

**IN THE MATTER of an Arbitration pursuant to Part 17.2, Division 2 of  
The Municipal Government Act, RSA 2000, c. M-26**

BETWEEN:

**CITY OF GRANDE PRAIRIE**

- and -

**COUNTY OF GRANDE PRAIRIE NO. 1**

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**RULING WITH RESPECT TO PRELIMINARY ISSUE**

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## TABLE OF CONTENTS

I.	INTRODUCTION AND BACKGROUND .....	1
II.	SYNOPSIS OF PARTIES' POSITIONS.....	2
III.	LEGISLATIVE CONTEXT .....	3
IV.	INTERPRETATION OF THE 2004 AGREEMENT: IS IT A COST SHARING AGREEMENT OR A REVENUE SHARING AGREEMENT? .....	5
A.	General Principles of Contractual Interpretation .....	5
B.	Application of General Principles.....	6
	The Wording of the 2004 Agreement .....	6
	Consideration of Wording of Preamble .....	7
	The Surrounding Circumstances.....	9
	Parol Evidence .....	9
	The 1995 Agreement.....	10
	Cost-Sharing Agreements .....	11
	The Letter of Intent.....	12
	Conclusion with respect to interpretation of 2004 Agreement .....	13
V.	SHOULD THE PAYMENTS BE CONSIDERED IN ANY EVENT? ARE THEY RELEVANT?.....	14
VI.	CONCLUSION AND ANSWER .....	15

## I. INTRODUCTION AND BACKGROUND

1. This arbitration is taking place between the City of Grande Prairie (the "City") and the County of Grande Prairie No. 1 (the "County") pursuant to part 17.2 of the *Municipal Government Act* (the "Act") with respect to the establishment of an Intermunicipal Collaboration Framework (a "Framework") between them.

2. Pursuant to Part 17.2 of the *Act*, the City and the County are mandated to establish a Framework for the following purposes:

- (a) to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
  - (b) to steward scarce resources efficiently in providing local services, and
  - (c) to ensure municipalities contribute funding to services that benefit their residents.
- (s. 708.27 of the *Act*)

3. The City and the County were unable to agree on a Framework. Accordingly the matter was mandated for arbitration pursuant to s. 708.35(1) of the *Act*.

4. On May 14, 2021, the parties retained me as the arbitrator with respect to the matters in issue between them related to the Framework. Pursuant to s. 708.36(1) of the *Act*, as arbitrator I must make an award that resolves the issues in dispute between the City and the County.

5. At the outset of the retainer, counsel advised that while their clients had been unable to conclude a Framework, they were optimistic that if I ruled on a preliminary issue related to the interpretation and relevance of a 2004 Revenue Sharing Agreement (the "2004 Agreement" or "2004 RSA"), that would greatly enhance the likelihood that the parties would be able to agree on the remaining outstanding issues between them without the necessity of proceeding through a hearing.

6. The parties have accordingly referred the following preliminary issue to me for determination:

Should the County's payments to the City under the June 7, 2004, Revenue Sharing Agreement between the County and the City be considered as part of the arbitration of an intermunicipal collaboration framework agreement between the parties when evaluating an appropriate total contribution by the County to the City arising from any benefit to the County from its residents' use of City services and facilities?  
(the "Preliminary Issue")

7. On July 14, 2021, the County provided a statutory declaration (the “Statutory Declaration”) declared on that date by Bill Rogan its Chief Administrative Officer. The Statutory Declaration sets out the history of discussions (from the County’s perspective) between the County and the City and appends various previous agreements between the parties.

8. On July 21, 2021, the City and the County provided their respective Briefs and Submissions with respect to the Preliminary Issue (respectively, the "City's Submissions" and the "County's Submissions").

9. On July 29, 2021, I held a video conference with counsel for the parties to discuss and obtain further information with respect to their respective Submissions.

10. This is my Ruling with respect to the Preliminary Issue.

11. At the outset, I would like to thank legal counsel for both parties for their cogent and articulate Submissions and the highly professional and skilled way they have conducted this matter to date.

