

## COMMERCIAL WATER CONVEYANCE AGREEMENT

THIS AGREEMENT is made effective the     day of                     , 2020.

BETWEEN:

**WESTERN IRRIGATION DISTRICT,**  
a corporation duly constituted under the Irrigation Districts Act,  
Chapter I-11, 2000,  
Having its Head Office in Strathmore, in the Province of Alberta  
(the "WID")

- and -

**WHEATLAND COUNTY**  
a corporation established pursuant to the laws of the Province of  
Alberta (the "Water User")

### RECITALS

1. WID operates and controls certain irrigation works commonly known as **85 (B Canal)** (the "**Works**") for the purposes of carrying water and for carrying out its statutory obligations as a supplier of water for irrigation purposes, as shown on the attached Schedule "A".
2. The Water User desires to divert water from the Bow River within SE 13-21-01-W5 through the Works for Municipal (Subdivision Water Supply) purposes (the "**Permitted Use**") within NE 8-25-26-W4.
3. The Water User will be permitted to remove the water conveyed under this agreement from a point on the system within NE 8-25-26-W4 (the "**Delivery Point**").
4. WID has agreed to allow the Water User to divert water through the Works, subject to, and upon the terms and conditions as herein contained.

NOW THEREFORE in consideration of the mutual covenants herein contained on the part of WID and the Water User and of the payments to be made by the Water User to WID as hereinafter provided, WID and the Water User agree as follows:

## **ARTICLE 1 TERM OF AGREEMENT**

- 1.1 **Term of Agreement.** The term of this Agreement shall be **Five (5)** water seasons, commencing and effective **May 1, 2021** and expiring on **September 30, 2025** (the "Term"), subject to the provisions hereinafter contained.

## **ARTICLE 2 SUPPLY OF WATER FOR PERMITTED USE**

- 2.1 **Water Diversion.** Subject to and in accordance with the provisions hereof, WID grants to the Water User during the Irrigation Season (as hereinafter defined) the right to convey through the Works such water as is reasonably required by the Water User for the Permitted Use only, such volumes not to exceed the limitations of the Licence issued under 2.2.
- 2.2 **Crown Licence.** The Water User, at its sole expense, shall during the Term of this Agreement be responsible for obtaining (and thereafter maintaining) from the Crown in Right of the Province of Alberta, or such other governmental or other body from time to time empowered with control over water resources, all requisite licences or approvals (the "Licence") so as to enable it to divert water from the Bow River for the Permitted Use through the Works during the Term of this Agreement. The Water User, notwithstanding the provisions of section 2.1 hereof, during the period May 1 to September 30 during each year of the Term (the "Irrigation Season"), shall only be entitled to divert through the Works the maximum amount of water as permitted under the Licence. The Water User shall not apply for an increase in the amount of water which it is allowed to divert from the Bow River under the Licence, without the prior written consent of WID, which consent will not be unreasonably withheld. The Water User shall provide WID with a copy of the Licence.

Any failure by the Water User to obtain and maintain the requisite Licence shall not relieve the Water User from its obligations hereunder, including without limitation the payment of fees to WID as hereinafter set forth. Provided, however, that any failure by the Water User to obtain or maintain the Licence shall entitle WID, to terminate this Agreement and to immediately cease supplying water to the Water User, without any liability for so doing.

- 2.3 **Water Supply Point.** The supply of water conveyed by the WID to the Water User, shall be available to the Water User from the Delivery Point within NE 8-25-26-W4.
- 2.4 **Reduction of Water Supply.** The Water User acknowledges that while WID shall utilize its best efforts to supply water to the Water User in such quantities as is permitted hereunder, WID shall not be responsible for the inability of the Water User to obtain required water supply levels caused as a result of washouts, repairs to, maintenance of, breakdown or damage to irrigation works of WID, shortages of water, downstream operational demands, events requiring WID to restrict the supply of water to the Water User so as to enable it to fulfil its statutory obligations as a supplier of water for irrigation purposes, or natural causes or events beyond the control of WID and the Water User shall have no claim against WID nor shall it be entitled to any fee reduction or compensation from WID as a result thereof.

- 2.5 **Water Quality.** The Water User will utilize any water supplied by WID at its own risk and acknowledges that WID has made and makes no representations now or in the future as to the quality or fitness of any water to be diverted by the Water User from the Delivery Point and WID shall not be responsible or liable to the Water User as a result of the introduction of any hazardous substance into the water supplied by WID to the Water User unless caused by the wilful and malicious acts of WID or those for whom WID is responsible in law. The term "hazardous substance" when used herein shall mean a substance or mixture of substances, material or thing which is capable of causing impairment of or damage to air, land, water, human health or safety, or property.

