.1 All disputes arising out of or in connection with the Agreement or in respect of any defined legal relationship associated with it or derived from it, shall be referred to and finally resolved under the Rules of Arbitral Procedure, attached as Schedule G.

9.4.2 An arbitral award rendered under Section 9.4 is final and binding on the parties and there shall be no appeal of the decision to the courts.

### 10. Force Majeure

10.1 Neither party will be liable for failing to perform any of its respective obligations or agreements (except obligations or agreements to pay or for damage or loss arising therefore) if failure, damage or loss is caused by one or more of the following events; namely acts of God or of the enemies of Canada, war, disaster, riots or other disturbances or for any other causes beyond the control of the party seeking relief, and any date affected thereby shall be extended for the number of days equal to that number of days during which any such even is operative.

### 11. Non-Waiver

11.1 Any waiver by any party of a default by another party shall apply to the particular default waived and shall not operate as a waiver of any other or future default.

### 12. Further Documents

12.1 The parties hereto agree to do all such acts and to execute, acknowledge and deliver such further documents in assurances and instruments as may from time to time be required to effectively and expeditiously carry out the terms of this agreement.

### 13. Consent by the City and Relationship of Parties

13.1 The City, strictly in its capacity as party to this agreement and not in its capacity as a regulatory, statutory or approving body pursuant to any law of the Province of Manitoba, hereby consents to this agreement. Nothing in this agreement shall constitute the granting by the City of any approval or permit as may be required pursuant to the Municipal Government Act, and any amendments thereto, and any other legislation in force in the Province of Manitoba.

13.2 This Agreement does not and shall not be construed as creating a relationship or joint ventures, partners or employer-employee between the City and RM.

#### **14. Indemnification**

14.1 Each party shall be solely responsible for and shall indemnify and save harmless the other party, its employees and agents, from any and all claims, demands, losses, costs, damages, causes of action, actions and suites of any kind whatsoever resulting from anything done or omitted to be done or alleged to have been done or omitted to be done by the indemnifying part, its employees, agents, independent contractors and subcontractors in pursuance or purported pursuance of this Agreement by or on behalf of that party.

#### **15. Damages**

15.1 The City and the RM shall be liable to and shall indemnify each other for all losses, damages and expenses on account of all physical damage caused by **Wastewater** flows, operating errors, blockages in the lines or release of prohibited or restricted materials unless such losses, damages and expenses are caused by the other party's negligence.

#### **16. Government Legislation and Governing Law**

16.1 Each party shall at all times abide and comply with all legislation, regulations, municipal bylaws, resolutions and orders of any competent legislative or governmental body related to acts or omissions done by the respective party, its employees, agents independent contractors and subcontractors in pursuance or purported pursuance of this Agreement and shall save harmless the other party from any and all costs and charges incidental thereto or damage or penalties resulting from the breach thereof.

16.2 This Agreement shall be governed and construed in accordance with the laws of the Province of Manitoba.

#### **17. Modification**

17.1 This Agreement contains the entire Agreement between the parties and may not be modified, amended or added to except by instrument in writing signed by the parties hereto.

#### **18. Illegal Provision**

18.1 If any provision of this Agreement is found to be or is deemed illegal or invalid, that provision shall be severed herefrom and the remainder of this Agreement shall be of full force and effort.

#### **19. Execution**

19.1 The parties shall, execute and deliver, and shall cause to be executed and delivered, any and all further documents and assurances necessary to give effect to this Agreement and the performance thereof.

#### **20. Notice**

20.1 A notice, demand or request sent by mail shall be deemed to have been received on the fifth (5<sup>th</sup>) business day following the date of mailing; PROVIDED that any notice served by mail at a time when there is an interruption of mail service affecting the delivery of mail shall not be deemed to have been served until the sixth (6<sup>th</sup>) business day following the date normal mail service is restored.

20.2 A notice to be given at a time when there is a known interruption of mail service affecting delivery of mail shall be delivered and not mailed.

**21. Binding**

21.1 This Agreement, and everything herein contained shall ensure to the benefit of and be binding upon the parties, their successors and permitted assigns.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the City of Winkler and by the Rural Municipality of Stanley by its seal as witnessed by the hand of its proper officers duly authorized on that behalf as of the day and year first above written.

CITY OF WINKLER

RM OF STANLEY

“OF THE FIRST PART”

“OF THE SECOND PART”

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
C.A.O.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Reeve

SCHEDULE A  
CITY RATE FORMULA

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## SCHEDULE B COST RECOVERY

Cost Recovery is based on the agreed design flows and organic loads as indicated in **Table 1**.

