

**In the Matter of an Arbitration under the *Municipal Government Act*, RSA 2000, c M-26 and
the Arbitration Act, R.S.A. 2000, C. A-43**

Between

Town of Whitecourt Party

and

Woodlands County Party

Arbitrator: Deborah M. Howes, C. Arb.

Hearing Dates: August 16 – 20, August 23, August 27, September 2, September 7,
September 16, and September 27 – 29, 2021

Appearances:

Town of Whitecourt – Sean Ward, Michael Swanberg, Counsel
Peter Smyl, Chief Administrative Officer

Woodlands County – Sharon Roberts and Orlagh O’Kelly, Counsel
Gordon Frank, Chief Administrative Officer

Award Date: February 3, 2022

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AWARD AND REASONS

Introduction

- [1] This award deals with a dispute between the Town of Whitecourt (Whitecourt) and Woodlands County (Woodlands) concerning the Intermunicipal Collaboration Framework (ICF) required under Part 17.2 of the *Municipal Government Act (MGA)*.
- [2] Woodlands and Whitecourt had numerous intermunicipal cost sharing and revenue sharing agreements in place prior to 2020. Before committing to arbitration, the two municipalities attempted, unsuccessfully, to reach agreement on new terms of intermunicipal servicing.
- [3] The parties acknowledge that an ICF is necessary and is mandated by the *MGA* given these municipalities share a common border. Their dispute centers around the content of their required ICF.

Arbitration Process and Matters in Dispute

- [4] Whitecourt and Woodlands are two autonomous legal entities who voluntarily entered into this arbitration under Part 17.2 of the *MGA*. The parties appointed me as sole arbitrator to arbitrate the matters and agreed I had the authority to decide all matters in dispute.
- [5] In the arbitration process, parties set and agreed to interim steps for pre-hearing disclosure. The parties provided a sworn written statement from each of their witnesses. Some witnesses also provided sworn written statements in reply. Most of the witnesses then appeared for cross examination by the other party and questioning by the arbitrator. Both parties raised concerns about the argument, opinion or hearsay contained in some of the witness statements. Under section 21 of the *Arbitration Act* RSA 2000, c A-43, an arbitrator is not bound by the rules of evidence applicable in the Courts:

21(1) The arbitral tribunal is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence.

(2) The arbitral tribunal may determine the manner in which evidence is to be admitted.

- [6] The parties used the sworn witness statements to shorten the hearing time. Given the history of the relationship between the parties and the volume of information presented, I

recognize that not every witness had firsthand knowledge of every event or document. Sometimes the witness statements provided the context and background, as well as the current information. For the most part, any opinion or commentary by a non-expert witness could be sourced in the supporting documents.

[7] The parties provided written briefs for the prehearing application and for the merits. They also provided oral arguments. I considered all their arguments in making this award.

[8] The hearings were recorded on Zoom and open to the public through simultaneous YouTube broadcast. As arbitrator I did not solicit written submissions from the public.

[9] The parties asked me to issue an interim consent award to continue the water and wastewater services agreement until such time as a new agreement is in place. I issued that interim consent award on May 27, 2021.

[10] Early in the arbitration process, Woodlands sought the exclusion of witness statements on certain topics. The parties provided written arguments on that application. I issued an interim award on August 6, 2021 denying the application. However, the written briefs have been included and considered as part of the parties' arguments on the substantive matters in dispute.

[11] The matters for decision are:

- 1) Water and wastewater services,
- 2) Solid waste and recycling services,
- 3) Fire services,
- 4) Airport services,
- 5) Recreation, arts and culture services,
- 6) Ancillary police services,
- 7) Forest Interpretive Centre (and economic development and tourism),
- 8) Family and community support services,
- 9) Library services,
- 10) Cemetery services,
- 11) Transportation services (including rail crossings, fringe roads, and transit),
- 12) Servicing of exempt properties (e.g. Ecole St. Joseph School),
- 13) Municipal Centre,
- 14) Dispute resolution provisions,

- 15) Matters relating to fiscal stewardship (communication protocols, disclosure, accountability),
- 16) Term and review period (termination provisions), and
- 17) Costs of the arbitration.

Structure of the Award

[12] This award first provides an overview of the parties and their relation to each other and their general positions. It then deals with some interpretative questions raised by Woodlands before addressing the specific matters in dispute. The topics are addressed in the same order as shown in the matters for decision in paragraph 11 of this award. Within each topic I summarize each party's specific position on the topic.

Overview of the Parties and Their Relation to Each Other

[13] Whitecourt and Woodlands are neighboring municipalities. Whitecourt is a town located within Woodlands County. In their Intermunicipal Development Plan the parties describe their area as:

... in the valley there are a variety of uses such as town centre, residential areas, Millar Western saw and pulp mill and many businesses. The Hilltop area of Whitecourt (south of the valley) includes more residential areas, some industrial and a highway commercial strip. West Whitecourt includes an industrial area and another commercial strip along Highway 43...

Outside of the community core, agriculture and country residential parcels are features on the rolling hills to the south of Whitecourt. West from town is the airport, some industrial uses, more country residential developments, agriculture and woodlots. Significant aggregate deposits have also been found upstream from the Town site towards the west. The Town is bounded by the Athabasca River on the north which is also the preferred growth direction for urban development. To the east of Whitecourt there are a few parcels of productive agricultural land; beyond that is Albert public land.

[14] The Town of Whitecourt and Woodlands County are located 170km northeast of Edmonton on Highway 43 via Highway 16. Whitecourt serves as the largest urban centre between Edmonton and Grande Prairie while Woodlands is noted as one of Alberta's most beautiful industrial heartlands with ample and accessible raw land. The Whitecourt/Woodlands region is a key location for doing business in northern Alberta. The following map shows the placement of Whitecourt and Woodlands in relation to

neighboring municipalities.

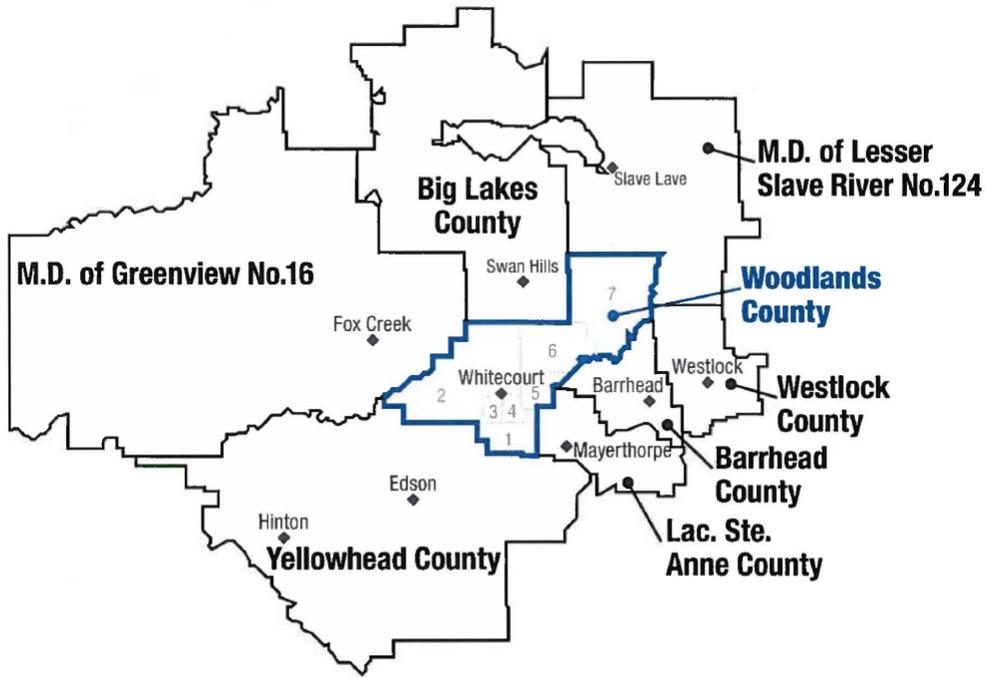


Figure 1 Whitecourt and Woodlands Relative to Neighbouring Municipalities

[15] Whitecourt has about 10,000 residents. Woodlands has about 4800 residents. Eighty percent of the Woodlands’ population live within a 20 – 30 km radius of Whitecourt. The following chart and map show the locations of Woodlands’ population by Electoral District and distance from Whitecourt.