WID shall, however, immediately notify the Water User in the event it becomes aware of the introduction of any hazardous substance into the Works which could reasonably be expected to affect any water supplied to the Water User. The Water User further acknowledges that WID does not test the quality of any water in the Works but grants to the Water User, and its agents, employees and contractors the right to access the Works solely for the purpose of conducting any desired water quality testing, such testing to be undertaken at the sole expense of the Water User. The Water User is aware that WID from time to time introduces into its irrigation works, including the Works, aquatic weed control treatments. In such an event, however, WID shall provide forty-eight (48) hours prior written notice to the Water User of its intention to undertake any such aquatic weed control treatment.

Any water supplied by WID to the Water User which is to be treated by the Water User shall be treated at the Water User's sole expense.

- 2.6 **Water User's Infrastructure.** The Water User shall, at its sole cost and expense, be responsible for installing, repairing, altering, modifying, and maintaining all works, facilities and devices which are required so as to enable it to divert water as permitted hereunder from WID and the Water User acknowledges and agrees that WID has no responsibilities in that regard. Any such work shall be undertaken in a manner as to not interfere with or disturb or disrupt any irrigation works of WID or any operations conducted by WID in carrying out its statutory responsibility as a carrier and supplier of water for irrigation purposes and shall only be done in a manner and at times approved by WID, acting reasonably, and then only in accordance with plans and specifications first reviewed and approved by WID.
- 2.7 **Installation of Water-Measuring Devices.** During the Term of this Agreement WID may request that reliable water-measuring devices (accurate within a tolerance of three percent (3%)) be installed by the Water User to record the water volume diverted from the Water Source by the Water User. The Water User shall, within one (1) year upon receipt of such request, install such water-measuring devices, which must first be approved by WID, acting reasonably, both as to suitability and as to location. The Water User shall bear the entire cost of the supply, installation, repair, alteration or maintenance of such water-measuring devices.
- 2.8 **Suspension of Service.** Notwithstanding anything to the contrary contained in this Agreement, WID reserves the right at all times to suspend in whole or in part the supply of water to the Water User, provided such suspension is not longer than as is reasonably required, so as to enable WID to make any repairs, alterations or modifications to any of its irrigation works or as may be required so as to undertake the construction of any new irrigation works which may be required so as to enable WID to fulfil its statutory obligations as a supplier of water for irrigation purposes. In such an event, however, WID shall provide

forty-eight (48) hours prior written notice to the Water User of its intention to suspend the supply of water.

### **ARTICLE 3 FEE STRUCTURE**

- 3.1 **Annual Payments.** In consideration of the Water User having available for its use a supply of water for the Permitted Use as permitted hereunder and of WID granting to the Water User the right to convey water through the Works the Water User, without notice or demand therefore, shall pay to WID at the time as set forth in section 3.3 and at the address as set forth in section 4.7, or at such other place as WID may designate from time to time, the following fees, together with an additional amount representing any applicable Goods and Services Tax, or other like or similar tax, levied by any governmental body or authority:

The Annual Payment to be paid to the Board is calculated by multiplying the total volume of water permitted to be diverted under the Water Users' Licence, times the rate per acre-foot being the rate applicable to Commercial Conveyance Agreements as is set by resolution of the Board. The said applicable rate per acre-foot of water is set by resolution of the Board on an annual basis, and is subject to change from time to time. The minimum amount payable under this agreement shall be the equivalent of the charge for 15 acre feet.

- 3.2 **Billing.** WID will normally render an invoice to the Water User during each year during the Term of this Agreement in respect the fee payable for that year. The Water User covenants and agrees that all fees payable by the Water User to WID shall be due and paid prior to the close of business the last business day before September 1 of each year during the Term of this Agreement. Failure by WID to provide the Water User with any invoice will not relieve the Water User from the obligation to pay the fees as required under section 3.1 of this Agreement. The Water User shall be obliged to pay all fees to WID as contemplated in section 3.1 hereof during each year of the Term of this Agreement in any event regardless of whether the Water User diverts all or a portion of any water as permitted under its Licence from the Bow River as permitted hereunder.

- 3.3 **Penalty.** Should the Water User fail to pay to WID all or any portion of those fees payable pursuant to section 3.1 and 3.2 before the close of business the last business day prior to September 1 of any year, the Water User shall pay to WID a 9% penalty, and a further 9% penalty on any amount still remaining outstanding after the close of business the last business day preceding January 1 of the next year, and each September and January 1 thereafter for so long as an amount remains outstanding.