**Table 1: Flow and Load Sharing as per Final Design**

Contributor	Flow (ML/d)	.35COD (kg/d)	NH3 (kg/d)	.5TSS (kg/d)	.65COD (kg/d)	TKN (kg/d)	P-Total (kg/d)	BNR (kg/d)	Raw Sludge	Sludge Stabilization
Winkler	10.48	1,771	299	1,001	3,289	460	138	5,187	2,772	7,820
	90%	90%	77%	83%	90%	81%	93%	87%	87%	87%
Stanley	1.15	207	89	200	384	105	10	788	407	1,184
	10%	10%	23%	17%	10%	19%	7%	13%	13%	13%
<b>Total</b>	<b>11.63</b>	<b>1,978</b>	<b>388</b>	<b>1,201</b>	<b>3,673</b>	<b>565</b>	<b>148</b>	<b>5,975</b>	<b>3,179</b>	<b>9,004</b>

$BNR = 0.65COD + 0.5TSS + NH_3 + TKN + P_{tot}$ ;

$Raw\ Sludge = 0.35COD + 0.5TSS$ ;

$Sludge\ Stabilization = COD + NH_3 + TKN + TSS$

The cost sharing for the raw sludge handling is based on the assumption that the primary clarifiers will remove 35% of the COD and 50% of the TSS.

The cost sharing for the BNR process is based on the assumption that 65% of the COD and 50% of the TSS will be discharged from the primary clarifiers to the BNR process with 100% of the NH<sub>3</sub>, TKN and P-total loads to be treated in the BNR process.

Cost recovery will be implemented as follows:

- Capital Works – The City and the RM will respectively be responsible for the share of capital as indicated in **Table 2** assuming 2/3 Federal/Provincial funding has been approved. The RM will reimburse the City for the use of existing infrastructure. The capital up-front cost will be as follows:
  - Winkler = \$5,206,781
  - Stanley = \$946,585 for new infrastructure
  - Stanley = \$742,035 for existing infrastructure

The RM will pay in pro rata of payments issued for construction certificates.

This capital contribution will be finalised after completion of construction.

**Table 2: Cost Estimates and Cost Sharing Summary for Activated Sludge (New Infrastructure)**

Cost Element	Total Estimate *	Contributors		
		2/3 Funding	City	RM
Inletworks	\$3,637,545	\$2,425,030	\$1,029,772	\$182,743
Primary Clarifiers	\$2,531,660	\$1,687,773	\$730,232	\$113,654
Bio-Reactors	\$4,967,836	\$3,311,891	\$1,437,657	\$218,289
Final Clarifiers	\$2,486,506	\$1,657,670	\$733,228	\$95,608
Utility Building	\$2,209,584	\$1,473,056	\$655,753	\$80,776
Pipelines	\$1,380,769	\$920,513	\$412,441	\$47,815
Mobilisation	\$1,000,000	\$666,667	\$166,667	\$166,667
Hydro/Instrumentation/SCADA	\$246,200	\$164,133	\$41,033	\$41,033
<b>Total</b>	<b>\$18,460,100</b>	<b>\$12,306,733</b>	<b>\$5,206,783</b>	<b>\$946,585</b>
<b>Cost Breakdown:</b>				
Capital	\$12,499,631	\$8,333,087	\$3,525,596	\$640,948
Engineering	\$2,048,669	\$1,365,780	\$577,839	\$105,050
PST	\$1,018,381	\$678,921	\$287,240	\$52,220
Contingencies	\$2,893,419	\$1,928,946	\$816,106	\$148,367
<b>TOTAL</b>	<b>\$18,460,100</b>	<b>\$12,306,734</b>	<b>\$5,206,781</b>	<b>\$946,585</b>

\* Total Estimate includes 15% Engineering, 7% PST and 20% Contingencies

The use of the existing treatment infrastructure and Lift Station #8 by the RM is based on their potential flow contribution of 10% and the organic load contribution, which is responsible for the total sludge, ie COD, NH3, TKN and TSS, which is 13%.

The storage cells and Lift Station #8 residual value as of 2015, is \$4,237,453. The aeration cells and aeration system residual value as of 2015 is \$2,448,379. The cost allocations for using the existing infrastructure by the RM are then as follows:

- Flow = 10% x \$4,237,453 = \$423,745
- COD, NH3, TKN, TSS = 13% x \$2,448,379 = \$318,289

**Total for the RM for Using Existing Infrastructure \$742,035**

2. Amortization Costs – The RM will pay annually the amortization costs as being summarized in **Table 3.**

The amortization costs have been calculated based on the straight line depreciation method. The amortization costs and the sharing of these costs for the existing infrastructure are indicated in **Table 3.**

**Table 3: Amortization Costs for Existing Infrastructure**

Existing Infrastructure	Year Built	Original Capital Investment	Residual		Residual Value @ 2015	Annual Contributions	
			Original	From 2015		City	RM
Storage Cells Phase 1	1986	\$ 573,800	50	21	\$ 235,259	\$ 10,095	\$ 1,108
Storage Cells Phase 2	2005	\$ 2,334,962	50	40	\$ 1,844,619	\$ 41,555	\$ 4,560
Storage Cells Repairs	2007	\$ 711,512	50	42	\$ 590,555	\$ 12,670	\$ 1,390
400mm dia Force Main	1995	\$ 626,000	60	40	\$ 412,117	\$ 9,284	\$ 1,019
Lift Station #8 New	1995	\$ 1,327,817	40	20	\$ 647,310	\$ 29,165	\$ 3,200
Lift Station #8 Upgrade	2012	\$ 547,400	40	37	\$ 507,593	\$ 12,362	\$ 1,357
<b>Total Allocated to Flow</b>		<b>\$ 6,121,491</b>			<b>\$ 4,237,453</b>	<b>\$ 115,132</b>	<b>\$ 12,634</b>
Aeration Cells New	2002	\$ 3,016,367	50	37	\$ 2,201,948	\$ 51,686	\$ 7,826
Aeration Equipment Replaced	2009	\$ 283,254	15	9	\$ 246,431	\$ 23,781	\$ 3,601
<b>Total Allocated to Sludge Stabilization</b>		<b>\$ 3,299,621</b>			<b>\$ 2,448,379</b>	<b>\$ 75,467</b>	<b>\$ 11,427</b>

