

THIS MEMORANDUM AND AGREEMENT dated the _31_ day of ____August____, 2020.

BETWEEN:

FOOTHILLS COUNTY

- AND -

TOWN OF OKOTOKS

(collectively, the “Parties”)

MEMORANDUM OF UNDERSTANDING & INTERIM AGREEMENT

WHEREAS the Parties wish to:

- A.** state their respective intentions respecting the Project;
- B.** establish their initial working relationship relating to the Project, including outlining their initial goals and objectives and determining the parameters of the Project through their existing Intermunicipal Committee;
- C.** establish certain principles relating to the potential development of sub-regional service relationships;
- D.** enter into certain commitments to, and obligations respecting, the Project and provide for the undertaking of certain initial Project Activities related thereto;
- E.** initiate a study of the potential for shared water servicing that services lands within the municipal boundaries of the Parties, and the identification of potential benefits that may be derived from such shared servicing concept;

as and to the extent provided by this MOU.

NOW THEREFORE the Parties, in consideration of the mutual covenants contained in this MOU, agree as follows:

Article 1 – Definitions & Schedules

1.1 Definitions - In this MOU, the following terms shall have the following meanings:

- (a) “**Conditions Precedent**” means those conditions specified in Article 5 of this MOU, which conditions must be met before the Parties will be obliged to proceed with the Further Arrangements;
- (b) “**Further Arrangements**” means all full and final agreements required in relation to the Project, which will include the Governance Agreements, and may include other agreements, in each case when and if applicable;
- (c) “**Governance Agreements**” means all those agreements between the Parties which are necessary or desirable in order to evidence a governance structure relating to the Project;
- (d) “**Grant Agreement**” means all such agreements or other commitments respecting the provision of grant funding to the Parties (as represented by one Party, or in respect of the Parties as a whole) respecting the Project;
- (e) “**Intermunicipal Committee**” means that intermunicipal committee as struck by both Parties for the purposes of:
 - (i) facilitating the working relationship between the Parties;
 - (ii) sharing information between elected officials and municipal staff of both Parties; and
 - (iii) providing a forum in which to review and comment on a range of topics of interest to both Parties;
- (f) “**MOU**” means this Memorandum of Understanding and Interim Agreement, including the Schedules attached hereto;
- (g) “**Parties**” means the Parties, and “**Party**” means any one of them;
- (h) “**Project**” means the review of design, constructing, financing, owning, servicing and maintaining options and alternatives related to the sub-regional supply of water services amongst the Parties, and the development of preferred options and alternatives for consideration by the Parties;
- (i) “**Project Activities**” means all activities reasonably required to complete the Project including, but not limited to:
 - (i) investigating all potential means for sharing water services;
 - (ii) engaging and carrying out the services of consultants retained by the Parties to assist in the development of options for the parties to consider in relation to the Project;

- (iii) consideration of Governance Agreements as part of the options and alternatives identified in relation to the Project;
- (j) **“Project Costs”** means all costs reasonably incurred to carry out Project Activities and approved by the Parties pursuant to the provision of this MOU and as set forth in accordance with those percentages as stated in Schedule “A” hereof as they apply to such respective costs;
- (k) **“Technical Committee”** means that committee appointed under Section 4.1(b) of this Agreement;
- (l) **“Term”** means, subject to the terms of this MOU and the execution of the Final Agreement, from the date hereof until December 31, 2021; and
- (m) **“Water Services”** means those water transmission services to be provided to the Parties by one or more the Parties for delivery to some or all consumers from time to time.

1.2 Schedules - The following schedule is attached to, and form a part of, this MOU:

Schedule “A” -	Project
Schedule “B” -	Project Costs

Article 2 - Memorandum of Understanding and Statement of Intentions

2.1 Purpose & Intentions - The Parties agree to work cooperatively together during the Term with a view to enabling Parties to conclude the Project and achieve the goals established therein, all as provided by and subject to this MOU.