### **ARTICLE 4 MISCELLANEOUS**

- 4.1 **Termination.** Should the Water User at any time or from time to time fail to comply with each and every one of the covenants, conditions or obligations to be observed and performed by it under this Agreement (other than the failure of the Water User to obtain or maintain the Licence, which shall allow for immediate termination by WID as set forth in section 2.2), WID shall be entitled to terminate this Agreement upon providing six (6) month's notice in writing to the Water User and WID shall also be entitled to pursue all and such other remedies as are available to it at law arising as a result of such breach.

Notwithstanding the provisions of section 1.1 of this Agreement, either WID or the Water User shall be entitled to terminate this Agreement at any time upon providing two (2) year's

prior written notice to the other party, or upon such other date as is mutually-agreed in writing between the Water User and WID.

- 4.2 **Rights of WID.** Notwithstanding anything to the contrary which may be contained in this Agreement, WID shall be entitled at all times, and at its expense, to carry water or alter, maintain, construct or repair any of its irrigation works, or to carry out any of its statutory powers and responsibilities under the *Irrigation Districts Act*, Chapter I-11, 2000, as amended or substituted from time to time (the "Irrigation Districts Act"), provided that such actions do not unreasonably interfere with the Water User's rights under this Agreement.
- 4.3 **Indemnity.** The Water User shall and does hereby indemnify WID, its officers, agents, contractors, employees or those for whom WID is responsible at law from and against and save harmless WID from and against all claims, suits, causes of action, losses, costs (including solicitor and client costs), or damages arising out of or as a result of or in connection with the conduct or management of or from any work or thing whatsoever done by the Water User in respect of the Water Source or which may arise as a result of the negligence or malfeasance of the Water User, its officers, agents, contractors, employees or those for whom the Water User is responsible at law or as a result of the breach or non-performance by the Water User of any term, covenant or agreement contained in or to be performed or observed by the Water User under this Agreement. Notwithstanding anything contained in this section 4.3 to the contrary, the Water User shall not be responsible for any claims, suits, causes of action, costs, losses or damage arising as a result of or in connection with any work or thing whatsoever in respect of the Water Source done by WID as a result of or in connection with any negligence of WID, its officers, agents, contractors, employees or those for whom WID is responsible at law.
- 4.4 **Release.** The Water User does hereby release WID, its officers, agents, contractors, employees or those for whom WID is responsible at law from any liability for death or injury or damage to property of the Water User or others arising as a result of the entering into of this Agreement, except as may be caused by the negligence of WID, its officers, agents, contractors, employees or those for whom WID is responsible at law.
- 4.5 **Provincial Legislation.** Notwithstanding anything to the contrary contained in this Agreement, the terms and provisions contained in this Agreement shall at all times be subject to the requirements, regulations and provisions contained in any provincial or other legislation affecting the subject matter of this Agreement, including without limitation, the *Water Act*, R.S.A. 1998 Ch. W-3.5, as amended or substituted from time to time, the *Irrigation Districts Act* and all other laws and statutes enforced from time to time in the Province of Alberta as are applicable to the licence, delivery and use of water and with respect to the irrigation works of WID. Whenever the words "irrigation works" shall appear in this Agreement they shall be given the same meaning as set out in the *Irrigation Districts Act*.
- 4.6 **Liens.** The Water User shall in undertaking or performing any work in relation to the Water Source or other irrigation works of WID, comply with all statutes, regulations, by-laws, specifications and requirements of any municipal, provincial, federal or other authority relating to such work and shall not permit any liens to be placed against any land or property owned by WID. In the event the Water User shall breach its obligation not to permit a lien against any property or lands owned by WID, WID may cause the same to be removed in

which case the Water User shall forthwith pay to WID the cost thereof including WID's legal costs on a solicitor and his own client basis.

- 4.7 **Notices.** All notices, demands, and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered personally or by fax to the party entitled to receive the same as follows:

To: Wheatland County  
HWY 1, RR 1  
Strathmore, AB  
T1P 1J6  
Telephone: (403) 934-3321

To: Western Irrigation District  
Box 2372, 105 – 900 Pine Road  
Strathmore, AB T1P 1K3  
Attention: Katherine Zakariasen  
Fax: (403) 934-5101

The date of receipt of any such notice, demand or other communication shall be the date of delivery thereof. Either party may at any time or from time to time notify the other party in writing as to a change of address.

- 4.8 **Time of the Essence.** Time shall be of the essence of this Agreement.

- 4.9 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Provided however, that the Water User shall be entitled to assign this Agreement only with the prior consent in writing of WID, which shall not be unreasonably withheld.

- 4.10 **Invalidity.** If any term, condition or provision of this Agreement is determined to be invalid or unenforceable, it shall be deemed to be severable from the remainder of this Agreement, which shall continue to be in full force and effect.