The amortization cost for new infrastructure is also determined by the straight line depreciation method using the following numbers of years for the lifespans:

- ✚ Buildings and Concrete Work - 50 years
- ✚ Metal Fabrications - 30 years
- ✚ Mechanical Equipment - 10 years
- ✚ Electrical Equipment - 20 years
- ✚ Clarifier Scrapers - 20 years
- ✚ Pipelines - 50 years

Based on the above, the numbers of years used for depreciation have been allocated to each respective element to calculate the annual depreciation for each structure, building, roads and pipelines and been summarised in **Table 4** with an indication of the amortization cost to the RM.

**Table 4: Annual Amortization Cost for New Infrastructure**

Description	Total	City	RM
Hydro & Instrumentation & SCADA	\$ 24,620	\$ 12,310	\$ 12,310
Inletworks	\$ 167,648	\$ 142,381	\$ 25,267
Utility Building	\$ 116,988	\$ 104,158	\$ 12,830
Primary Clarifiers	\$ 35,997	\$ 31,149	\$ 4,848
Bio-Reactors	\$ 177,468	\$ 154,074	\$ 23,394
Final Clarifiers	\$ 73,454	\$ 64,981	\$ 8,473
Pipelines	\$ 27,068	\$ 24,256	\$ 2,812
<b>Total</b>	<b>\$ 623,243</b>	<b>\$ 533,309</b>	<b>\$ 89,934</b>

3. Operation & Maintenance Costs – The rate formula developed for this cost category will be applied to calculate the portion of cost to cover the O&M costs of the pumping and treatment of wastewater to each of the two contributors, ie City and the RM. The labor costs will be shared equally and will be added after the formula has been applied to the balance of the O&M costs. The factors as indicated in **Table 5** are the factors to which each capital cost item has been assigned to as follows:

- ✚ Category A: Infrastructure cost to handle the flow component of the wastewater, which entails among others lift station #8, the inletworks, some interconnecting pipework, pipelines, clarifiers, pump stations, disinfection and some electrical work. This category is represented by the factor “A” in the formula below and is a percentage of the total cost of the project, which is 47% based on the current estimates.
- ✚ Category B: Infrastructure cost to remove the COD component of the wastewater, which entails among others, the primary sludge pump station, primary and secondary clarifiers, some interconnecting pipework bio-reactors part of the utility building, RAS pump station, process air system, and some electrical work. This category is represented by the factor “B” in the formula below and is a percentage of the total cost of the project, which is 30% based on the current estimates.
- ✚ Category C: Infrastructure cost to remove the TSS component of the wastewater, and which entails the following infrastructure among others, the bioreactors, primary and secondary clarifiers, part of the utility building, RAS pump station, process air system, some electrical work and some interconnecting pipework. This category is represented by the factor “C” in the formula below and is a percentage of the total cost of the project, which is 15% based on the current estimates.
- ✚ Category D: Infrastructure cost to remove ammonia from the wastewater. This category is represented by the factor “D” in the formula below and is a percentage of the total cost of the project, which is 3% based on the current estimates.
- ✚ Category E: Infrastructure cost to remove TKN from the wastewater. This category is represented by the factor “E” in the formula below and is a percentage of the total cost of the project, which is 4% based on the current estimates.
- ✚ Category F: Infrastructure cost to remove Total P chemically from the wastewater, ie the balance of Total P not being removed biologically in the BNR process, to meet the 1 mg/l P effluent standard. This category is represented by the factor “F” in the formula below and is a percentage of the total cost of the project, which is 1% based on the current estimates.
- ✚ Category G: Infrastructure cost to remove fat, oil and grease (FOG) from the wastewater. This category is represented by the factor “G” in the formula below. With the withdrawal of Saputo as a potential partner, it may be possible that FOG will be of a minor problem and no special allowance has currently been made in the new plant. This will however be confirmed during the next round of composite sampling and during detail design.

**Table 5** below is a summary of the cost and calculations for determining the percentage values of each factor discussed above.



