

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “**Agreement**”) is dated effective the 30th day of September, 2020 (the “**Effective Date**”).

BETWEEN:

FOOTHILLS COUNTY, a municipal corporation existing under the *Municipal Government Act* (Alberta)
(the “**Purchaser**”)

OF THE FIRST PART

- and -

PRIDDIS GREENS SERVICES CO-OP LTD., a co-operative association existing under the *Rural Utilities Act* (Alberta)
(the “**Vendor**”)

OF THE SECOND PART

(the Purchaser and Vendor are each referred to herein as a “**Party**”,
and together referred to herein as the “**Parties**”)

WHEREAS the Vendor owns and is responsible for managing and maintaining certain water and wastewater infrastructure, including, but not limited to a water treatment plant and distribution system, a wastewater treatment plant and collection system and a firewater distribution system, all as described in Schedule “A” attached hereto (the “**Utility Assets**”);

AND WHEREAS the Utility Assets are used for the purpose of providing water treatment services and wastewater treatment services (the “**Utility Services**”) to all of the residents of the hamlet of Priddis Greens in Foothills County (the “**Residents**”);

AND WHEREAS the Vendor wishes to sell to the Purchaser, and the Purchaser wishes to purchase from the Vendor the Utility Assets;

AND WHEREAS the Vendor wishes to assign to the Purchaser, and the Purchase wishes to take carriage of the provision of the Utility Services to the Residents;

AND WHEREAS the Parties wish to enter into this Agreement in order to set forth the basic terms of purchase and sale respecting the Utility Assets, and transfer of the Utility Services, from the Vendor to the Purchaser (the “**Transaction**”);

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties agree as follows:

1. **Binding Agreement.** This Agreement, and the completion of the Transaction contemplated herein, constitutes a legally binding obligation of the Parties, enforceable against each Party in accordance with the terms hereof.
2. **Material Terms.** The Purchaser shall purchase and the Vendor shall sell the Utility Assets in accordance with the following terms and conditions:

- (a) **Purchase Price.** The aggregate consideration to be paid by the Purchaser to the Vendor for the Utility Assets shall be the amount of One (\$1.00) Dollar plus applicable GST (the “**Purchase Price**”).
- (b) **Payment of Purchase Price.** The Purchase Price shall be paid by the Purchaser to the Vendor by way of certified cheque, bank draft or wire transfer made to the Vendor’s solicitor, on or before September 30, 2020 (the “**Closing Date**”).
- (c) **Description of the Utility Assets.** The Utility Assets are described in Schedule “A” hereto.
- (d) **Condition of the Utility Assets.** The Parties acknowledge and agree that:
 - (i) the Purchaser has been provided with reasonable and sufficient access in order to inspect the Utility Assets;
 - (ii) the Vendor makes no representation, warranty or condition of any kind as to the physical condition of the Utility Assets; and
 - (iii) the Utility Assets shall be transferred to the Purchaser on an “as-is, where-is” basis and the Vendor expressly disclaims all warranties, representations and conditions, including without limitation, warranties of merchantability or fitness for a particular purpose.
- (e) **Management Services Agreement.** Upon execution of this Agreement, the Parties shall also execute the water and wastewater management agreement in the form attached hereto as Schedule “B” (the “**Management Agreement**”). The Management Agreement shall govern the terms and conditions respecting the provision of the Utility Services by the Purchaser beginning on the Effective Date and ending on the later of (a) the Closing Date, or (b) the date the Management Agreement is terminated in writing by the Parties in accordance with the terms thereof.
- (f) **Asset Purchase Agreement.** On or before the Closing Date, the Parties shall enter into a formal Asset Purchase Agreement which shall include the terms set forth herein respecting the sale of the Utility Assets and such additional covenants, conditions, indemnities, representations, and warranties which are customary for a transaction of this nature.

3. **Representations and Warranties of the Vendor.**

- (a) At closing of the Transaction (“**Closing**”), the Vendor shall represent and warrant that the Utility Assets are free and clear of any mortgages, hypothecations, charges, liens, security interests, encumbrances and adverse claims or interests of any kind whatsoever (collectively, “**Encumbrances**”), other than such Encumbrances as will be discharged in connection with the payment of the Purchase Price by the Purchaser to the Vendor on the Closing Date, and the Permitted Encumbrances (as defined below).
- (b) For the purposes of this Section 3, “**Permitted Encumbrances**” means:

- (i) liens for taxes not yet due or the validity of which is being contested in good faith by the Vendor and liens for the excess of the amount of any past due taxes for which a final assessment has not been received over the amount of such taxes as estimated by a responsible representative of the Vendor and in respect of which the Vendor has set aside cash reserves sufficient to fully pay and satisfy the same;
- (ii) liens incurred or created in the ordinary course of business on the Utility Assets in favour of any other person who is conducting the development or operation of the Utility Assets the cost of which would otherwise have been paid by the Vendor and in respect of which the Vendor has set aside cash reserves sufficient to fully pay and satisfy the same;
- (iii) easements or rights in land granted to public utilities, common carriers or similar bodies or to any municipality or governmental or other public authority which are not of such nature as to prevent or materially affect the use, for the purposes of the Purchaser, of the Utility Assets that is subject thereto;
- (iv) any other restrictive covenants, easement agreements, right of way agreements or other such agreements existing that are required for the provision of the Utility Services to the Residents;

to the extent such encumbrances affect the Utility Assets.