## **II. SYNOPSIS OF PARTIES’ POSITIONS**

12. A synopsis of the parties' positions with respect to the Preliminary Issue is as follows.

### **City Position**

13. The City's position is that the proper interpretation of the 2004 Agreement is that it does not (and was not intended by the parties to) represent in whole or in part a contribution by the County to the City for costs incurred by the City in delivering services, (or more specifically, services that are to be included in an ICF to residents within the County).

14. Rather, the City submits that the 2004 Agreement properly interpreted is a revenue sharing agreement between the City and the County as a collaborative effort between them to foster regional development by expanding water and wastewater services to the County. It was entered into for a business development purpose to cooperate to attract mutually beneficial development in the shared region.

15. Its' position is that payments made pursuant to the 2004 Agreement are accordingly entirely irrelevant to this arbitration the subject matter of which is the equitable sharing of costs between the City and the County.

16. The City submits that the 2004 Agreement was essentially established in order to compensate the City for allowing the County to become a shareholder in Aquatera Utilities Inc. ("Aquatera") which was the City's newly created municipal utility corporation. The essence of the agreement was that the County was to receive shares in Aquatera and access to water and wastewater service connections within the County and that, in exchange for the increased development in the County which would be facilitated through utility connections, the County agreed to pay the City 10% of the municipal property taxes generated by new non-residential developments serviced by Aquatera.

### **County Position**

17. The County's position is that the 2004 Agreement, properly interpreted, is a cost sharing agreement between the parties and that the payments set out in it are made in recognition of and as a contribution toward the costs of City's services and facilities available to County residents.

18. The County relies in large part upon certain wording in the preamble of the 2004 Agreement. It submits the preamble wording provides greater context to the purpose of the agreement and that it demonstrates that the payments are more than the mere consideration for receiving the share in Aquatera. Rather it submits that the preamble wording demonstrates that the true nature of the agreement was cost sharing between the parties.

19. The County also emphasizes that s. 708.38(1) of the *Act* provides the arbitrator with very broad authority to consider any matter he or she considers relevant. It notes that the question in the Preliminary Issue is not whether the payments should account for all, or any specific portion of any amounts owing to the City pursuant to the Framework; rather the question is whether the payments should be considered at all when evaluating the County's appropriate total contribution.

### **III. LEGISLATIVE CONTEXT**

20. As noted, Part 17.2 of the *Act* sets out the legislative framework for the establishment of intermunicipal collaboration frameworks.

21. The ICF regime essentially requires municipalities to cooperate in the delivery of services that are shared between residents of 2 or more municipalities and to contribute to the cost of providing services provided by another municipality to the benefit of their residents.

22. As noted in s. 708.29, the ICF must describe the services to be provided under it, identify which municipality is responsible for providing which services and outline how the services will be funded.

23. The City submits that the focus in the ICF process is on the equitable sharing of the *costs* of the services. It notes the Intermunicipal Collaboration Framework Workbook, a document which had been provided to municipalities throughout the province to assist them in the preparation of ICFs. It describes ICFs as:

... a tool to facilitate and encourage cooperation and *cost sharing* between neighboring municipalities in order to ensure municipal services are provided to residents efficiently [emphasis added]

24. The City distinguishes the cost sharing mechanisms typical under ICFs from other arrangements based on revenue sharing mechanisms. It submits that the distinction between the two types of arrangements is clear – that cost sharing arrangements are a form of municipal cooperation that attempts to ensure that municipalities share in the cost of providing services that benefit their residents. On the other hand, revenue sharing agreements are a means of municipal cooperation aimed at ensuring mutual benefit from regional development.

25. The City submits that the 2004 Agreement is truly a revenue sharing agreement as opposed to a cost sharing agreement and that the purpose of the 2004 Agreement was to foster regional development as opposed to making any attempt to share in costs of services.

26. This requires the interpretation of the 2004 Agreement to determine what the parties intended – cost sharing or revenue sharing?

#### **IV. INTERPRETATION OF THE 2004 AGREEMENT: IS IT A COST SHARING AGREEMENT OR A REVENUE SHARING AGREEMENT?**

##### **A. General Principles of Contractual Interpretation**

27. The parties agree that the applicable general principles relevant to the interpretation of contracts in Canada are set out in the decision of *Creston Moly Corp. v. Sattva Capital Corp.*, 2014 SCC 53 ("*Sattva*").