**Table 5: Cost Allocations to Derive Factor Values**

<b>Factors</b>	<b>A (FLOW)</b>	<b>B (COD)</b>	<b>C (TSS)</b>	<b>D(NH3)</b>	<b>E (TKN)</b>	<b>F (Ptot)</b>	<b>Total</b>
Total Construction Cost	\$7,013,330	\$5,743,290	\$3,056,342	\$493,700	\$718,919	\$188,319	<b>\$17,213,900</b>
Mobilization	\$407,423	\$333,643	\$177,551	\$28,680	\$41,764	\$10,940	<b>\$1,000,001</b>
Hydro & Instrumentation & SCADA	\$100,307	\$82,143	\$43,713	\$7,061	\$10,282	\$2,693	<b>\$246,199</b>
Existing Infrastructure	\$4,237,453	\$1,505,134	\$492,012	\$159,018	\$231,559	\$60,656	<b>\$6,685,832</b>
<b>Subtotals</b>	<b>\$11,758,513</b>	<b>\$7,664,210</b>	<b>\$3,769,618</b>	<b>\$688,459</b>	<b>\$1,002,524</b>	<b>\$262,608</b>	<b>\$25,145,932</b>
Factor as %	47%	30%	15%	3%	4%	1%	

The formula for determining the O&M cost sharing is as follows:

$$Com = Ct \frac{Q_{rm}}{Q_t} \left[ A + B \left( \frac{COD_i}{COD_t} \right) + C \left( \frac{TSS_i}{TSS_t} \right) + D \left( \frac{NH3_i}{NH3_t} \right) + E \left( \frac{TKN_i}{TKN_t} \right) + F \left( \frac{P_i}{P_t} \right) + G \left( \frac{FOG_i}{FOG_t} \right) \right]$$

Where:

- Com* = Operational and maintenance cost of each contributor respectively for the quarter under consideration
- Ct* = Total operational and maintenance cost for the quarter
- Q<sub>rm</sub>* = Total quarterly flow from RM in Megaliters
- Q<sub>t</sub>* = Total quarterly flow to plant in Megaliters
- A, B, C, D, E, F & G* = Factors in percentages as described above (A + B + C + D + E + F + G = 100%)
- COD<sub>i</sub> & COD<sub>t</sub>* (Chemical Oxygen Demand) = Average COD concentration during any quarter in the wastewater from RM and the average COD concentration during the same quarter in the wastewater entering the plant respectively
- TSS<sub>i</sub> & TSS<sub>t</sub>* (Total Suspended Solids) = Average TSS concentration during any quarter in the wastewater from RM and the average TSS concentration during the same quarter in the wastewater entering the plant respectively
- NH<sub>3i</sub> & NH<sub>3t</sub>* (Ammonia Nitrogen) = Average NH<sub>3</sub> concentration during any quarter in the wastewater from RM and the average NH<sub>3</sub> concentration during the same quarter in the wastewater entering the plant respectively
- TKN<sub>i</sub> & TKN<sub>t</sub>* (Total Kjeldahl Nitrogen) = Average TKN concentration during any quarter in the wastewater from RM and the average TKN concentration during the same quarter in the wastewater entering the plant respectively
- P<sub>i</sub> & P<sub>t</sub>* (Total Phosphorous) = Average P concentration during any quarter in the wastewater from RM and the average P concentration during the same quarter in the wastewater entering the plant respectively
- FOG<sub>i</sub> & FOG<sub>t</sub>* (Fat, Oil & Grease) = Average FOG concentration during any quarter in the wastewater from RM and the average FOG concentration during the same quarter in the wastewater entering the plant respectively.

4. Septage Receiving Station (SRS) – The proposed septage receiving station will be installed inside the new inletworks building with the pipe connection just outside the building for the haulers to connect to.

The SRS will have an automated metering and control system to track septage and provide accurate billing data for the facility and a receipt for the hauler. Each hauler will have to register with the City to register to use the facility and an identification number to access the facility. An invoice will be mailed to each registered hauler every month, based on the total volume of septage being discharged by the respective hauler.

The registered haulers will recover their costs from their clients, the City or the RM depending for whom they delivered services. [note: a decision has to be made between City and RM if capital investment will be shared resulting in income sharing from the SRS or City covers all SRS costs and then will receive all revenue without splitting.]

5. Stabilized Sludge Disposal – Sludge stabilized in the Aeration Cells will eventually need to be disposed of, which is foreseen to be land applied. Due to the uncertainty when it will be required and which agriculture lands may be available at that time, the costs cannot be determined at this time. The sharing of costs will however be determined on the basis of sludge produced by the City and RM respectively from commissioning until the time when desludging becomes necessary.

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END of Schedule B

## SCHEDULE C

### RESTRICTED WASTES APPLICABLE TO SANITARY SEWERS

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The following are designated as Restricted Wastes when present in the wastewater, or clear-water waste being released to the sanitary sewerage system at a concentration in excess of the levels set out below, with concentrations being expressed as total concentrations unless specified otherwise.