4. **Covenants of the Purchaser.** Upon Closing, the Purchaser shall:

- (a) **Employees of the Vendor** - offer employment to all employees of the Vendor that are employed immediately prior to the Closing Date (the “**Employees**”) on terms and conditions no less favourable than the terms and conditions of which the employees of the Vendor are employed immediately prior to the Closing Date, and indemnify and hold the Vendor harmless from and against any and all claims and liabilities related to the Employees, howsoever arising, including without limitation, any and all liabilities for any claims made by the Employees after Closing for, or related to termination pay, severance, pay in lieu of notice of termination, vacation or holiday pay, income tax on amounts paid, any other employee entitlements or claims, or any other amounts required to be paid by the laws of the Province of Alberta or the laws of Canada which may have accrued after Closing, or which may arise as a result of the transactions contemplated hereunder;
- (b) **Conformity with Architectural Standard** - maintain the structure, design and components of any and all buildings or structures included in the Utility Assets, including any renovations thereon or additions thereto (collectively, the “**Buildings**”) in conformity with any architectural standards imposed by one or more restrictive covenants respecting the Buildings;
- (c) **Water Meters** - at its own cost, install water meters at the dwellings of each of the Residents as of the Closing Date, and maintain and repair the water meters as part of the provision of the Utility Services;

- (d) **Rates for Utility Services** - charge the Residents the same rate for the provision of the Utility Services as is charged by the Purchaser to other residents of Foothills County (the “County”) for substantially similar utility services;
- (e) **Future Capital Expenditures** - in its provision of the Utility Services, proportionately allocate capital expenditures among the Utility Assets and any other assets owned by the Purchaser which serve other residents of the County (“Other Utility Assets”), such that all such capital expenditures are applied in an equal manner between the Utility Assets and the Other Utility Assets;
- (f) **Water Softening Practice** - in its provision of the Utility Services, continue using potassium chloride to soften potable water in the same manner as currently conducted by the Vendor, until such time as the Parties mutually agree in writing to cease such practice;
- (g) **Irrigation Water Supply (Raven 7 Pond)** - in its provision of the Utility Services, supply irrigation water to that body of water called “*Raven 7 Pond*” as shown in Schedule “C” attached hereto; and
- (h) **Compliance with AEP and DFO Requirements** - conform to and abide by any and all rules, requirements and regulations issued by Alberta Environment and Parks and the Department of Fisheries and Oceans Canada that are or may be applicable to the Utility Services.

5. **Covenants of the Vendor.** From and after the Effective Date, the Vendor acknowledges and agrees as follows:

- (a) **Assignment of Agreements and Licenses.** To the extent that restrictive covenants, easement agreements, right of way agreements, or any other agreements or licenses exist that are required for the provision of the Utility Services to the Residents, including the AEP Licenses and Approvals (collectively, the “**Utility Services Agreements and Licenses**”) the Vendor shall use commercially reasonable efforts to assign such Utility Services Agreements and Licenses to the Purchaser.

For the purposes of this Section 5(a), “**AEP Licenses and Approvals**” means all water licenses, registrations and approvals issued by Alberta Environment and Parks, including:

- (i) Approval 1590-03-00 waterworks system approval;
- (ii) Water license 00031588-00-00;
- (iii) Water license 00031589-00-00;
- (iv) Amended water license 00031589-00-01;
- (v) Approval 1589-03-00 wastewater system approval; and
- (vi) License to Temporarily Divert Water 00464807.

6. **Option to Purchase.** The Parties agree that if, after Closing, the Purchaser intends to sell the Utility Assets, any such sale shall be subject to an option to purchase in favour of the Vendor to purchase the assets for One (\$1.00) Dollar (the “**Option to Purchase**”). In connection with the exercise of the Option to Purchase, the Parties acknowledge and agree that notwithstanding repurchase of the Utility Assets from the Purchaser, the Residents shall continue to be charged the same rate for the Utility Services as other customers purchasing Utility Services from the County.
7. **Confidentiality.**
- (a) During the course of the Transaction, either Party (as the “**Disclosing Party**”) may disclose or make available to the other Party (as the “**Receiving Party**”) information about its business affairs, products/services, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” (collectively, “**Confidential Information**”).
- (b) Confidential Information shall not include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 7 by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by, or in the possession of, the Receiving Party or its representatives before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed under applicable federal, provincial or territorial law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.
- (c) The Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. The Receiving Party shall be responsible for any breach of this Section 7 caused by any of its representatives.
8. **Existing Agreements.** The Vendor is party to a number of agreements in connection with its provision of the Utility Services (the “**Existing Utility Services Agreements**”). The Existing Utility Services Agreements include, but may not be limited to:
- (a) a Water Supply Agreement between PGSC and Priddis Creek Developments Ltd., dated April 2, 2003 and as amended thereafter;