28. As noted in paragraph 47 of *Sattva*, a decision maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract.

... a decision maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning. ...

29. The Court, at paragraph 57, noted that the surrounding circumstances will be considered in interpreting the terms of a contract, [but] they must not be allowed to overwhelm the words of that agreement:

While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement. [Citations omitted]

30. The Court noted that the examination of the surrounding circumstances is to deepen the decision maker's understanding of the mutual and objective intentions of the parties and includes the facts known or reasonably ought to have been known to both parties at or before the date of the contracting. The parol evidence rule precludes, among other things, evidence of the subjective intentions of the parties.

[59] [...] The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been wholly reduced to writing. To this end, the rule precludes, among other things, evidence of the subjective intentions of the parties. The purpose of the parol evidence rule is primarily to achieve finality and certainty in contractual obligations, and secondarily to hamper a party's ability to use fabricated or unreliable evidence to attack a written contract [citations omitted].

[60] The parol evidence rule does not apply to preclude evidence of the surrounding circumstances. [...] The surrounding circumstances are facts known or facts that reasonably ought to have been known to both parties at or before the date of contracting; therefore, the concern of unreliability does not arise.

## **B. Application of General Principles**

### ***The Wording of the 2004 Agreement***

31. I start by considering the wording of the 2004 Agreement as a whole.

32. The 2004 Agreement is an agreement between the County and the City. It is entitled Revenue Sharing Agreement. It is dated June 7, 2004.

33. The Preamble reads as follows:

WHEREAS the County and the City are Municipalities within the meaning of the *Municipal Government Act*, R.S.A. 2000, c. M-26 ("MGA");

AND WHEREAS the MGA provides that two or more Municipalities may enter into an agreement for the sharing of taxes collected by a Municipality;

AND WHEREAS numerous persons who reside within the City are employed within the County, and vice versa;

AND WHEREAS numerous persons who reside within the County utilize the services and facilities provided by the City, and vice versa;

AND WHEREAS the County, the City, the Town of Sexsmith and Aquatera Utilities Inc. have entered into certain Agreements related to the provision of Utility Operations to the County;

AND WHEREAS the County and the City acknowledge that it is fair and equitable that the County share with the City some of the tax revenues collected by the County;

IT IS THEREFORE AGREED by the County and the City that: ...

34. The body of the 2004 Agreement sets out the following main terms:

- (i) a previous (1995) Revenue Sharing Agreement is revoked and replaced by this Agreement; (para. 2.01)
- (ii) the County agreed to pay the City 20% of Municipal Taxes collected from the Bear Creek Cogeneration facility; (para. 3.01)
- (iii) the County agrees to pay the City 10% of Municipal Taxes levied by the County for new, non-residential development within the Service Zone that receive connections for treated water or wastewater services after the Effective Date from Aquatera and which thereafter receive water services from the Corporation (i.e., Aquatera) and to major improvements to existing non-residential developments in the Service Zone; and Improvements to any existing non-residential development within the Service Zone if those improvements will increase the assessed value of the development by more than 51% as of the date of the first assessment showing such increase. (para. 3.02.01)

35. The body of the 2004 Agreement is entirely silent with respect to the costs of wastewater services or the equitable sharing of those costs between the County and the City.

***Consideration of Wording of Preamble***

36. As noted, the County relies in large part on the wording of the Preamble. That wording references that:

- (a) numerous persons who reside in the City are employed within the County, and *vice versa*,
- (b) numerous persons who reside within the County utilize the services and facilities provided by the City and *vice versa*, and that
- (c) the City and the County acknowledge that it is fair and equitable that the County share with the City some of the tax revenues collected by the County.

37. The County submits that the wording evidences the parties' intention that the 2004 Agreement be an agreement by the County to contribute to the costs of the services provided. It submits that the wording "speaks for itself" and while "the form of revenue sharing has evolved over time, it has always recognized that it is related to the costs of services and facilities provided by the City".

38. The City responds that even if these words are given a charitable interpretation they are at most vague and ambiguous in their intent and do not suggest a disparity between the delivery of services and the usage of those services. It submits that the words are more appropriately read as a mutual recognition of the shared interests of the City and the County, and support the City's position that the 2004 Agreement was intended to enable the municipalities to cooperate in order to attract development.