1. (a) **CONTAMINANTS**
  - i. Biochemical oxygen demand (BOD) 10,000 mg/L
  - ii. Chemical oxygen demand (COD) 20,000 mg/L
  - iii. Oil, fat and grease 800 mg/L
  - iv. Phosphorus (P) 200 mg/L
  - v. Total Suspended Solids (TSS) 5,000 mg/L
  - vi. Total Kjeldahl Nitrogen (TKN) 500 mg/L
- (b) **INORGANIC CONSTITUENTS**
  - i. pH (Hydrogen ion) less than 6.0 or greater than 11.5
  - ii. Arsenic (As) 1.0 mg/L
  - iii. Cadmium (Cd) 0.10 mg/L
  - iv. Chlorine (free) (Cl<sub>2</sub>) 5.0 mg/L
  - v. Chromium (Hexavalent) (Cr<sup>+6</sup>) 2.0 mg/L
  - vi. Chromium (total) (Cr) 4.0 mg/L
  - vii. Cobalt (Co) 5.0 mg/L
  - viii. Copper (Cu) 1.0 mg/L
  - ix. Cyanide (CN<sup>-</sup>) 2.0 mg/L
  - x. Lead (Pb) 1.0 mg/L
  - xi. Mercury (Hg) 0.10 mg/L
  - xii. Molybdenum (Mo) 5.0 mg/L
  - xiii. Nickel (Ni) 4.0 mg/L
  - xiv. Silver (Ag) 5.0 mg/L
  - xv. Sulphide (S<sup>-</sup>) 3.0 mg/L
  - xvi. Thallium (Tl) 1.0 mg/L
  - xvii. Zinc (Zn) 2.0 mg/L
- (c) **ORGANIC COMPOUNDS**
  - i. Hydrocarbons 50 mg/L;
  - ii. Phenols 1.0 mg/L;
- (d) **PHYSICAL PROPERTY**
  - i. temperature greater than 75 degrees Celsius

2. Notwithstanding the concentration based limits contained in this Schedule, the Parties, by mutual agreement, may require a facility or premises to meet site-specific load based limits where concentration based limits are considered inappropriate.

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END of Schedule C

## SCHEDULE D PROHIBITED WASTES

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The following are designated as Prohibited Wastes:

1. any matter in a concentration that may cause a hazard to human health;
2. any flammable liquid or explosive matter which, by itself or in combination with any other substance, is capable of causing or contributing to an explosion or supporting combustion;
3. any matter which by itself or in combination with another substance is capable of obstructing the flow of or interfering with the operation or performance of the sewerage system, watercourse or wastewater treatment facility including, but not limited to
  - a) agricultural wastes;
  - b) animals, including fish and fowl or portions thereof that will not pass a 2 centimetre screen;
  - c) ashes;
  - d) asphalt;
  - e) concrete and cement based products;
  - f) gardening wastes;
  - g) glass;
  - h) gravel;
  - i) metal;
  - j) paper and cardboard;
  - k) plastics;
  - l) rags and cloth;
  - m) rock;
  - n) sand;
  - o) sharps;
  - p) soil;
  - q) straw;
  - r) tar;
  - s) wash water from washing equipment used in the mixing and delivery of concrete and cement based products;
  - t) wood, sawdust or shavings from wood;
  - u) grit or skimmings from interceptors, catch basins, pre-treatment facilities or private wastewater disposal systems; or
  - v) sludge from interceptors, catch basins, pre-treatment facilities or private wastewater disposal systems;
4. any matter with corrosive properties which, by itself or in combination with another substance, may cause damage to any sewerage system or wastewater treatment facility;
5. any matter, other than domestic wastewater, which by itself or in combination with another substance is capable of creating an air pollution problem outside a sewerage system or in and around a wastewater treatment facility;
6. any matter which, by itself or in combination with another substance, is capable of preventing safe entry into a sewerage system or wastewater treatment facility;

7. any matter
  - a) consisting of 2 or more separate liquid layers;
  - b) which when it comes in contact with storm water, clear-water waste or wastewater is capable of forming a separate liquid layer;
8. any matter which by itself or in combination with another substance is detrimental to the operation or performance of the sewerage system, watercourse, wastewater treatment plant or to the environment, including, but not limited to:
  - a) biological waste;
  - b) elemental mercury;
  - c) paint, stains and coatings, including oil and water based;
  - d) prescription drugs; and
  - e) automotive and machine oils and lubricants; and
9. radioactive material in solid form;
10. effluent from an industrial garbage grinder;
11. any matter which may:
  - i. cause a hazard to human health and that cannot be effectively mitigated by wastewater treatment;
  - ii. cause a hazard to the environment;
  - iii. cause a hazard to workers responsible for operating and maintaining the sewerage system or the wastewater treatment facility;
  - iv. cause an adverse effect to the sewerage system;
  - v. cause an adverse effect to the wastewater treatment facility;
  - vi. result in the wastewater being released by the City's wastewater treatment facility being in contravention of Provincial regulatory requirements; or
  - vii. restrict the beneficial use of biosolids from the City wastewater treatment facility.