- (b) Hawk's Landing Operating Agreement between PGSC and Hawk's Landing Services Co-op Ltd., dated November 17, 2010;
- (c) an agreement made between PGSC and Priddis Greens Golf & Country Club, dated January 1, 2006; and
- (d) a Priddis Greens Water Management Agreement made between Priddis Greens Golf & Country Club, Priddis Creek Developments Ltd., Loon Lake Holdings Inc. and Stanley Carscallen dated September 1, 2010.

the Parties acknowledge and agree that some or all of the Existing Utility Services Agreements may need to be amended and/or restated or terminated and redrafted in connection with the Transaction (the "**Amendments**"). The Parties shall negotiate in good faith with one another and the other parties to the Existing Utility Services Agreements in order to effect the Amendments in a manner that is reasonable and consistent with the terms of this Agreement and the Asset Purchase Agreement, and that provides a reasonable and effective transition from the Utility Services being provided by the Vendor to the Utility Services being provided by the Purchaser.

- 9. **Indemnification.** The Purchaser shall defend, indemnify and hold harmless the Vendor, its affiliates and their respective shareholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including legal fees, disbursements and charges, arising from or relating to the Utility Assets and the provision of the Utility Services by the Purchaser.
- 10. **Good Faith Negotiations.** The Parties shall negotiate in good faith and use their best efforts to bring about the execution and delivery of the Asset Purchase Agreement at the earliest practicable time following the execution of this Agreement.
- 11. **Entire Agreement.** This Agreement and the Management Agreement constitute the entire agreement between the Parties with respect to the subject matter herein and there are no other written or verbal agreements or representations, warranties or covenants.
- 12. **Costs and Expenses.** The Purchaser shall be responsible for all reasonable costs and expenses of both Parties associated with the Transaction, including without limitation the legal and administrative costs of negotiating and completing the Transaction and negotiating this Agreement, the Management Agreement and the Asset Purchase Agreement.
- 13. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized courier (receipt requested); (iii) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 13):

If to the Purchaser:

Foothills County
P.O. Box 5605
309 MacLeod Trail
High River, Alberta T1V 1M7
Telephone: (403) 552-2341
Email: HarryRiva.Cambrin@FoothillsCountyAB.ca
Attention: Chief Administrative Officer

If to the Vendor:

Priddis Greens Services Co-op Ltd.
c/o General Manager
1 Priddis Greens Drive
Priddis Greens, Alberta T0L 1W3
Telephone: (403) 931-3171
Email: admin@priddisgreens.com
Attention: Chair

14. **Further Assurances.** Each of the Parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.
15. **Document Requests.** The Vendor agrees to co-operate with the Purchaser with respect to any future request by the Purchaser to gain access to any records relating to the Utility Assets that may be in the Vendor's possession or control and to provide copies of such records to the Purchaser upon request.
16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
17. **Time of the Essence.** Time shall be of the essence in this Agreement.
18. **No Third-Party Beneficiaries.** Nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this Agreement.
19. **Successors and Assigns.** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective trustees, legal representatives and successors, as applicable. Neither this Agreement, nor any rights or obligations hereunder may be assigned, delegated, or conveyed by either Party for any reason whatsoever.
20. **Counterparts.** This Agreement may be executed in one or more counterparts, including facsimile and e-mail transmission thereof, each of which shall be deemed an original and when so executed all such counterparts taken together shall form one agreement and shall be valid and binding on all Parties to this Agreement..

[Remainder of this page left intentionally blank. Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

FOOTHILLS COUNTY

PRIDDIS GREENS SERVICES CO-OP LTD.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE "A"

DESCRIPTION OF THE UTILITY ASSETS

1. Potable water treatment and delivery infrastructure up to curbstop valves, including firewater mains and hydrants, and raw water supply pumps and lines from Pumphouse No. 1, drawing water from either the infiltration gallery on Priddis Creek or from Loon Lake.
2. A wastewater treatment facility and collection infrastructure, including septic tanks, together with discharge infrastructure including discharge infrastructure providing for discharge to Raven 7 Pond
3. Waste/wastewater laboratory furnishing and equipment, as described in Schedule "D".
4. Wastewater treatment plant and water treatment plant and associated lands.
5. Documentation:
 - (a) drawings respecting the Buildings and Utility Assets insofar as in the possession of the Vendor (designs or as-built, depending on availability);
 - (b) operating and maintenance manuals;
 - (c) business records and financial information relating to the Utility Assets; and
 - (d) operating records of the wastewater treatment plant and water treatment plant.

SCHEDULE "B"
FORM OF MANAGEMENT AGREEMENT

SCHEDULE "C"
RAVEN 7 POND
(see attached)

SCHEDULE "D"

WASTE/WASTEWATER LABORATORY FURNISHING AND EQUIPMENT

(see attached)