Electoral District	Population	30km Radius (% of Population)	60km Radius (% of Population)	10km Radius (% of Population)
1 - Anselmo	460	60%	100%	0%
2 - Whitecourt West	868	100%	100%	80%
3 - Whitecourt Central	748	100%	100%	100%
4 - Whitecourt East	1157	100%	100%	100%
5 - Blue Ridge	661	80%	100%	20%
6 - Goose Lake	403	15%	100%	0%
7 - Fort Assiniboine	457	0%	0%	0%
Total	4754	3772	4297	2558

Figure 2 Population by Electoral Districts

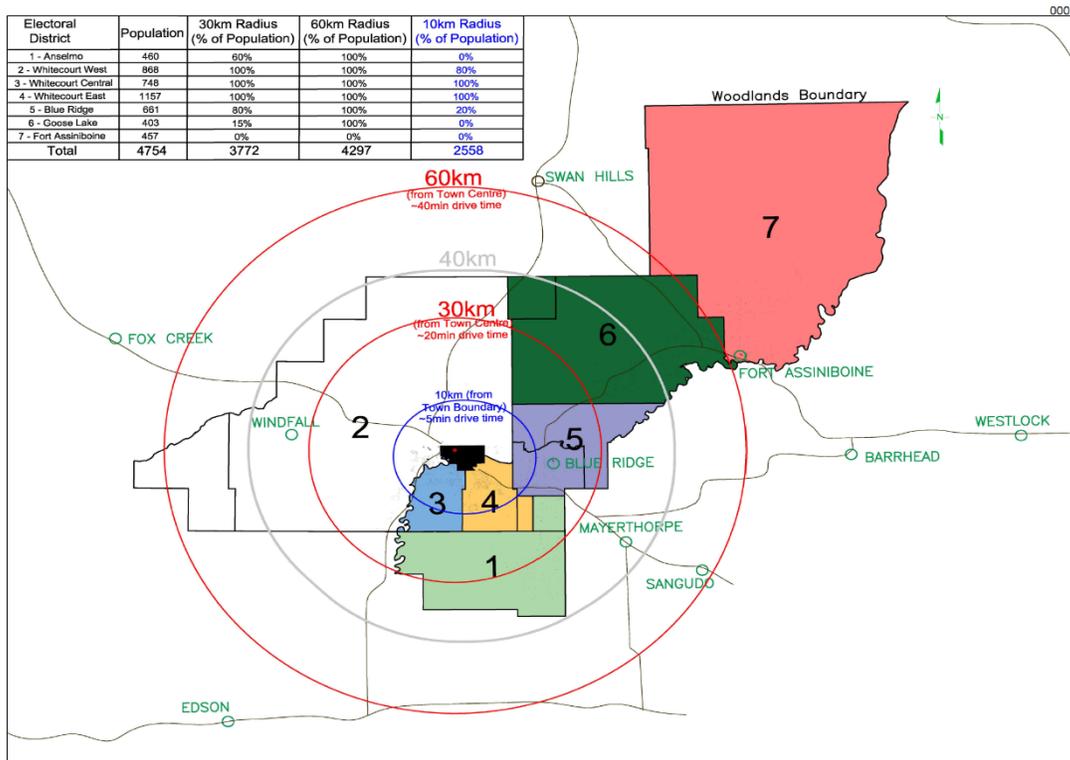


Figure 3 Distance of Electoral Districts from Whitecourt

[16] Collette Miller, Wilde and Company, testified as an expert witness in municipal government accounting. Wilde and Company is the auditor for both municipalities. Ms. Miller compiled, compared and analyzed the audited financial statement information of Woodlands and Whitecourt. She reported that the combined revenue of Woodlands and

Whitecourt exceeded \$54 million in 2020. Their combined equity in tangible capital assets exceed \$220 million. Their total cash balances at the end of 2020 were over \$45 million.

[17] For many years the parties collaborated around most of the topics in this arbitration. They have a long and successful history of Cost Share Agreements with the most recent one negotiated in 2013. Some of the more recent agreements include:

- Water and Wastewater Agreement dated March 11, 2013 (the 2013 Water and Wastewater Agreement),
- Sak de Wah Intermunicipal Services Agreement for water and wastewater services, dated October 31, 2006 (the Sak de Wah Agreement),
- Deer Park Intermunicipal Services Agreement for water and wastewater services, dated June 6, 2016 (the Deer Park Agreement),
- Tax Revenue Sharing Agreement concerning non-residential tax revenue sharing, dated April 26, 2010 (the 2010 Tax Revenue Agreement),
- Amended Intermunicipal Cost Sharing Contribution Agreement dated March 11, 2013, which included revenue sharing provisions (the 2013 Cost Sharing Agreement),
- Intermunicipal Cost Sharing Contribution Agreement dated June 24, 2008 (the 2008 Cost Sharing Agreement), and
- Intermunicipal Development Plan dated March 11, 2013.

[18] These parties have a demonstrated history of collaborative relationships. They have received accolades and awards for their collaborative efforts. This collaborative relationship has, in the past, generated benefits for both municipalities and their residents.

[19] The 2018 economic downturn affected Alberta and impacted these municipalities, particularly Woodlands arising from the non-payment of taxes by the oil and gas sector. The impact on Woodlands was significant enough to trigger it being placed on the “at risk” list of municipalities by Alberta Municipal Affairs.

[20] Unfortunately, events from 2018 resulted in each of them taking steps that negatively impacted the collaborative relationship. They each relied on termination provisions giving them the one-sided opportunity to end a service or arrangement.

[21] In 2019 Woodlands terminated the 2013 Cost Share Agreement, along with a 2010 Tax Revenue Sharing Agreement. In return, Whitecourt terminated the 2013 Water and Wastewater Agreement. Following these changes, the parties were unable to negotiate their ICF but did agree to extend the fire services and the water and wastewater services through the arbitration process.

[22] Ms. Miller's observations about the historic arrangements and agreements shed significant light into the current dispute:

- The Town and County appeared to have good processes in place including the Joint Liaison Committee for capital contributions and former long-standing cost share agreements.
- The respective Directors of Corporate Services appear to have been communicating transparently and calculating amounts accurately in accordance with the terms. They appear to have had the financial expertise to accurately track the amounts owing and paid and would resolve discrepancies in a congenial, professional manner.
- Due to turnover in the finance team, as well as senior leadership and department managers, there may be gaps in understanding and communication regarding the agreements.
- Considering that the agreements are over a decade old and that there have been many changes in staff and political leaders during this period, it is important to consider how municipal priorities may have changed when developing the Intermunicipal Collaboration Framework (ICF).

[23] Under section 708.28 municipalities with common borders must create a framework with each other unless they are members of the same growth management board, or the Minister has by order exempted one or more of them from the requirement to create a framework. These municipalities are not members of the same growth management board, and the Minister has not exempted either of them from the requirement to create a framework. Whitecourt and Woodlands have common borders so they must create a framework. Whitecourt does not share common boundaries with any other municipality, so this will be its sole required ICF. Woodlands, on the other hand, shares common boundaries with multiple other municipalities and is party to seven other ICFs.

[24] I turn now to the general positions of the parties.

General Positions of the Parties

Whitecourt

[25] Whitecourt submits the previous cost sharing agreement worked well for the parties for many years, along with other agreements related to tax revenue sharing and other shared services. The cost sharing agreement represents a fair starting point for developing a new ICF. The services identified in that agreement represent intermunicipal services.