2.2 Project Characteristics - The Parties agree that it is their common intention that the Project will have the following characteristics:

- (a) The Project shall be undertaken jointly by the Parties;
- (b) The primary parameter for the servicing structures to be contemplated under the Project involve:
 - (i) Development of a raw water intake and trunk main and appurtenances, including pump stations, for the transmission of raw water to the location to be agreed upon by the Parties;
 - (ii) Upon the agreement of the foregoing, the production of a trusted water supply within existing, future upgraded water treatment facilities or new water treatment facilities located or to be located within the municipal boundaries of both Parties or either one of them;

- (iii) the transmission of treated water to the Parties; and
- (iv) the direct or indirect distribution of treated water within those areas that the Parties will so determine;

or a combination of the above, based on factors such as the practicality, feasibility, relative costs and benefits, and legality of either approach;

- (c) The purpose of the Project shall be to provide the Parties with options and alternatives to consider in relation to the provision of Water Services to the Parties within those areas that the Parties will determine;
- (d) The Parties shall, to the extent possible, apply for and access grants and assistance that may be available in relation to the Project from Canada, Alberta, developers (including in the payment of off-site levies and similar funding) or from any other person or entity other than the Parties that may financially contribute to this Project;
- (e) The Parties intend that the Project Costs shall be funded firstly through the grants that are made available to the Parties and secondly through their own municipal financial resources. In the event that the amount of the grant funds received exceeds the amount of the required for this particular Project, the Parties shall mutually agree upon the appropriate distribution of the excess grant funds amongst each of them, considering always the terms imposed upon the payment of the grant funds by the grant funder(s). Should the Parties not agree upon the terms of the distribution of any excess grant funds, then the Conflict Resolution terms that are set forth in the terms of reference for the Intermunicipal Committee shall be utilized to resolve the issue.

2.3 Common Intentions - The Parties acknowledge that they are collaboratively working towards iterations of the proposed Water Services on a sub-regional basis. The Parties confirm their common intention to work together in good faith with a view to investigating all possible options and alternatives and, subject to the Conditions Precedent, continuing discussion of the potential implementation of preferred options or alternatives; provided always that each of them shall be entitled to accept or reject any or all Further Arrangements in its sole discretion.

2.4 Project Obligations - The Parties agree to identify and undertake all Project Activities required to in order to address all applicable issues as expeditiously as possible and in accordance with budgets and operating plans prepared by the Parties and approved by the Intermunicipal Committee from time to time. Subject to further agreement of the parties to proceed, the Project Activities shall not include any physical work, construction, or provisions of Water Services themselves. The purpose of the Project shall be to investigate and review the options and alternatives presented to the Parties and thereafter construct the necessary infrastructure to implement the Project, subject always to the satisfaction of the Conditions Precedent.

- 2.5 Standard of Performance** - Each of the Parties shall use reasonable commercial efforts (subject always to such duties, obligations and limitations as may be imposed by law) to perform all of its duties under this MOU. Without limiting the foregoing, each of the Parties will make reasonable commercial efforts intended to result in the successful completion of the Project.

Article 3 – Initial Project Activities and Project Costs and Contributions

- 3.1 Payment for Initial Project Activities** - The Parties each agree to contribute such initial contributions as may be agreed upon by them jointly through the recommendations provided by the Intermunicipal Committee and agreed upon by each Council for each Party and additionally through any existing or future Grant Agreement(s), to carry out Project Activities pursuant to this MOU, except such costs as are paid by non-repayable grants from other governments.

Provided that notwithstanding anything in this MOU, expenditures for and on behalf of the Parties shall be limited to the extent provided for in budgets recommended by the Intermunicipal Committee but agreed upon by each Council for each Party.