- 4.11 **Waiver.** No covenant, term or condition of this Agreement shall be waived except by the written consent of the parties hereto and any forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of the covenant, term or condition to be performed by the other party and the other party shall be entitled to invoke any remedy available to it under this Agreement or at law despite such forbearance or indulgence. The waiver of any breach of any covenant, term or condition by either party shall not constitute a waiver of any other or subsequent breach regardless of either party's knowledge thereof.

- 4.12 **Governing Law.** This Agreement shall be governed by the laws of the Province of Alberta.

- 4.13 **Entire Agreement.** This Agreement contains all the terms and provisions of the agreement between the parties related to its subject-matter and cancels and supersedes any prior agreements, undertakings and commitments. There are no oral understandings, statements or stipulations bearing upon the meaning and effect of this Agreement which have not been incorporated herein.

**THIS AGREEMENT** is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ with effect from the 1st day of May, 2021.

**WHEATLAND COUNTY**

\_\_\_\_\_

c/s

\_\_\_\_\_

**WESTERN IRRIGATION DISTRICT**

\_\_\_\_\_

Chairman

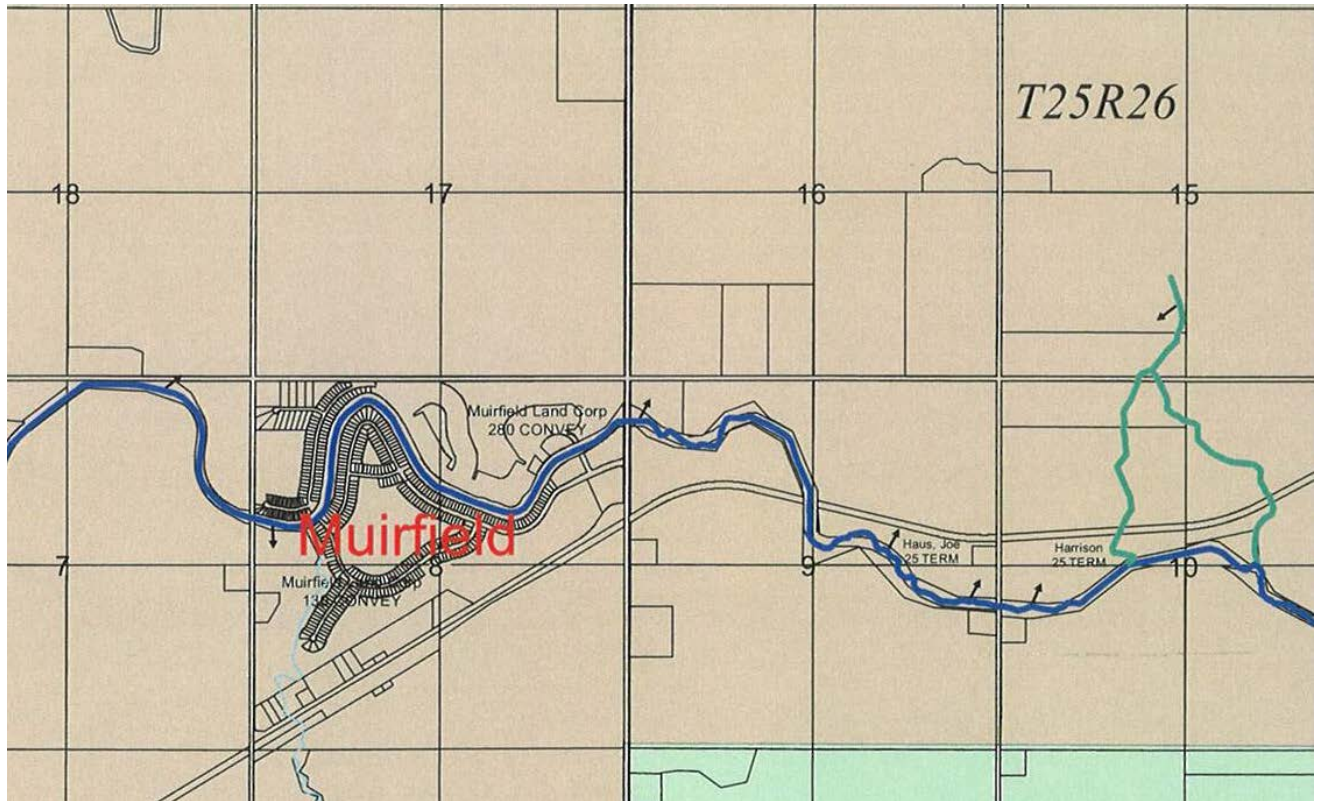
c/s

\_\_\_\_\_

General Manager

## SCHEDULE "A"

Diagram showing location of the Works



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**WESTERN IRRIGATION DISTRICT**

- and -

**WHEATLAND COUNTY**

**COMMERCIAL WATER CONVEYANCE**