[26] Whitecourt submits that ICFs are intended to provide mechanisms for municipalities to share in costs associated with the delivery of services funded by one municipality which benefits residents in the other, as well as to create processes to allow the parties to address changes in shared services in the future. Whitecourt seeks to add to the ICF other intermunicipal services which were not previously cost-shared. Provisions in the 2013 Cost Sharing Agreement and 2010 Tax Revenue Sharing Agreement related to the sharing of tax revenues. Whitecourt previously funded certain shared services, in part, through revenues received from these tax sharing arrangements. Since the Arbitrator cannot make an award that directs a municipality to transfer revenue to another municipality unless the revenue transfer is directly related to services provided by a municipality that the revenue-transferring municipality derives benefit from, the Arbitrator cannot reinstate the previous Tax Share Agreement or the provision in the 2013 Cost Sharing Agreement which provided for general tax revenue sharing. Accordingly, Whitecourt submits those services and the costs related to those services ought to now be considered and included in the new ICF between the parties.

[27] The cost sharing agreement used a catchment model to calculate cost share contributions for services provided by Whitecourt which benefitted residents in Woodlands, and Whitecourt seeks to continue that model. Whitecourt also seeks to improve certain components of the model including the system for calculating the catchment area to increase certainty and reduce the potential for conflict going forward. It seeks to use a full cost accounting approach to demonstrate the costs of the intermunicipal services. It proposes Woodlands contribute to the full costs of the shared services, not just a contribution to operating costs. Whitecourt says the funding contributed by the other municipality should reflect and include expenses related to capital, infrastructure, maintenance and life cycle, administrative overhead and third-party service providers.

[28] In the previous agreement, the parties had also established an information exchange protocol which provided for transparency to both parties, including mechanisms to address areas of concern proactively through regular meetings between administration and through

a Joint Liaison Committee. These mechanisms, in general, worked reasonably well and while Whitecourt is suggesting some improvements, key aspects of the previous cost sharing agreement ought to be continued going forward.

Woodlands

[29] Woodlands says it wishes to pay its fair share of the operating costs for only the intermunicipal services that qualify within an ICF, which it says are limited to the Woodlands' airport services, and the Whitecourt fire services, indoor pool, and ice rink. It also seeks inclusion of and amendments to two current service agreements which it characterizes as intermunicipal services with specialized arrangements: regional solid waste authority (landfill) and water/wastewater. For the remaining items on the disputed list, Woodlands says they are either not intermunicipal services or the circumstances demonstrate Woodlands should not contribute funding for the service. It seeks to exclude services provided by third party providers unless both municipalities are party to the contract with the third-party service provider or both municipalities agree to the services and provider.

[30] Woodlands seeks a fixed term ICF with an option to extend the agreement and seeks certainty around the review period. It seeks standards that apply to both municipalities, such as equity, fiscal stewardship, and accountability. It also seeks a provision in the ICF to enable the parties to deal with unforeseen circumstances, such as a disaster or economic difficulties. For example, the previous Cost Sharing Agreement between the parties contained provisions which enabled Woodlands to terminate the agreement.

[31] Woodlands prefers a lump sum contribution by each municipality with a maximum cap. It says the funding contribution should be for operating costs only; it seeks to exclude costs related to capital, infrastructure, life cycle plans or administrative overhead fees. Woodlands does not agree to the full cost accounting approach

[32] Woodlands seeks robust disclosure provisions that are transparent and not administratively cumbersome. If a party makes the disclosure cumbersome, the ICF should make that party responsible to pay additional costs. Parties should know what must be disclosed and when; they must be able to meet those disclosure requirements in a simple, straightforward way. Similarly important is the need for predictability, consistency, and robust and practical dispute resolution and amendment clauses.

[33] Woodlands says an ICF must respect the autonomy of each municipality and the accountability of their respective Councils to the electorate. There must be no fettering or sub-delegation of legislatively delegated municipal government discretion. As a result, the

ICF should not include a joint liaison committee. Rather, all decisions must be left with the respective councils.

[34] Finally, Woodlands County seeks a direction that the Town be required to reimburse the County for a portion of the costs it incurred in this ICF Arbitration.

[35] Woodlands relies on a variety of statutes, resources and cases set out in Appendix C.

[36] The next segment deals with the interpretative questions raised by Woodlands.

Interpretative Questions

Woodland's Interpretation

[37] Woodlands raises two key interpretative questions to address before examining the evidence. First, what services are included in an ICF and second, what costs are included in an ICF? I set out the highlights of the parties' arguments and then address the analysis in two separate parts.

[38] In oral argument, Woodlands proposed the following meaning for "intermunicipal services":

Public services or other consumable products delivered by or on behalf of one municipality that benefits the residents of one or more other municipality, but does not include the facilities, infrastructure and/or capital costs associated with delivery of those services.

[39] Woodlands argues an intermunicipal service is a service:

- delivered by one municipality that is party to the ICF,
- being delivered on an ongoing basis at the time the ICF is developed, not an historical or future service,
- of demonstrable benefit to residents of the other municipality that is party to the ICF, and
- the other municipality agrees may be delivered in the other municipality, if delivered outside of the municipality's own boundaries,

but is not:

- a service provided by third parties, such as library boards or the RCMP, who are not parties to the ICF, although funded by a municipality, unless the other municipality expressly agrees to provision by a third party (which agreement cannot be imposed by an arbitrator),
- facilities, capital or infrastructure constructed or operated or maintained for the purpose of enabling third parties to deliver services,
- future capital projects or future services unless those services are clearly defined enough to form part of a contract, or
- council's policies and programs or debt obligations captured in section 243 of the *MGA*,
- any matter or subject contained within an intermunicipal development plan, such as future land use and development proposals, provision of transportation systems for future land use, and coordination of intermunicipal programs relating to the physical, social and economic development of the area as set out in an intermunicipal development plan.

[40] Second, Woodlands argues certain expenses and revenues are excluded from the shared funding provisions of the ICF, particularly:

- capital, infrastructure, lifecycle, or maintenance costs incurred for the purpose of enabling third parties to deliver services,
- capital and infrastructure costs (including lifecycle and maintenance costs) incurred for the purpose of enabling the municipality to deliver services,
- capital expenditures to build new facilities or infrastructure,
- administrative overhead for any service,
- expenses related to council's policies and programs or debt obligations captured in section 243 of the *MGA*,
- historical capital expenses,
- revenue sharing or transfers that are not directly connected to the delivery of

services by a municipality, and

- any revenue that would compel a municipality to alter its tax scheme or other ways of generating revenue from its residents.

[41] Woodlands' argument is multi-faceted. It relies on the modern principle of statutory interpretation, particularly that:

1. there is a presumption against redundancy:
 - a. internal and external context can reveal potential redundancies,
2. there is a presumption that legislative amendments are purposeful:
 - a. legislative history can reveal legislative intent,
 - b. external references such as Hansard, policy documents and guides can reveal the legislative intent, and
3. an interpretation should not be preferred if it leads to an absurdity.

[42] Where the Legislature uses terms in legislation and those words are not defined in the legislation, the words should not be interpreted so as to be redundant. Each word in the legislation has to have a meaning.

[43] The *MGA* currently does not contain a definition for 'service' or 'intermunicipal service'. In 2017 the *Intermunicipal Collaboration Framework Regulation*, Alta. Reg 191/2017 defined "service" to include "any program, facility or infrastructure necessary to provide a service". This definition was repealed on January 1, 2020.

[44] While the ordinary meaning of words cannot be determined by merely looking them up in a dictionary, dictionaries play an important role in statutory interpretation as they offer a useful starting point that is tangible and objective. In this regard, Woodlands says the Cambridge Online Dictionary¹, defines "service" as a "public need," as either "a government system or private organization that is responsible for a particular type of activity, or for providing a particular thing that people need". Woodlands references WordReference Online Dictionaries² to define "services" as "commodities, such a banking, that are mainly intangible and usually consumed concurrently with their production or a system of

¹ <https://dictionary.cambridge.org/dictionary/english/service>

² <https://www.wordreference.com/definition/services>

providing the public with gas, water, etc.”.