- 3.2 Other Contributions to Initial Project Activities** - Each of the Parties agrees to provide assistance, other than financial assistance, and to participate as may be reasonably requested by the Intermunicipal Committee in relation to Project Activities carried out pursuant to budgets and operating plans approved by the Intermunicipal Committee from time to time.

- 3.3 Additional Contributions Via Technical Committee** - Without limiting the foregoing, the Parties agree to provide representatives to sit on and attend to the conduct meetings and business of the Technical Committee, when and if determined by unanimous agreement of the Parties to be constituted and charge with duties and responsibilities, the attendance and costs for which, unless otherwise agreed to, shall be the respective responsibilities of the Parties in each case.

- 3.4 Further Project Activities and Agreement** - No Project Costs are to be paid by the Parties pursuant to Section 3.1, and no costs shall be incurred by any Party which are to be otherwise recovered from the Parties or Project funding and contributions contemplated within this Agreement, except in accordance with monthly and quarterly budgets recommended by the Intermunicipal Committee, and approved in writing by the Parties. Such budgets shall provide for all Project Costs relevant to those Project Activities the Parties have agreed to pursue or perform pursuant to this MOU in the pursuance of the satisfaction of the Conditions Precedent and the intentions of this MOU generally, and shall make reasonable provision for contingencies.

Article 4 - Committees

4.1 Appointment - The Parties agree as follows:

- (a) the existing Intermunicipal Committee shall be responsible for governance and decision making for the parties in respect of the Project, which shall include, but not be limited to, the recommendation of budget adjustments as set forth by Section 4.1(b) hereof and consisting of those representatives of each Party as set forth in the terms of reference of the Intermunicipal Committee; and
- (b) the Technical Committee, when and if established by the Intermunicipal Committee, shall be responsible for such duties and responsibilities as the Parties may assign or otherwise include within terms of reference for the committee, which may include but will not be limited to the following:
 - (i) the preparation and recommendation of budgets for the approval by Council of each Party as necessary to enable the carrying out of this MOU; and
 - (ii) the preparation and recommendation of operating plans for the approval by Council of each Party as necessary to enable the carrying out of this MOU.

In each case, vacancies on the committees shall be filled as soon as reasonably possible by the Party entitled to appoint the application representative.

4.2 Authority of Intermunicipal Committee - Without in any way altering or adding to the Parties' agreements set forth above or additionally, without altering or adding to the terms of reference for the Intermunicipal Committee as previously established by the Parties, the Intermunicipal Committee shall (subject always to appropriate authorities provided by the Parties, and as such as and when called upon by the Parties) have the following authority and functions:

- (a) approval of Project plans;
- (b) if not delegated to the Technical Committee, generally, to act as a forum for communication, planning, analysis, Project management, and similar functions including ensuring that the activities contemplated by this MOU are being carried out as and when required.

4.3 Authority of Technical Committee – Without in any way altering or adding to the Parties' agreements set forth herein or without altering or adding to any terms of reference for the Technical Committee as may be established by the Parties, the Technical Committee shall (subject always to appropriate authorities provided by the Parties, and as such as and when called upon by the Parties) have the following authority and functions:

- (a) approval of the consultants for the Project;
- (b) approval of other major supply arrangements; and

- (c) such other matters as delegated by the Intermunicipal Committee to the Technical Committee as and when required, for such matters that are of a technical nature.

4.4 Meetings - Unless otherwise agreed to by the Parties or the representatives of the Intermunicipal Committee, and subject always to the practical issue of availability, the committees shall and their respective advisors shall meet at least monthly at a date, time and place reasonably acceptable to the Parties and/or the respective committees.

4.5 Binding Resolutions - The Parties agree and acknowledge that:

- (a) all actions, approvals and decisions required to be taken, given or made by the Parties in respect of the Project shall be made by the Intermunicipal Committee and to be implemented by the Technical Committee pursuant to the direction provided by the Intermunicipal Committee.