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END of Schedule D

## SCHEDULE E FLOW METERING

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1. It is recommended that the RM will monitor their **Wastewater** flow before entering the **Connection Point** to compare it with flows to be monitored at the **Connection Point**.
2. All flows received from the RM Facilities will be monitored at the **Connection Point** continuously and recorded.
3. The combined flow of the City and the RM will be monitored continuously as it is being discharged to the treatment facility from Lift Station #8.
4. The total flow to be received at the treatment facility will be monitored continuously to determine the total wastewater flow entering the plant from all sources.
5. All flow data will initially be stored in data loggers and made available to both parties. The data will ultimately be stored in a permanent data base and made available to the RM upon request.
6. Monitoring equipment will be installed according to accepted standards and verifications will be conducted on a semi-annual basis or after modification. Confirmation of meter verification and verification results will be provided upon request.
7. Errant or missing data will be estimated monthly by the owner of the data and an explanation shall be provided to the parties who receive that flow for approval.

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END of Schedule E

## SCHEDULE F WASTEWATER SOURCE CONTROL

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### Background

The discharge of prohibited and restricted substances into sanitary sewers, may have adverse effects on human health, the environment, public infrastructure, the treatment plant and the beneficial use of wastewater biosolids. In addition, these substances may result in violation of federal or provincial legislation, guidelines and codes of practice.

### Regulation

1. Schedules C and D specify the requirements for the release of wastewater to the sanitary sewer.
2. Monthly 24-hour composite sampling at the Connection Point will be conducted by the City. Samples will be conducted in accordance with the sampling procedure in this Schedule and will test for pH, Fat, Oil & Grease, TSS, TKN, NH<sub>3</sub>, Total Phosphorous and Hydrocarbons.
3. Restricted wastes will be sampled at the Connection Point when considered necessary.

### Sampling

4. All wastewater samples shall be collected, preserved and documented in accordance with Standard Methods for Examination of Water and Wastewater, latest edition unless otherwise agreed.
5. All wastewater samples shall be analyzed by an accredited laboratory.
6. Discrete or composite wastewater samples may be used for enforcement purposes.
7. A composite sample may be collected by manual or automated means, and shall be obtained on either a time proportionate or flow proportionate basis.
8. Results of all measurements will be used to arrive at a reliable average for each constituent respectively which may be used to reduce the sampling frequency and analytical costs if agreed by both parties.

### Enforcement

9. Where a sample collected, indicates the presence of Restricted or Prohibited waste, an investigation and enforcement action will be initiated by the party in whose jurisdiction the problem originates.
10. All enforcement actions shall be documented.
11. No more than one warning shall be issued for the discharge of Restricted or Prohibited waste. Subsequent offenses shall be addressed by a fine or order or other legal remedy in accordance with the Bylaws of either the City or RM.
12. Releases that have the potential to cause adverse effect to the environment shall be reported to provincial and federal agencies in accordance with applicable legislation.

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END of Schedule F

# SCHEDULE G

## RULES OF ARBITRAL PROCEDURE

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### Part 1 – General

#### 1. Interpretation

- 1.1. In these Rules
  - a) the terms and phrases have the same meanings as may be attributed to them under the *Arbitration Act, Manitoba*
  - b) “Working Days” means days other than Saturdays, Sundays and statutory holidays.
  - c) “Contract” means a contract containing an agreement to refer disputes to arbitration and appending these Rules, or incorporating them by reference, and
  - d) “Parties” mean the parties to the Contract.
- 1.2. In these Rules, time shall be calculated in the same manner as time is calculated in the Contract.
- 1.3. In these Rules, words in the masculine gender include the feminine and vice versa.

#### 2. Application

- 2.1. These Rules apply to an arbitration conducted under the Contract.
- 2.2. The parties to an arbitration may, by agreement, change or make additions to these Rules.

#### 3. Communications:

- 3.1. All communications under these Rules shall be given in the same manner as communications may be given in the Contract.
- 3.2. There shall not be any oral communications with respect to the issues in dispute between a party and the arbitrator unless it is made in the oral presence of both parties or their legal representative.
- 3.3. A copy of all written communications between the arbitrator and a party shall be given to the other party at the same time.

#### 4. Objections

- 4.1. A party shall state any objections to any aspect of the arbitral proceedings or to the conduct of the other party or the arbitrator at the earliest possible time.
- 4.2. The arbitrator may refuse to consider an objection if a party fails to comply with Clause 4.1.

### Part II – Pre-Arbitration Considerations

#### 5. Commencement

- 5.1. Either party (“the Claimant”) may submit a dispute to arbitration as permitted under the Contract by giving the other party (“the Respondent”) a written notice containing the following:
  - a) a description of the Contract;
  - b) a statement of the issue in dispute;
  - c) a request that the dispute be referred to arbitration;



- d) a description of the claim being made;
- e) the name or names of proposed arbitrators, along with the resume described in Clause 6.2.

5.2. For purposes of the calculation of time under these Rules, the arbitration shall be deemed to have commenced on the date the Respondent receives the notice under Clause 5.1.