39. The City cites authority that, where there is an apparent inconsistency between a contract's preamble and its written terms, the clear and unambiguous written terms of the contract prevail. (See, for example, *Western Irrigation District v. Alberta*, 2002 ABCA 200 at para. 21; *Fontaine et al. v. Canada (Attorney General) et al*, 2014 MBCA 93 at para. 50).

40. I have reviewed the cited authorities. Even though I do not find the words in the body of the 2004 Agreement to be ambiguous, I am prepared to consider the meaning of the words set out in the preamble and their impact, if any, on the words set out in the body of the Agreement. I do not consider an ambiguity in the body of the Agreement to be a pre-condition to consideration of the meaning of the words of the preamble.

41. However, I do not interpret the words of the preamble as evidencing an intent by the parties to establish a cost-sharing arrangement. I agree with the City's Submission that the words can be appropriately read as a mutual recognition of the shared interests of the City and the County and the interconnectivity between the two municipalities. I agree that these provisions are consistent with the conclusion that the 2004 Agreement was intended to enable the municipalities to cooperate in the attraction of business development for their mutual benefit.

42. I accept the City's submission that if the parties had intended the 2004 Agreement to be a cost-sharing agreement, one might have expected the preamble to note such matters as the County residents commonly and disproportionately relying on services provided by the City which would justify payments to the County to compensate the City.

43. In the result, when I read the words of the 2004 Agreement in isolation and note the absence of any words in the body of the agreement with respect to the cost of the water or wastewater services or the equitable sharing of such costs, combined with wording in the preamble that is arguably consistent with the interpretation urged by the City, I am unable to interpret the agreement as a cost sharing agreement.

44. However, I must also consider the surrounding circumstances.

***The Surrounding Circumstances***

45. The parties agree that certain other agreements provide relevant objective evidence of the surrounding circumstances and can be properly considered in the interpretation of the 2004 Agreement. These agreements are:

- (a) a prior agreement (the "1995 Agreement") which had a similar though distinct revenue sharing arrangement, and which was repealed and replaced by the 2004 Agreement;
- (b) 3 Cost Sharing Agreements between the County and the City dated 2002, 2009 and 2010 (the "Cost Sharing Agreements") and a 2011 letter from the County notifying the City that it had approved a payment towards the capital costs of the City's new multiplex facility;
- (c) a January 9, 2003, Letter of Intent ("Letter of Intent") setting out the general terms by which the County would acquire shares in Aquatera which gave rise to the 2004 Agreement;

***Parol Evidence***

46. The parties disagree whether certain arguably subjective intentions of members of the County Council or administration as set out in the Statutory Declaration run afoul of the parol evidence rule and are inadmissible.

47. The Statutory Declaration contains various expressions of what can properly be characterized as subjective intentions of members of the County's council or administration and improper parol evidence.

48. I agree with the City's Submissions that paragraphs 6, 8, 9 and 10 of the Statutory Declaration set out the County's subjective perspectives or intentions with respect to the negotiations between the parties. As such they are not properly considered in the interpretation of the meaning of the contract.

49. The same can be said with respect to Exhibit D of the Statutory Declaration which is apparently an update provided to County council with respect to revenue sharing.

50. I agree with the City's Submissions that the introduction of this evidence would be improper and I agree that the ambiguity exception with respect to parol evidence does not apply.

51. I have accordingly not considered the aforesaid information as part of my consideration of the surrounding circumstances.

***The 1995 Agreement***

52. The 1995 Agreement established a revenue sharing formula for any development that took place in a specified area adjacent to the City. It provided that the County would pay the City 20% of all municipal taxes gathered from any commercial or industrial facilities within the defined revenue sharing area which essentially included the area within the County immediately surrounding the City. If a base amount of taxes equal to \$250,000 was not collected by the County from the facilities and area in question, no revenue was shared.

53. A commercial or industrial facility was defined in the 1995 Agreement as "an industrial operation of any nature located either wholly or partly within the Revenue Sharing Area provided construction was commenced after October 27, 1994, and included major expansions of existing facilities".

54. The 1995 Agreement was to be in force until December 31, 2014. However, it was terminated as an express provision of the 2004 Agreement.