Article 5 - Conditions Precedent

5.1 Conditions Precedent - Notwithstanding anything contained within this MOU, the Parties acknowledge and agree that the final decision to proceed with any steps, undertakings, arrangements or other matter whatsoever beyond the completion of the Project will not occur unless and until:

- (a) each Party is satisfied, acting reasonably, that the Project has produced financially viable and practical options or alternatives worth pursuing further by all or any combination of the Parties; and
- (b) the respective Councils of the participating Parties shall have formally approved the Further Arrangements, and have duly authorized the execution of the Further Arrangements;

and it is accordingly agreed that the authorities provided by the Parties under this Agreement is limited to the conduct of the Project.

5.2 Failure of Conditions - Subject to Section 7.2 hereof, if all of the Conditions Precedent specified in Article 5 inclusive have not been met by **December 31, 2021**, this MOU will be at an end, except that the Parties shall forthwith advance any further amounts necessary to pay Project Costs as provided by Article 3.1, and incurred or properly committed to prior to the date of such termination.

5.3 The Parties' Authority - The Parties acknowledge that:

- (a) The Parties, their respective administrations and Council, and anyone acting on behalf of any of them have not made and make no representations, warranties, promises or agreements whatsoever relating directly or indirectly to the subject matter of this MOU or the Project, except to the extent specified in this MOU; and

- (b) each of the Parties are acting on their own behalf, and are not an agent of the other Party for any purpose relating to the Project or this MOU, and consequently each Party has no authority, and has had no authority, whether express or implied to bind or to make any representations on behalf of the other Party relating directly or indirectly to the Project or this MOU, save and except for as evidence in agreement, or as evidenced in the minutes, resolutions or records of meetings of the Parties or the committees contemplated within this Agreement.

Article 6 - Confidential Information

6.1 Confidential Information - Each of the Parties acknowledges that it has to date and that it will, in connection with this MOU, be provided with certain confidential oral and written information (collectively, the “**Confidential Information**”) by the other Parties, including legal opinions, business plans, designs, proceedings of the Parties, financial data, financial and other projections, customer lists and draft agreements and other arrangements with third parties. Each of the Parties agrees that it will use its best efforts to hold such Confidential Information in confidence and use it solely for the purposes of this MOU, and:

- (a) shall not reveal it to anyone other than in the case of the Parties, its council members, officers, employees and advisers who need to know the Confidential Information in connection with this MOU for purposes related to this MOU; and
- (b) subject always to any statutory or regulatory requirement to disclose such information.

Each of the Parties further agrees to return, where possible, all Confidential Information provided by the other Party forthwith upon the request of the other Party on the termination of this MOU.

6.2 Exclusions - The term “Confidential Information” does not include information which:

- (a) was already in the possession of a Party prior to its disclosure by another Party in relation to this Project;
- (b) is or becomes available in the public domain other than as a result of a disclosure contrary to the provisions hereof;
- (c) becomes available to the Party on a non-confidential basis from a source which itself is not, to the knowledge of the Party receiving the information, in breach of a confidentiality obligation relating thereto;
- (d) is independently developed without any breach of this MOU by the personnel of the Party or its advisors who did not have access to the Confidential Information; or

- (e) is required to be disclosed by any law, or is required or formally requested in connection with any rule, regulation or order of any court of competent jurisdiction or any governmental, quasi-governmental or other self-regulating or competent authority having jurisdiction over any of the Parties or the Confidential Information.

Notwithstanding anything contained within this Agreement, each of the Parties shall be subject to, and shall at all times ensure that it neither causes nor contributes to any breach of, any confidentiality agreement or other terms of confidentiality imposed upon any of the parties by third parties providing information to any of the Parties.

- 6.3 Survive Termination** - In the event of termination of this MOU, all Parties shall remain bound by the obligations of confidentiality set forth in Section 6.1 and 6.2 for a period of two years following the date of termination of this MOU.