[45] Woodlands says “intermunicipal” means between two or more municipalities. There is no plain meaning of “intermunicipal” that would include third party service providers such as a library board or any society. The “services” referred to in section 708.27 must be read in accordance with section 708.36(7)(f), which limits services to those provided by a municipality. Section 708.29 specifies the contents of the ICF must describe “the services to be provided”, “which municipality is responsible for providing which services” and outline “how the services will be delivered and funded”. Therefore, services delivered by third parties cannot be intermunicipal services as they are not delivered by a municipality. This aligns with the purpose of Part 17.2 which is that municipalities establish an ICF that relates to the delivery of services by a municipality that benefit the residents of multiple municipalities.

[46] To include third party service providers would also conflict with the need to ensure the autonomy of each municipality, unless the parties to the ICF expressly agreed to include and fund a service provided by a third party. Without agreement of the parties, Woodlands says the arbitrator has no authority to include services provided by a third party. Here, both parties have not expressly agreed to the inclusion of services provided by a third party.

[47] Woodlands relies on the guidance provided by the Intermunicipal Collaboration Framework Workbook (the ICF Workbook) prepared by the Rural Municipalities of Alberta (RMA) and the Alberta Urban Municipalities Association (AUMA). The workbook distinguishes between services and infrastructure and also states services provided by third parties would not be included in an ICF:

In determining which services are of benefit to residents in more than one municipality, it is helpful to determine whether a service is provided by a third party. For example, library boards and RCMP services are provided by a third party and therefore would not need to be identified in an ICF. However, an intermunicipal service operated by a municipality, such as a peace officer service, would need to be identified.³

[48] Woodlands argues this is a relevant and admissible policy document which can aide in

³ ICF Workbook: Resource Guide for Municipalities, Version 3, February 2020: https://www.auma.ca/sites/default/files/Advocacy/Programs_Initiatives/MGA_Change_Mgmt_Resources/icf_workbook_update_sept_3-20.pdf) at section 1.1 Something to Consider

legislative interpretation because it was funded by Alberta Municipal Affairs “to develop the initial guide and subsequent update on the ICF”.

[49] Woodlands argues a service, by definition, cannot be intermunicipal if it is offered within the boundaries of one municipality only.

[50] Section 3 of the *MGA* refers to both “services” and “facilities” in relation to the purposes of a municipality. Therefore, “services” cannot be read to include “facilities”.

[51] Under section 3, purposes of a municipality, “services, facilities and other things” are separate items a municipal council may address, but it is only required to work collaboratively with neighboring municipalities to plan, deliver and fund “intermunicipal services”, therefore “intermunicipal services” must exclude “facilities”. To interpret services otherwise would improperly render the term “facilities” in section 3 redundant.

[52] Using the context provided by sections 3 and 708.27, the ordinary meaning of “intermunicipal services” reveals that intermunicipal services cannot be read (i) to impose third party delivery, (ii) to include administrative overhead of only one municipality, or (iii) to fund one municipality’s capital infrastructure, overhead and maintenance costs.

[53] The emphasis in sections 3 and 708.27 on “planning, delivery and funding of intermunicipal services” also excludes from the meaning of “intermunicipal services” all non-planning aspects of capital or infrastructure. Unlike other sections of the *MGA* where the Legislature included specific terms referencing capital costs, such as capital property, capital improvements, capital budgets, capital plans and capital costs, there is no reference to capital costs in Part 17.2. Had the Legislature intended to include capital items in the definition of intermunicipal services, it would have used the terms as it had done elsewhere.

[54] Woodlands argues the legislation will also use patterns of expression that can assist to give meaning or to identify intention of the Legislature. For example, “capital” is used 86 times in the *MGA* but not in Part 17.2, so “services” in Part 17.2 cannot be read to include capital.

[55] Part 17.2 of the *MGA* does not use the terms “capital costs” or “infrastructure” or “reserves”, but those terms are used in other parts of the *MGA*. In section 243 “reserves” and “capital” are used separately, giving them distinct meanings from “services”. Woodlands argues that section 243 lists the municipality’s funding obligations under an ICF separately from expenditures or transfers to provide for council’s policies and programs or needed to pay the debt obligations in respect of borrowings made to acquire, construct,

remove or improve capital property. If expenditures related to council's policies and programs or debt obligations were intended to form part of an ICF, they would not be treated separately for the purposes of municipal budgeting.

[56] Woodlands says "services" could including funding for future services as long as those future services are clearly defined enough to form part of a contract. For those services that are not yet defined, the parties could agree to strategic planning in relation to the services, but not to funding a service that does not yet exist. To be included in an ICF, the service must be certain as to how it will be delivered and funded and must provide a benefit to the residents of the municipalities. The capital costs of future services do not provide a known benefit to the residents of either municipality.

[57] Next, Woodlands refers to section 708.29(5) which deems a framework to be an agreement for the purposes of section 54 of the *MGA*. Section 54 deals with agreements to provide services that are delivered within a municipality outside of the municipality's boundaries. Those services may only be delivered with the agreement of the other municipality and Woodlands argues, cannot be imposed through arbitration under Part 17.2.

[58] In relation to what an intermunicipal service is not, Woodlands submits the subjects of an intermunicipal development plan are excluded from an ICF and cannot be services within an ICF because the *MGA* separately defines intermunicipal development plans in section 631(8). To rule otherwise would make the two types of intermunicipal agreements redundant.

[59] An intermunicipal development plan cannot hold either party to an ICF hostage to specific development or cost sharing and the intermunicipal development plan does not take precedence over the terms of the ICF. The intermunicipal development plan is a prospective agreement expressing the parties' intent to develop collaboratively together. The intermunicipal development plan is the home of infrastructure and facilities, not the ICF. If a matter is addressed in the intermunicipal development plan, it cannot be included in the ICF.

[60] In relation to the items that Woodlands says are not "intermunicipal services", it says the legislative history of the *MGA* can assist to determine the legislative intent and the meaning of legislative provisions. It says the decision maker must determine whether the changes are simply stylistic ones – perhaps to fix a mistake or provide further clarity that expands on an existing legislative intent, or whether the changes demonstrate a legislative intent to change the substance of the law. Woodlands argues the changes to Part 17.2 and its companion Regulation implemented by in the *Red Tape Reduction Implementation Act*,

2019, SA 2019, c 22 demonstrate a legislative intention to change the substance of the law concerning the ICF.

[61] Part 17.2 of the *MGA* used to contain extensive procedural requirements for the preparation of an ICF, including the identification and classification of services to be delivered municipally, intermunicipally, or by third parties pursuant to contracts with a municipality and the consideration of details for the development of infrastructure for the delivery of intermunicipal services. Changes to section 708.29(1)(f) removed references to “infrastructure” which indicates the Legislature intended to not include infrastructure or capital in “services”. Therefore, an Arbitrator can compel their inclusion in an ICF.

[62] In regard to the presumption that a valid interpretation will not lead to an absurdity, Woodlands reiterates its equitable argument. There is no equity or fiscal stewardship if it is required to contribute funding toward capital without corresponding ownership and control of the capital. This would be an absurd result.

[63] It would be inconsistent with the statutory scheme of the *MGA* to interpret its ICF provisions as broad enough to include cost and revenue sharing for new infrastructure and capital expenditures. An ICF should not amount to a de facto municipal amalgamation in which one municipality assimilates the other’s resources to fund its daily operations, or its aspirations for (and capital expenditures on) future projects that are not subject to any cost-sharing agreement for intermunicipal service delivery.

[64] Expenditures and transfers such as those proposed by Whitecourt are also not part of the ICF framework because of section 243 which mandates the requirements for a municipality’s operating budget. It argues that section 243 lists the municipality’s funding obligations under an ICF separately from expenditures or transfers to provide for council’s policies and programs or needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property. If expenditures related to the latter two items were intended to form part of an ICF, they would not be treated separately for the purposes of municipal budgeting.

Whitecourt’s Interpretation

[65] In oral argument, Whitecourt proposed the following meaning for “intermunicipal services”:

Public services or other consumable products delivered by or on behalf of one municipality that benefits the residents of one or more other municipality.