## **6. Arbitrator**

- 6.1. The arbitration shall be conducted before a single arbitrator appointed under these Rules who possesses the qualifications, if any, agreed to by the parties.
- 6.2. If a party proposes an individual as an arbitrator, that party shall also provide a written resume of that individual's work background, qualifications and arbitration experience.
- 6.3. The parties shall make every reasonable effort to reach agreement on an arbitrator within 20 days after the arbitration commences.
- 6.4. If an agreement is not possible under Clause 6.3, either party may make an application to the court for the appointment of an arbitrator.
- 6.5. Before an arbitrator accepts an appointment, she or he shall provide the parties with a written statement declaring that there are no circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality and that she or he will disclose any such circumstances to the parties if they should arise before the arbitration is concluded.
- 6.6. If, for any reason, the arbitrator resigns, is unable or refuses to act or is removed from office, she or he shall be replaced by another arbitrator under these Rules and any oral hearings previously held shall be rescheduled.
- 6.7. If the parties do not agree that the circumstances specified in Clause 6.5 exist, either party may apply to the Court for an order that the arbitrator should be replaced.

## **7. Scheduling a Meeting**

- 7.1. Within 20 Working Days after the arbitrator is appointed, the arbitrator shall convene a meeting of the parties to reach a consensus, if possible, and to make orders, if necessary, on:
  - a) the procedure to be followed in the arbitration,
  - b) the time periods for taking steps in the proceedings,
  - c) the scheduling of any oral hearings or meetings,
  - d) any preliminary applications or objections a party may have and
  - e) any other matter which will assist the arbitration to proceed in an efficient and expeditious manner.

## **8. Powers of the Arbitrator**

- 8.1. Subject to any limitations in these Rules or any agreement reached by the parties, the arbitrator may conduct the arbitration in any manner she or he considers appropriate but each party shall be treated fairly and shall be given full opportunity to present its case.
- 8.2. The arbitrator may:
  - a) order an adjournment of the proceedings from time to time,

- b) make an interim order on any matter with respect to which the arbitrator may make a final award, including an interim order for preservation of property which is subject matter of the dispute,
- c) order inspection of documents, exhibits or other property at any locations
- d) order the recording of any oral hearing or meeting and
- e) extend or abridge a period of time required in these Rules or fixed or determined by the arbitrator where she or he considers it just and appropriate in the circumstances.

8.3. The arbitrator may adjourn the proceedings from time to time if the arbitrator considers that it would facilitate settlement discussions between the parties.

## **9. Exchange of Statements**

9.1. The parties shall exchange written statements of their respective positions in the dispute in the following manner:

- a) the Claimant shall give a statement outlining the facts, the matters in issue and the relief or remedy requested no later than ten Working Days after the scheduling meeting is held in Clause 7.1,
- b) the Respondent shall give a statement outlining its response to the Claimant's statement and its counterclaim, if any, no later than ten Working Days after receiving the counterclaim.
- c) the Respondent, by counterclaim, shall give a statement outlining its defence to the counterclaim no later than ten Working Days after receiving the counterclaim.

9.2. The parties shall provide the arbitrator with copies of the statements exchanged in Clause 9.1.

## **10. Disclosure**

10.1. Within 20 Working Days after providing the statement required by Clause 9.1, each party shall provide a list of documents:

- a) upon which it intends to rely and
- b) which describes each document by kind, date, author, addressee and subject matter.

10.2. During the arbitration proceedings the arbitrator may allow a party to amend or add to any statement made in Clause 9.1 unless:

- a) the amendment or addition goes beyond the terms of the arbitration agreement in the Contract, or
- b) the other party would be prejudiced by the delay in making the amendment or addition.

10.3. The arbitrator may order a party to produce any documents not disclosed under Clause 10.1 and 10.2 that it has in its care, custody or control and that the arbitrator considers to be relevant, within the time the arbitrator specifies.

10.4. Each party shall allow the other party the necessary access at reasonable times to inspect and take copies of all documents that the former party has listed in Clause 10.1 or 10.2 or that the arbitrator has ordered to be produced in Clause 10.3.

10.5. The parties shall prepare and send to the arbitrator an agreed statement of facts within the time specified by the arbitrator.

- 10.6. Each party shall, no later than 15 Working Days before the oral hearing commences, provide the other party with the name and address of any witnesses to be called and a written summary of their evidence.
- 10.7. In the case of an expert witness, notwithstanding Clause 10.6, each party shall, not later than 40 Working Days before the oral hearing commences, provide the other party with, a written statement or report prepared by the expert witness.
- 10.8. In the case of an expert witness called by a party to rebut the written statement of an expert called by the other party, that party shall, not later than 20 Working Days before the oral hearing commences, provide the other party with a written statement or report prepared by the expert witness.
- 10.9. Each party shall, not later than 20 Working Days before the oral hearing commences, give to the other party and the arbitrator an assembly of all documents to be introduced at the hearing.

## **11. Hearings and Meetings**

- 11.1. The arbitrator shall give the parties written notice of not less than:
  - a) five Working Days of any oral hearings, or
  - b) three Working Days of any meetings,which have not been previously scheduled under Clause 7.1.
- 11.2. All oral hearings and meetings in the arbitrations shall be conducted in private and the arbitrator and the parties shall keep all written communications and documents in respect of these proceedings strictly confidential.
- 11.3. All oral hearings shall be conducted in the City of Winkler.