Article 7 - Term & Termination

- 7.1 Term** - This MOU shall be in effect for the Term, unless:

- (a) earlier terminated in accordance with this MOU; or
- (b) replaced by the Further Arrangements, which are intended to replace this MOU as provided by the Further Arrangements.

- 7.2 Payments and Adjustments on Termination** - In the event that:

- (a) the Project is terminated by agreement of the Parties; or
- (b) this MOU is terminated or expires;

at any time prior to the replacement of this MOU by execution of the Further Arrangements as contemplated within Section 7.1(b), the Parties shall be responsible for all Project Costs approved and incurred in accordance with the provisions of this MOU.

Article 8 – Miscellaneous

- 8.1 Announcements & Publicity** - The Parties agree that the contents and timing of any announcements or media releases regarding any of the matters provided for in this MOU shall be subject to the prior approval of all Parties. The Parties each agree that it shall consult with the other Party in relation to the contents and timing of any announcements and media releases.

- 8.2 Notices** - Any notice required or permitted to be given under this MOU shall be in writing and may be given by delivery to the following addresses, and if so given shall be deemed received at the time of delivery; or by facsimile transmission to the following numbers or

by email transmission to the following email addresses, and if so given shall be deemed received on the next business day following transmission:

(a) **TOWN OF OKOTOKS** PO Box 20
Okotoks, AB T1S 1K1
Email: _____
Fax: 403-938-7387

(b) **FOOTHILLS COUNTY** PO Box 5605
High River, AB T1V 1M7
Email: _____
Fax: 403-652-7880

- 8.3 No Relationship** - Except as expressly agreed, no Party shall be or be deemed to be an agent or representative of the other Party, and nothing contained within this MOU shall be construed so as to create a partnership relationship. Without limiting the foregoing, no Party shall without the written approval of the other Party, be entitled to make any contract, commitment or expenditure binding on the other.
- 8.4 No Assignment** - No party shall assign any of its rights, duties and obligations set forth and provided for in this MOU, without the prior consent of the other Party, which consent may be arbitrarily withheld.
- 8.5 Capacity and Authority** - Each of the Parties represents to the other that it has full legal capacity and authority to execute and deliver this MOU, and perform any obligations which may arise from the provision of this MOU.
- 8.6 Enurement** - This MOU shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 8.7 Entire Agreement** - This MOU constitutes the entire agreement between the Parties pertaining to this subject matter, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties; and there are no warranties, representations, conditions, acknowledgements or other agreements whether direct or collateral, express or implied, that form part of this MOU except as specifically set forth herein.
- 8.8 Alteration and Amendments** - No change or modification of this MOU shall be valid or effective against a Party unless it is in writing and signed by the duly authorized representative of that Party.
- 8.9 Waiver** - A waiver by or on behalf of a Party of a breach of any term of this MOU shall not be binding upon that Party unless it is in writing and executed by its duly authorized representative, and such a waiver shall not release the Party in breach from strict compliance with that or any other term in any other instance.

- 8.10 Laws of Alberta** - This MOU shall be governed by the laws of the Province of Alberta. The Parties agree to exclusively attorn to the courts of the Province of Alberta to resolve any disputes that may arise under or pursuant to this MOU.
- 8.11 Counterpart** - This MOU may be executed in any number of counterparts, and each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.
- 8.12. Force Majeure** - In the event that any Party is rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder, such Party shall give written notice to the other Party stating full particulars of such force majeure. The obligation of the Parties giving such notice shall be suspended during the duration of the delay resulting from such force majeure, to a maximum of One Hundred and Eighty (180) days.

The term “*force majeure*” shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the Queen’s enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, inability with reasonable diligence to obtain materials and any other cause not within the control of the Party claiming a suspension, which, by the exercise of due diligence, such Party shall not have been able to avoid or overcome; provided however, the term “*force majeure*” does not include a lack of financial resources or available funds or similar financial predicament or economic circumstances or any other event, the occurrence or existence of which is due to the financial inability of a party to pay any amount that a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid or discontinue such event.