[66] Whitecourt argues the scope and content of an ICF is broad. An intermunicipal service is a service that is municipally funded and benefits residents of both municipalities who are party to the ICF. An intermunicipal service does not have to be delivered only by a municipality directly. It is not restricted to services currently being provided. Nor does the statute require a threshold level of benefit to residents to qualify as an intermunicipal service.

[67] Whitecourt submits Woodlands' interpretation of the scope of ICFs is overly restrictive and does not accord with the purpose and intent of the legislation. The interpretation proposed by Woodlands is unduly narrow and is inconsistent with the modern principle of statutory interpretation. Rather, Part 17.2 requires municipalities to develop ICFs that address all shared services which benefit residents of both municipalities, and in circumstances where the parties disagree about whether certain services ought to be included in an ICF, it is appropriate for the arbitrator to consider evidence on those services to ascertain whether they are appropriate for inclusion.

[68] Whitecourt disputes Woodlands' assertion that ICFs can only account for present services and costs as being inconsistent with the intent and purpose of Part 17.2. ICFs are intended to provide for more than just a mechanism to calculate cost contributions between the parties – they are also intended to provide a framework for the parties to address changes in how services are provided and funded going forward. This is expressly stated in section 708.27, which notes that ICFs must “provide for the integrated and strategic planning, delivery and funding of intermunicipal services.” The reference to “integrated and strategic planning” necessarily implies that ICFs must include a framework by which the parties will address potential changes to shared services going forward, including consideration for how new costs are to be addressed.

[69] With respect to public services delivered by third parties but funded by municipalities, there is nothing in the *MGA* which prohibits such services from being included for consideration in these arbitration proceedings, provided such services benefit residents of more than one municipality. A purposive interpretation of the relevant legislation demonstrates that arbitrators do have jurisdiction to consider evidence related to services operated by third parties but funded by municipalities, and to make certain types of orders pertaining to such services.

[70] Statutes are “construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.” The *Interpretation Act*, RSA 2000, c I-8, s 10 requires Part 17.2 of the *MGA* to be interpreted in a broad, purposive fashion to achieve its objectives. Woodlands' proffered interpretation is

inconsistent with this legislative direction.

[71] Read together, sections 708.27 and 708.29 give municipalities significant flexibility in crafting an ICF that covers all shared services between them, provided those services are municipally funded and benefit residents of both municipalities. The direction in section 708.29(1) is that the ICF “must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.” There is no reference to excluding intermunicipal services that are funded by municipalities but are operated by third parties, nor is there any reference to excluding capital, infrastructure or maintenance costs that are related to the delivery of intermunicipal services. All that is required is that the service be funded by the municipalities and benefit residents in both municipalities for it to be addressed in the ICF.

[72] Put another way, if the legislature had intended to narrow the scope of what constitutes an intermunicipal service, it could have done so, but did not. There is no express reference anywhere in the *MGA* which carves out services operated by third parties but funded by municipalities as being outside the scope of an ICF. In the absence of such limiting language, the scope of ICFs ought not to be interpreted in a narrow and restrictive fashion. The distinction between “services operated directly by municipalities” and “services operated by third parties that are otherwise funded by municipalities” is artificial and represents an unreasonably restrictive interpretation.

[73] Further, this artificial distinction disregards section 708.27(b) which identifies one of the purposes of an ICF is “to steward scarce resources efficiently in providing local services.” That must allow the parties (and the arbitrator) to consider the most efficient and effective way to deliver a service, which could include providing funding to a third party to operate that service on the municipalities’ behalf. If Woodlands’ interpretation is accepted, that would act as a major disincentive for municipalities to provide public services through establishing and funding third parties, as that would disentitle a municipality to intermunicipal contributions for that service under an ICF.

[74] The flexibility inherent in Division 1 of Part 17.2, particularly section 708.36(1), also extends to the arbitrator’s jurisdiction under Division 2 – essentially, the arbitrator has jurisdiction to decide any aspects of an ICF for which the parties do not agree. Even if one party disagrees, the arbitrator has jurisdiction to consider whether any service is appropriate to include in the ICF based on its merits.

[75] In regard to the argument that legislative history of Part 17.2 supports a narrow interpretation, Whitecourt disagrees. Some significant amendments to Part 17.2 came into force in December 2019 and they were intended to make the ICFs more flexible, but those

amendments otherwise did not alter the scope of the types of intermunicipal services which could and should be addressed in the context of an ICF.

[76] Up to December 5, 2019, section 708.29 (which prescribes the contents of ICFs) was much more detailed and prescriptive than the version of that section which replaced it on that date. In particular, the previous version of section 708.29 expressly stated that:

- ICFs must list the services provided by each municipality, services being shared on an intermunicipal basis by the municipalities and services in each municipality that are being provided by third parties by agreement with the municipality;
- ICFs must account for all services that are to be provided intermunicipally;
- ICFs must expressly consider certain specified areas, including: transportation, water/wastewater, solid waste, emergency services, recreation, and any other services which benefit residents in more than one of the municipalities that are parties to the framework;
- ICFs may include details required to implement services, including locating and developing infrastructure to support the services; and
- ICFs may contain provisions for developing infrastructure for the common benefit of residents of the municipalities.

[77] Whitecourt argues that Woodlands appears to suggest that, in replacing the previous version of section 708.29 with the version currently in force, the Legislature demonstrated an intent to narrow the scope of what issues may be addressed in ICFs. Simply removing express provisions and definitions and replacing them with more general provisions does not automatically mean the Legislature was intending to exclude those items that were previously expressly referenced. For example, the previous version of section 708.29 expressly required ICFs to include provisions with respect to water/wastewater, solid waste, recreation, transportation and emergency services, and those express references have now been removed. This obviously does not mean that these services now fall outside the scope of an ICF. A more nuanced interpretation is required.

[78] The changes to section 708.29 were enacted via the *Red Tape Reduction Implementation Act*, 2019, SA 2019, c22. When this enactment was debated in the Legislature, no reference was made to any intent to narrow the scope of ICFs to exclude services operated by third party service providers but funded by municipalities, or to exclude capital and infrastructure costs associated with the delivery of intermunicipal

services. Instead, statements made in debate focused on how the amendments were intended to provide municipalities with greater flexibility in crafting ICFs, and to be less prescriptive in what ICFs could include, when compared to the previous version. Whitecourt submits that the legislative history of section 708.29, and relevant Hansard excerpts, support an interpretation of this section which is broad, as opposed to the narrow interpretation advanced by Woodlands.

[79] The purpose of these amendments was not to artificially narrow the scope of what could be considered an “intermunicipal service” within the context of an ICF. Simply removing express reference to services provided by third parties, and to infrastructure and capital costs, is not evidence of an intention to exclude these from ICFs completely, as the Legislature could have expressly indicated this, but did not do so. Rather, the text of the legislation itself, and the statements made during Hansard debates on those amendments, point to an intent to create more flexibility for municipalities to craft ICFs that address their particular circumstances.

[80] Whitecourt uses a similar approach for the argument that the repeal of the *Intermunicipal Collaboration Framework Regulation* does not support a narrow interpretation of what a “service” is or what costs related to a service can be included in an ICF. The simple fact that the Regulation, containing an express definition of “service” was repealed is not evidence that a contrary interpretation now applies. The government could have proclaimed a new definition of “service” by regulation which excluded infrastructure and capital costs, but it did not. In the absence of an express definition of “service”, its plain and ordinary meaning is preferred, and there is no principled reason to interpret this term narrowly to exclude these costs.

[81] Whitecourt argues a purposive interpretation of the relevant legislative provisions demonstrates that services funded by municipalities, but operated by third parties, can be included in the context of an ICF (and therefore be included for consideration in arbitration proceedings regarding the same). The interface between intermunicipal development plans (under Part 17) and ICFs is addressed in section 708.36(7)(d), which indicates that arbitrators cannot make awards which are “contrary to an intermunicipal development plan under Part 17.” This in no way limits the arbitrator’s authority to make awards that are consistent with intermunicipal development plans, which includes establishing mechanisms for the parties to address the integrated and strategic planning of shared services (as is required under section 708.27).