55. The preamble of the 1995 Agreement included the following wording:

B. Numerous persons who reside within the City are employed in different industries situated within the County; and

C. It is fair and equitable that the parties share proportionately the municipal taxes to be collected from or with respect to certain of such industries to reflect the extent to which each of the parties provides services to those industries and their employees.

56. This wording is arguably more suggestive of a cost sharing arrangement than the wording of the preamble in the 2004 Agreement.

57. The City notes the following distinctions between the 1995 Agreement and the 2004 Agreement.

(a) The 1995 Agreement required tax sharing for any developments that took place within the specified area adjacent to the City while the tax sharing requirement of the 2004 Agreement is triggered nearly exclusively by *any development after connection to the Aquatera utility system*.

- (b) 1995 Agreement had a defined term of 20 years while the 2004 Agreement has no fixed term and specifies termination only occurs if the County ceases to be a shareholder in Aquatera.

### ***Cost-Sharing Agreements***

58. Between 2002 and 2011, the City and the County entered into three cost-sharing agreements as follows:

- (a) 2002 Cost-Sharing Agreement

- (i) In 2002 the City and the County signed a cost-sharing agreement [Exhibit C of Statutory Declaration] with respect to the extension of firefighting services for a fixed term of five years from January 1, 2003 to December 31, 2008 as well as a contribution by the County to the City in payment of annual costs for operating the City's leisure centre and as a contribution for past capital costs.
- (ii) The preamble to the 2002 cost-sharing agreement sets out that the parties are in the process of negotiating the provision of regional services for their mutual benefit, that the County recognizes the value to the South Peace Region of the indoor pool, that the County has asked the City to provide firefighting services to the County and that the parties have agreed that for certain considerations the City will provide municipal services to the County as provided in the agreement.
- (iii) The 2002 cost-sharing agreement contains no reference to revenue sharing of municipal tax amounts or any reference to the 1995 Agreement.

- (b) 2009 Cost-Sharing Agreement

- (i) In 2009 the parties entered into a new agreement [Exhibit G of Statutory Declaration] with respect to payments for the leisure centre for a two year period.
- (ii) As before, the preamble to the agreement noted that the parties were in the process of negotiating the provision of regional services for their mutual benefit, that the County recognized the value to the South Peace Region of the indoor pool at the City's leisure centre and that the County has agreed to contribute to the annual operating costs of the leisure centre.
- (iii) No reference is made in the 2009 cost-sharing agreement to the 2004 Agreement.

(c) 2010 Cost-Sharing Agreement

- (i) In 2010 the parties entered into a further agreement [Exhibit H of Statutory Declaration] with respect to the annual operating costs of the leisure centre for the calendar year 2011.
- (ii) As before, the preamble to the agreement noted that the parties were in the process of negotiating the provision of regional services for their mutual benefit, that the County recognized the value to the South Peace Region of the indoor pool at the City's Leisure Centre and that the County has agreed to contribute to the annual operating costs of the Leisure Centre.
- (iii) No reference is made in the 2010 cost-sharing agreement to the 2004 Agreement.

(d) 2011 Multiplex Contribution

- (i) In 2011 the County notified the City by letter that it had approved a payment of \$250,000 toward the capital costs of the City's new multiplex facility. No reference was made in the letter to the 2004 Agreement.

59. The Cost-Sharing Agreements are examples of actual cost-sharing agreements entered into between the City and the County on various dates. The 2002 Cost sharing agreement provides some evidence of the surrounding circumstances at the time of the 2004 Agreement namely that the parties had recently entered into an agreement that was clearly by its terms a cost sharing agreement.

***The Letter of Intent***

60. In 2003, the parties executed a Letter of Intent setting out the terms by which the County would acquire shares in Aquatera.

61. The terms include that the County would be issued one share in Aquatera; Aquatera would provide water and waste utilities to properties within the County; the City would receive from the County 10% of tax revenues derived from "new non-residential development in the County that receives water or wastewater services from Aquatera".

62. The Letter of Intent provides that the County will fix rates for utility services on full recovery basis and will retain full rate setting authority within the County. The County agrees to compensate Aquatera in the event that rates do not fully cover the costs of services.

***Conclusion with respect to interpretation of 2004 Agreement***

63. I have reviewed the wording of the 2004 Agreement and its surrounding circumstances and have concluded that the 2004 Agreement is not a cost-sharing agreement.