IN WITNESS WHEREOF the Parties have executed this MOU as of the date first above written.

TOWN OF OKOTOKS

Per: - Original Signed -
Mayor/Reeve

Per: - Original Signed -
CAO/Manager

FOOTHILLS COUNTY

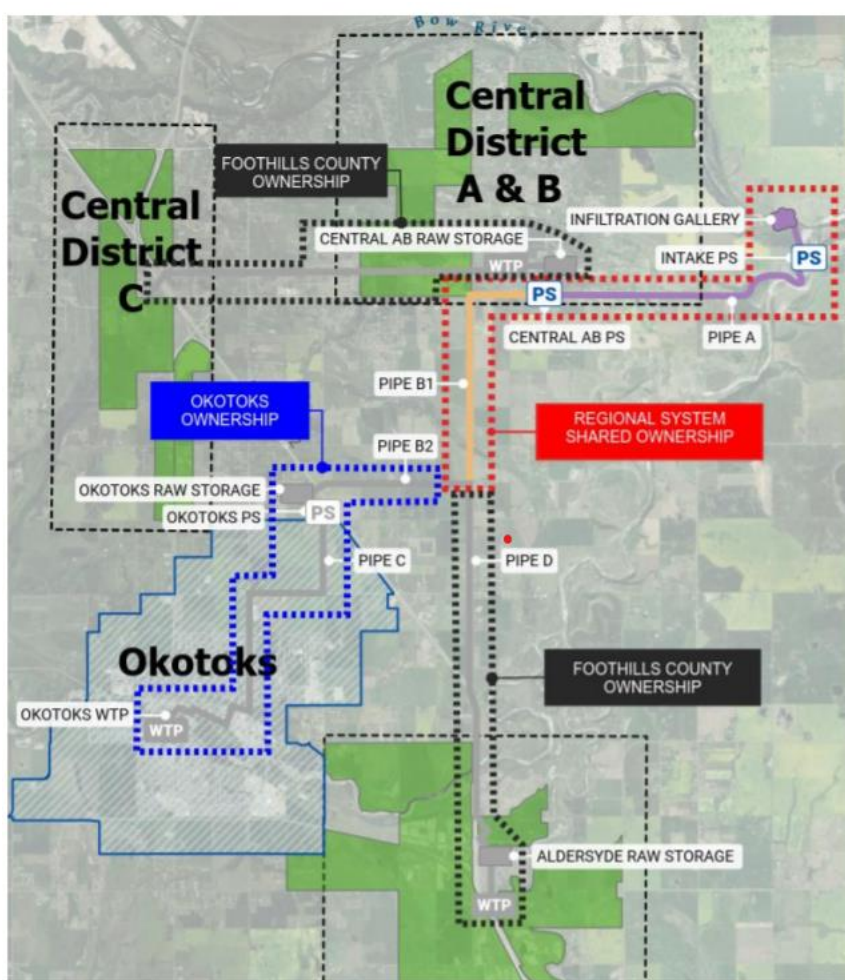
Per: - Original Signed -
Mayor/Reeve

Per: - Original Signed -
CAO/Manager

SCHEDULE "A"

Proposed Project

The Project shall consist of that certain sub-regional water servicing options and governance review process described within the Sub-Regional Raw Water Supply presentation of Urban Systems Ltd. dated July 6, 2020, as that is amended, refined and upgraded from time to time during the course of the Project by the Intermunicipal Committee.



SCHEDULE “B”

Project Costs

Regional Infrastructure	County’s Share	Town’s Share
Infiltration Gallery	48%	52%
Intake Pump Station	48%	52%
Pipe A – Intake to Central A&B Storage (350 mm)	48%	52%
Central A&B Raw Pump Station	18%	82%
Pipe B1 – Central A&B Storage to Junction (300 mm)	18%	82%