[82] On the matter of whether the capital, infrastructure and maintenance costs should be part of the shared costs in an ICF, Whitecourt disagrees with the interpretation offered by

Woodlands and says no such distinction is provided for in the legislation. Whitecourt argues it is appropriate to consider all costs related to intermunicipal services, which would logically include capital costs to construct and maintain infrastructure necessary to provide those services. Constructing and maintaining facilities and equipment to provide shared services is logically and necessarily connected to operating those services, and there is no compelling reason to interpret the term “services” narrowly such that only operational costs are included. If Woodlands’ interpretation were preferred, it would create a significant inequity between the municipalities, since one municipality would bear all costs and risks associated with capital costs and maintenance connected to the delivery of shared services, while the other would only be responsible for contributing to operating costs.

[83] The removal of any express references cannot be interpreted as an intention to exclude capital costs from ICFs – rather, their removal signals an intention to provide greater flexibility, leaving open the possibility that capital costs, infrastructure, and maintenance costs can be included in an ICF.

[84] Concerning section 243 suggesting that debt obligations cannot be considered in ICFs because they are listed separately as budget items from ICF obligations, Whitecourt says Woodlands misconstrues how municipal budgets are prepared. The reference to “debt obligations” in section 243 relates to the capital property of the municipality in question. This does not limit the possibility that amounts to be paid under ICFs could include contributions related to capital costs in other municipalities covered under an ICF.

[85] Further, Section 243, as it currently stands, has not been amended since 2018; accordingly, this same section was in place at the same time as the previous version of section 708.29 of the *MGA* was in force. The previous version of section 708.29 expressly recognized that capital and infrastructure costs can be considered in the context of ICFs. Since the previous version of section 708.29 was in force at the same time as the current version of section 243, it cannot be possible that section 243 was intended to exclude certain types of costs from consideration under an ICF.

[86] On the argument that ICFs cannot include any provisions which involve “developments” as those topics are addressed under intermunicipal development plans, section 708.36(7) directs arbitrators not to make awards contrary to an existing intermunicipal development plan. This necessarily means arbitrators will consider intermunicipal development plans and can make awards consistent with existing intermunicipal development plans, such as awards providing for contributions to capital costs for infrastructure which are used for the provision of intermunicipal services.

[87] Whitecourt says under section 708.27(a) ICFs must provide for mechanisms for the

integrated and strategic planning for the delivery and funding of intermunicipal services in the future, which necessarily must include consideration for future capital costs associated with the delivery of intermunicipal services.

[88] Concerning any argument around section 54 of the *MGA*, Whitecourt says Section 54 refers to situations where a municipality provides services outside its borders with the consent of the neighbouring municipality. It makes sense that Part 17.2 references this section, since ICFs will in some cases allow for one municipality to provide services physically outside its borders, and in those cases, the ICF will act as an agreement under section 54. However, the inclusion of this reference cannot be read as limiting ICFs to only services that are physically offered by one municipality outside of its borders, which would frustrate the objective of ICFs set in section 708.27(c), which is “to ensure municipalities contribute funding to services that benefit their residents.” ICFs are intended to be broadly construed to encompass any service which benefits the residents of more than one municipality. Accordingly, the Town submits that, provided there is a demonstrative benefit to residents in another municipality, a service may be considered in the context of an ICF.

Analysis on the Interpretative Questions

[89] In order to determine the content of the ICF and later how much a municipality should contribute for the intermunicipal services that benefit its residents, I must deal with the interpretative questions raised by Woodlands, being:

1. Does the phrase “intermunicipal services”:
 - a. include any facility, capital or infrastructure?
 - b. include only services provided in both municipalities?
 - c. include only services that exist and are being delivered at the time the ICF is created?
 - d. include only services delivered by one of the municipalities who are parties to the ICF and exclude services funded by a municipality but delivered by a third party?
2. What costs can be included in the determination of the funding that a municipality contributes for intermunicipal services that benefit its residents? Specifically, should the costs be limited to operating costs and exclude any aspects of capital or infrastructure and therefore costs related to those items such as capital costs, maintenance costs, life cycle costs, reserves or debenture

servicing costs?

[90] The parties agree the *MGA*, like all legislation, must be interpreted in accordance with the modern principle of statutory interpretation (the modern principle) as expressed in *Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21 and *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at paras 26-30:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the legislature].

[91] The parties have no dispute about accuracy or applicability of the specific presumptions or conventions argued by either of them. They also agree section 10 of the *Interpretation Act* RSA 2000, c I-8 applies.

[92] The modern principle directs interpreters:

to read the words in legislation

- in their entire context (including the words in the section, the part and the entire act),
- in their grammatical and ordinary meaning (unless the words are otherwise defined in the statute), and

to read the words in legislation harmoniously with

- the scheme of the legislation
- the object of the legislation, and
- the intention of the legislature or legislator.

[93] Section 10 of the *Interpretation Act* captures the spirit of the modern principle. It reads:

10 An enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

[94] In *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, the Supreme Court of Canada explained aspects of the modern principle as follows:

[45]... Guided by the modern principle, courts must not construe particular provisions in isolation; rather, individual provisions must be considered in light of the act as a whole, with each provision informing the meaning given to the rest (see Sullivan, at §13.3). This rule ensures that statutes are read as coherent legislative pronouncements. In this regard, “[i]t is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain” (ibid., at §8.23).

[46] This presumption must play a role in our interpretation so as to ensure that no provision of the Code is “interpreted so as to render it mere surplusage” (R. v. 2017 SCC 62 (CanLII) Proulx, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 28).

...

[50] The modern principle of interpretation requires that courts approach statutory language in the manner that best reflects the underlying aims of the statute. This follows from the obligation to interpret the words of an Act harmoniously with the object of the Act and the intention of Parliament. As Professor Sullivan notes, “[i]n so far as the language of the text permits, interpretations that are consistent with or promote legislative purpose should be adopted, while interpretations that defeat or undermine legislative purpose should be avoided” (§9.3).

...

[60] It is well established that the legislative history of statutes can be relied on to guide the interpretation of statutory language (Gravel v. City of St-Léonard, [1978] 1 S.C.R. 660; see also R. v. Ulybel Enterprises Ltd., 2001 SCC 56, [2001] 2 S.C.R. 867, at para. 33). The legislative evolution of an enactment forms part of the “entire context” to be considered as part of the modern approach to statutory 2017 SCC 62 (CanLII) interpretation (Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, 2005 SCC 70, [2005] 3 S.C.R. 425, at para. 28).

[95] In an earlier case of *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para 43, the Court provided the following guidance on legislative history:

[43] The legislative evolution and history of a provision may often be important parts of the context to be examined as part of the modern approach to statutory

interpretation: *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, 2005 SCC 70, [2005] 3 S.C.R. 425, at para. 28, per Binnie J.; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at p. 528, per L’Heureux-Dubé J.; *Hilewitz v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, [2005] 2 S.C.R. 706, at paras. 41-53, per Abella J. Legislative evolution consists of the provision’s initial formulation and all subsequent formulations. Legislative history includes material relating to the conception, preparation and passage of the enactment: see Sullivan, at pp. 587-93; P.-A. Côté, with the collaboration of S. Beaulac and M. Devinat, *Interprétation des lois* (4th ed. 2009), at pp. 496 and 501-8. [44] We think there is no reason to exclude proposed, but unenacted, provisions to the extent they may shed light on the purpose of the legislation. While great care must be taken in deciding how much, if any, weight to give to these sorts of material, it may provide helpful information about the background and purpose of the legislation, and in some cases, may give direct evidence of legislative intent: Sullivan, at p. 609; Côté, at p. 507; *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862, at para. 37. This Court, in *M. v. H.*, [1999] 2 S.C.R. 3, has held that failed legislative amendments can constitute evidence of Parliamentary purpose: paras. 348-49, per Bastarache J.

1. A meaning for “intermunicipal services”

Ordinary meaning of the text

[96] Read as a whole and in context, “intermunicipal services” are things the public needs, public activities or commodities (often intangible and consumable), delivered by or on behalf of one municipality that benefits the residents of one or more other municipality. This is similar to the interpretation proposed by Whitecourt. This interpretation advances the specific purposes of Part 17.2. My reasons follow.