64. First, the body of the 2004 Agreement is silent with respect to the costs to the City (or, for that matter, Aquatera) of the services covered by the agreement. The agreement makes no attempt to allocate such costs as between the City and the County. The 2004 Agreement makes no reference at all to the services at issue in the within arbitration (i.e., recreation, culture, cemeteries or homelessness) and does not in any way attempt to establish a cost-sharing mechanism.

65. Rather, in accordance with the Letter of Intent between the parties, the parties' arrangement is that Aquatera will provide services in the County on at least a break even basis and that, if there is any net loss in providing utility services within the County, the County would shoulder those losses.

66. In this regard, I note and accept the City's submission that in any event, even if Aquatera were experiencing a net loss in providing the utility services, the City would not be able to rely on that in order to press for increased payments from the County through an ICF as services provided by third parties are not eligible under the ICF Framework.

67. I also accept the City's submission that there is no intuitive connection between the increased non-residential development in the County and the services provided by the City, such as leisure and recreation facilities. I agree that if the 2004 Agreement was intended to constitute a cost-sharing arrangement then it would make more sense to have included existing and residential developments and not have limited its application to new and non-residential developments. Further I accept that there appears to be little if any rational connection between costs for providing services and being a shareholder in a utility company.

68. As previously noted herein, while the words of the preamble in the 2004 Agreement do provide additional context to the relationship between the parties and the purpose of the Agreement, I find that the wording is not clear or certain enough so as to convert what would otherwise be a revenue sharing agreement entered into for the purpose of fostering regional development for business purposes into a cost-sharing agreement

69. I accordingly find that the 2004 Agreement is properly interpreted as a Revenue Sharing Agreement for the purpose of fostering regional development. It is not a cost sharing agreement.

**V. SHOULD THE PAYMENTS BE CONSIDERED IN ANY EVENT? ARE THEY RELEVANT?**

70. As noted, s. 708.38(1) provides the arbitrator with broad discretion. Among other things, the arbitrator may have regard to the “equitable sharing of costs among municipalities” and “any other matters that the arbitrator considers relevant”.

71. The issue accordingly becomes whether I consider the payments made by the County under the 2004 Agreement to be relevant to the issues which will be before me at the hearing of this matter.

72. I am mindful that a trier of fact must exercise caution when attempting to determine at a preliminary stage of proceedings what might end up being relevant at an eventual hearing of the matter.

73. However, I am also mindful that the parties desire that a clear decision be made (one way or the other) with respect to the Preliminary Issue. I am advised by counsel, and I accept, that it would not be helpful to the parties for me to render a decision to the effect that the payments might “possibly” or “potentially” be relevant.

74. I understand from counsel that the subject matter of the hearing will be the equitable sharing of costs related to the recreation center, funeral services, cemeteries, and homelessness. Counsel expects to lead evidence with respect to the nature of those services, their net costs, the usage rates of the parties and the net benefits to each party. Based on this evidence they will make submissions with respect to what would be the equitable sharing of the costs of those services.

75. In this regard I am having great difficulty in appreciating how payments made by the County to the City pursuant to an unrelated Revenue Sharing Agreement on a service that is not part of the Framework would be relevant to my determination. I accordingly find that the payments are not relevant.

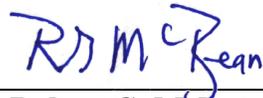
**VI. CONCLUSION AND ANSWER**

76. For the reasons set out herein, the answer to the Preliminary Issue is "No".

77. The County's payments to the City under the June 7, 2004, Revenue Sharing Agreement should **not** be considered as part of the arbitration of the intermunicipal collaboration framework agreement when evaluating an appropriate total contribution by the County to the City arising from any benefit to the County from its residents' use of City services and facilities.

78. This constitutes my ruling with respect to the Preliminary Issue. If the parties require any further ruling with respect to this matter, they are of course at liberty to contact me.

DATED at the City of Edmonton, in the Province of Alberta, this 2<sup>nd</sup> day of September 2021.



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**Robert G. McBean, Q.C.**  
**Arbitrator**

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**IN THE MATTER of an Arbitration pursuant to  
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**Arbitrator:**  
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