## **12. Evidence**

- 12.1. The arbitrator shall not be required to apply the legal rules of evidence and shall determine the relevance and materiality of the evidence presented.
- 12.2. All oral evidence shall be taken in the presence of the arbitrator and all parties unless a party is absent by default or has waived the right to be present.
- 12.3. The arbitrator may order any individual to be examined under oath or on affirmation in relation to the issues in dispute and to produce before the arbitrator all relevant documents within the individual's care, custody and control.
- 12.4. The document assemblies delivered under Clause 10.5 shall be deemed to have been entered into evidence at the oral hearing without further proof and without being readout at the hearing but a party may challenge the admissibility of any document so introduced.
- 12.5. The arbitrator may permit a document to be introduced at the oral hearing which was not previously disclosed under Clause 9.3 or provided as required under Clause 10.4 (b) or 10.5. However, the arbitrator may take that default into account when determining the costs to be awarded in the arbitration.
- 12.6. If the arbitrator permits the evidence of a witness to be presented as a written statement, the other party may require that witness to be made available for cross examination at the oral hearing.

12.7. The arbitrator may order a witness to appear and give evidence, and in that event, the parties may cross examine that witness and call evidence in rebuttal.

### **13. Arbitrator Retained Experts**

13.1. The arbitrator may:

- a) retain one or more experts to give a written report on specific issues and
- b) for that purpose, require a party to make available relevant documents, goods or other property for the expert's inspection.

13.2. The arbitrator shall give a copy of the expert's report to the parties who shall have the opportunity to reply to it.

13.3. On a request of a party, an expert retained under Clause 13.1 shall:

- a) make available to the party for examination all documents, goods or other property in the expert's possession with which she or he was provided in order to prepare a report, and
- b) provide the party with a list of all documents, goods or other property not in the expert's possession, but with which was provided in order to prepare a report, and a description of the location of those documents, goods or other property.

13.4. The parties may cross examine an expert on the report and may call evidence in rebuttal.

### **14. Default**

14.1. Where a Claimant, without sufficient cause and after five Working Days notice from the arbitrator, fails to provide the statement required in Clause 9.1 (a) within the required time, the arbitrator can terminate the arbitration with respect to that claim.

14.2. Where a Respondent, without sufficient cause and after five Working Days notice from the arbitrator, fails to provide the statement required in Clause 9.1 (b) within the required time, the arbitrator shall:

- a) continue the arbitration, and
- b) require the Claimant to submit such evidence to support the claim as the arbitrator may require before making an award.

14.3. Where a party without sufficient cause, fails to appear at a scheduled oral hearing, or fails to produce any evidence, the arbitrator may continue the arbitration and make an award based upon the evidence before the arbitrator.

### **15. Close of Hearings**

15.1. The arbitrator shall close the oral hearings when:

- a) the parties advise they have no further evidence to give or submissions to make, or
- b) the arbitrator considers further hearings to be unnecessary or inappropriate.

15.2. Where the arbitrator considers it to be just and appropriate to do so, the arbitrator may reopen the oral hearings at any time before making the final award.

## **Part IV – The Award**

### **16. Award**

16.1. An arbitrator shall decide the dispute in accordance with the law.

- 16.2. The arbitrator shall, not later than 20 Working Days after the hearings have been closed:
- a) advise the parties as to when the arbitrator will make a final award, or
  - b) make a final award not later than 20 Working Days after the hearings have been closed and give a signed copy of the award to each party.
- 16.3. The final award of the arbitrator shall be dated, be in writing and state the reasons upon which it is based.
- 16.4. The arbitrator may order interest to be paid in the final award.
- 16.5. The final award is final and binding on the parties and the parties agree to comply with it as soon as possible

## **17. Costs**

- 17.1. The arbitrator shall fix the costs of the arbitration in the final award, which costs may include, but are not limited to, the following:
- a) the fees of the arbitrator,
  - b) any necessary expenses incurred by the arbitrator,
  - c) the fees, travel costs and other expenses of witnesses approved by the arbitrator,
  - d) any fees, charges or expenses for providing services to the arbitrator or the parties in connection with the arbitration.
- 17.2. Except for the costs of legal fees and legal expenses of the successful part, the costs of the arbitration shall be apportioned between the parties unless the arbitrator considers it appropriate in the circumstances that the costs be borne by the unsuccessful party.
- 17.3. With respect to the costs of legal fees and legal expenses of the successful party, the arbitrator
- 17.4. In making a decision under Clause 17.3, the arbitrator is not limited to awarding the legal fees and expenses that the Court of Queen's Bench may award to a successful party in a civil action.
- 17.5. The fees of the arbitrator shall be reasonable in amount, taking into account the amount in the dispute, the complexity of the subject matter, the time spent by the arbitrator and any other relevant circumstances.

## **18. Amendments and Corrections to the Award**

- 18.1. Upon application by a party, an arbitrator may amend or vary a final award to correct:
- a) a clerical or typographical error, or
  - b) an arithmetical error made in a computation.
- 18.2. An application by a party to the arbitrator pursuant to Clause 18.1 shall be made within ten Working Days after that party receives the final award.

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END of Schedule G