[97] The phrase “intermunicipal services” appears in section 708.27 Purpose (of Part 17.2):

708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities

(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.

[98] Ordinary meaning refers to “the meaning that comes to a reader’s mind when first reading a provision”. See: *Macdonald Communities Limited v Alberta Utilities Commission*, 2019 ABCA 353, at para 17.

[99] Section 708.27 discloses several characteristics of “intermunicipal services” relevant to an ICF. These characteristics can assist with determining meaning of the phrase.

Intermunicipal services:

- can be planned, delivered and funded,
- must benefit the residents of more than one of the municipalities party to the ICF,
- may be provided in only part of a municipality,
- must be the responsibility of a municipality, and
- must be capable of being described concerning how they will be delivered and funded.

[100] The parties agree that intermunicipal services are funded by a municipality. Municipal funding accounts for the public nature of the services.

[101] The *MGA* contains no definition of “intermunicipal” or “services” or “intermunicipal services”. Neither does the *Interpretation Act*.

[102] As is common when using the modern principle, a dictionary may provide possible ordinary interpretations of words and phrases which can then be considered within the context, scheme, object of the legislation and the intent of the legislature. The interpretation which makes sense within the context and harmonizes with the scheme and objective of the legislation and the intention of the legislature is the preferred interpretation. Although the phrase is not defined in a dictionary, the individual words are.

[103] Websters’ Dictionary does not define intermunicipal, but it defines “inter⁴” as:

- 1 : between : among : in the midst *intercrop interpenetrate interstellar*
- 2 : reciprocal *interrelation* : reciprocally *intermarry*

⁴ <https://www.merriam-webster.com/dictionary/inter>

- 3 : located between *interstation*
- 4 : carried on between *international*
- 5 : occurring between *interborough* : intervening *interglacial*
- 6 : shared by, involving, or derived from two or more *interfaith*
- 7 : between the limits of : within *intertropical*
- 8 : existing between *intercommunal* *intercompany*

[104] Websters' Dictionary defines "municipal" as: "of, relating to, or characteristic of a municipality".

[105] These definitions suggest "intermunicipal" is something between or among municipalities, is located between municipalities, is reciprocal, is carried on between municipalities, occurs between municipalities, or is shared by or involving or derived from municipalities.

[106] The Stantec, AUMA, RMA Intermunicipal Collaboration Framework Workbook version 3, 2020 (the ICF Workbook)⁵ includes a definition of "intermunicipal" that focusses on where or to whom the service is provided. The Workbook describes "intermunicipal" as "a service that is provided to two or more municipalities". This definition does not help because it clouds the focus of the service being provided to the benefit of the residents of two or more municipalities. The ICF is concerned with services that benefit the residents of multiple municipalities, not the municipalities themselves.

[107] The meanings proposed by the parties for "intermunicipal services" includes a circular reference to services. Therefore, the ordinary meaning needs to be further expanded to eliminate the circular reference.

[108] Woodlands provides two dictionary definitions for "service" as: being a system responsible for a type of activity or particular thing, or a commodity:

a public need - a government system or private organization that is responsible for a particular type of activity, or for providing a particular thing that people need.

commodities, such a banking, that are mainly intangible and usually consumed concurrently with their production or a system of providing the public with gas, water, etc.

⁵ <https://rmlberta.com/wp-content/uploads/2020/09/ICF-Workbook-Version-3-FINAL.pdf>

[109] These definitions tell us a service can be a system organized by a government or private company that provides or supplies something the public needs, a particular type of public activity, or a commodity (often intangible and consumable). The “services” then include the:

- things the public needs,
- public activities, or
- commodities (often intangible and consumable).

[110] Working with the meanings proposed by the parties, but incorporating an ordinary meaning for “services”, the possible ordinary meanings of “intermunicipal services” would be:

Woodlands: Things the public needs, public activities or commodities (often intangible and consumable), delivered by or on behalf of one municipality that benefits the residents of one or more other municipality, but does not include the facilities, infrastructure and/or capital costs associated with delivery of those services.

Whitecourt: Things the public needs, public activities or commodities (often intangible and consumable), delivered by or on behalf of one municipality that benefits the residents of one or more other municipality.

[111] I prefer the ordinary meaning proposed by Whitecourt. Therefore, I move forward to see if the broad meaning of intermunicipal services harmonizes with the context and purpose of the legislation.

Context provided by section 708.27 and 708.29

[112] The grammatical and ordinary meaning of “intermunicipal services” in section 708.27 indicates services are different than the contributions for funding for those services. This further supports a broad meaning. There is nothing in the ordinary meaning of the phrase which imports the concept of contributions, funding or costs. Section 708.27 and 708.29 specifically separate the two concepts. Only after the municipalities or an arbitrator determine a proposed service meets the tests of being an intermunicipal service that benefits the residents in more than one municipality does the question of funding contributions arise. At that point, costs become relevant. Incorporating an exclusion of costs in the definition of intermunicipal services would restrict the subsequent funding discussions.

Context provided by section 3 and section 708.29

[113] Two other sections in the *MGA* contain the phrase “intermunicipal services”. First, it appears in section 3, Municipal Purposes:

3 The purposes of a municipality are

(a) to provide good government,

(a.1) to foster the well-being of the environment,

(b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality,

(c) to develop and maintain safe and viable communities, and

(d) to work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services.

[114] Second, it appears in the singular in section 708.29:

708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

(2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

[115] One can consistently apply the amended meaning of “intermunicipal services” proposed by Whitecourt in each of these sections. Section 3(b) provides a separate municipal purpose to address services, facilities or other things that are necessary or desirable for that municipality. Sections 7, 8 and 12 outline that municipalities pass bylaws dealing with services within the municipality only. Historically, municipalities could focus on their own municipal interests and weigh any requests from other municipalities against its own plans and interests. Although collaboration between municipalities could occur, it was not required and when established could just as easily breakdown in default to the intra-municipal interests. An ordinary reading of the section 3 indicates that the purpose in section 3(b) is separate from the purpose in 3(d) which is to work collaboratively with

neighboring municipalities concerning intermunicipal services for the broader purposes in Part 17.2.

[116] As Part 17.2 deals exclusively with intermunicipal services, an ordinary interpretation would suggest that wherever the term “services” appears in Part 17.2, it can only mean “intermunicipal services”. However, “services” in the remainder of the *MGA* could ordinarily refer to the services contemplated in section 3(b). Doing so enables one to read both section 3(b) and 3(d) as written and without redundancy.

Context from section 243, operating budgets

[117] Section 243 directs municipalities towards transparency in their budgets. The description of categories in the operating budget does not assist with interpreting “intermunicipal services”. A broad meaning of “intermunicipal services” would not make any aspects of section 243 redundant.

[118] Section 243(1)(c.1) does not turn an ICF contribution into the paying municipality’s expenditure for its own programs or policies or debt obligations. The municipality remains responsible for its own policies and programs and debt obligations; it retains authority over its own decisions. Section 243 simply outlines the various contents of a municipality’s operating budget. The budget must include the estimated amount of each of nine specified expenditures and transfers and the estimated amount of each of eleven specified sources of revenue and transfers. The specified expenditures and transfers in section 243(1) include:

- a) the amount needed to provide for the council’s policies and programs,
- b) the amount needed to pay the debt obligations in respect of borrowings made to acquire, construct, remove or improve capital property, and
- c.1) the amount of expenditures and transfers needed to meet the municipality’s obligations for services funded under an intermunicipal collaboration framework.

[119] Part 17.2 requires municipalities to contribute funding for intermunicipal services that benefit their residents. Section 243(1) identifies how those contributions are recorded in the expenditures portion of the municipal budget of the contributing municipality. Unlike how a municipality records expenditures arising for any other contract, the *MGA* requires municipalities to specify expenditures or transfers under the ICF. When Part 17.2 was added to the *MGA*, the Legislature clearly intended the municipalities to adjust their budgets for the ICF funding obligations. This budgeting obligation aligns with the general purpose in Part 17.2 of having municipalities plan for and contribute funding towards

intermunicipal services.

[120] Section 243(1)(a) addresses those policies and programs provided by the municipality for its own residents. Debt obligations in section 243(1)(b) refers to the municipality's own debt obligations. Both budget lines align with the municipal purpose in section 3(b).

[121] On the other hand, section 243(c.1) aligns with the municipal purpose in section 3(d) and requires the municipality to disclose and budget its obligations under an ICF. There is nothing about an ICF that presumptively makes the recipient municipality responsible for the debt obligations, policies or programs of another municipality. At the same time, section 243 does not restrict the content of an ICF. The two provisions can be interpreted to work in tandem.

Context from section 631, intermunicipal development plans

[122] Under section 631, municipalities with common borders must adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary. In section 631(8) the contents of the intermunicipal development plan would address:

- the future land use within the area,
- the manner of and the proposals for future development in the area,
- the provision of transportation systems for the area, either generally or specifically,
- the co-ordination of intermunicipal programs relating to the physical, social and economic development of the area,
- environmental matters within the area, either generally or specifically, and
- any other matter related to the physical, social or economic development of the area that the councils consider necessary.

[123] Section 631(9) of the *MGA* does allow matters to be dealt with in both the ICF and the intermunicipal development plan:

Despite subsection (8), to the extent that a matter is dealt with in a framework under Part 17.2, the matter does not need to be included in an intermunicipal development plan.

[124] Although municipalities must have both an ICF and an intermunicipal development plan,

the MGA no longer requires that both be approved at the same time. As a result, municipalities may negotiate both agreements at different times. Section 631(9) contemplates this possibility by enabling matters to be in the ICF also. Therefore, including matters under section 631 in an ICF will not render the two agreements redundant.

[125] Section 708.36(7) prohibits an arbitrator from making an award that is contrary to the intermunicipal development plan. Other than this interpretative question, the parties have not raised any concerns that any of the matters in dispute will create a conflict with their ICF.

Context from legislative history

[126] Woodlands argues that legislative changes since 2019 assist in giving meaning to “intermunicipal services” by removing facilities, capital and infrastructure from the meaning. It argues the legislative history demonstrates a purposeful approach by the Legislature to change the substance of the law and to limit “intermunicipal services”.

[127] Whitecourt says the legislative amendments do not alter the scope of intermunicipal services but only make the ICF and the ICF process more flexible. The changes were not substantive.

[128] Here, Whitecourt relies on excerpts from Hansard to support its interpretation. Woodlands says Hansard is not reliable in this regard, in part, because it contains ambiguities on the matter.

[129] Some changes did occur to Part 17.2 and to the companion Regulation. Until December 5, 2019, Part 17.2 was more detailed and prescriptive in a number of areas. Section 708.29 contained a prescriptive list of contents for an ICF. Division 2 Arbitration also contained prescriptive arbitration processes. In 2019, section 708.29 read:

708.29(1) A framework

(a) must list

(i) the services being provided by each municipality,

(ii) the services being shared on an intermunicipal basis by the municipalities, and

(iii) the services in each municipality that are being provided by third parties by agreement with the municipality,

at the time the framework is created,

(b) must identify

(i) which services are best provided on a municipal basis,

(ii) which services are best provided on an intermunicipal basis, and

(iii) which services are best provided by third parties by agreement with the municipalities,

(c) for services to be provided on an intermunicipal basis, must outline how each service will be

(i) intermunicipally delivered, including which municipality will lead delivery of the service,

(ii) intermunicipally funded, and

(iii) discontinued by a municipality when replaced by an intermunicipal service,

(d) must set the time frame for implementing services to be provided on an intermunicipal basis,

(e) may contain any details required to implement services on an intermunicipal basis including details in respect of planning for, locating and developing infrastructure to support the services,

(f) may contain

(i) provisions for the purposes of developing infrastructure for the common benefit of residents of the municipalities, and

(ii) any other provisions authorized by the regulations,

(g) must meet the requirements of Division 4, and

(h) must meet any other requirements established by the regulations.

(2) With respect to the requirements of subsection (1)(b), each framework must address services relating to

(a) transportation,

- (b) water and wastewater,
- (c) solid waste,
- (d) emergency services,
- (e) recreation, and
- (f) any other services, where those services benefit residents in more than one of the municipalities that are parties to the framework.

(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

(4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.

(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

[130] In 2019 the *Intermunicipal Collaboration Framework Regulation*, Alta Reg 191/2017 also existed. It was deleted effective January 1, 2020. Among other things, the Regulation included:

- a definition of “service” as “includes any program, facility or infrastructure necessary to provide a service”,
- a detailed description of the duty to act in good faith,
- an obligation to provide to the other parties a rationale as to why a service has a benefit to residents in the affected municipalities,
- a detailed arbitration provision,
- detailed requirements for the ICF dispute resolution provisions and a model dispute resolution process.

[131] Effective January 1, 2020 section 708.29 reads:

708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

(2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

(3) Nothing in this Part prevents a framework from enabling an intermunicipal service to be provided in only part of a municipality.

(3.1) Every framework must contain provisions establishing a process for resolving disputes that occur while the framework is in effect, other than during a review under section 708.32, with respect to

(a) the interpretation, implementation or application of the framework, and

(b) any contravention or alleged contravention of the framework.

(4) No framework may contain a provision that conflicts or is inconsistent with a growth plan established under Part 17.1 or with an ALSA regional plan.

(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

[132] The ICF content was simplified to include only intermunicipal services, rather than a full inventory of services. All reference to requirements in the Regulation was deleted, including the definition of “services” and the detailed good faith, arbitration and dispute resolution provisions. The obligation to address services related to water and wastewater, transportation, emergency services, recreation, solid waste and other areas was deleted. The discretion to include details for planning, locating and developing infrastructure to support services disappeared. So did the discretion to include provisions for developing infrastructure for the common benefit of residents in the municipalities.

[133] Part 17.2 changed because of amendments introduced in the *Red Tape Reduction Implementation Act, 2019, SA 2019, c.22*. This act was one of a series of red tape reduction statutes passed by the Legislature. The first was the *Red Tape Reduction Act SA 2019, c R-8.2* in June 2019. In December 2019 *Red Tape Reduction Implementation Act, 2019* passed. In 2020, two additional acts passed: *Red Tape Reduction Implementation Act, 2020 SA 2020, c 25* and *Red Tape Reduction Implementation Act, 2020 (No. 2) SA 2020, c 39*.

[134] The preamble for the first act in the series, *Red Tape Reduction Act* expressed the following purposes for the statute:

WHEREAS the Government of Alberta recognizes that a consistent, transparent and efficient system of regulatory and administrative requirements is necessary to protect the public interest, including health, safety, the environment and fiscal accountability;

WHEREAS some regulatory and administrative requirements result in unnecessary costs for Albertans in terms of time, money or other resources, putting burdens on businesses and non-profit and public sector organizations and threatening jobs;

WHEREAS addressing the requirements that cause these burdens will enable economic growth, innovation and competitiveness and facilitate a strong investment climate in Alberta, getting Albertans back to work and making life better for Albertans;

WHEREAS the Government of Alberta is committed to acting deliberately and expeditiously to eliminate and prevent unnecessary regulatory and administrative requirements by establishing strategies and initiatives based on the principles of necessity, effectiveness, efficiency and proportionality, including moving from a process-based to an outcome-based regulatory approach; and

WHEREAS the Government of Alberta will strive to ensure that these strategies and initiatives meet a standard of excellence that citizens can rely on and taxpayers can afford, with no net increase in regulatory or administrative burdens;

[135] According to the title of the statute and the preamble, the Legislature was addressing red tape or unnecessary regulatory or administrative requirements. The companion statutes which followed were titled *Red Tape Reduction Implementation Act*, which indicates they were implementing aspects of the first statute.

[136] In *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40 at para. 47, the Supreme Court of Canada said that decision makers can use Hansard within the interpretative exercise.

[47] This Court has observed that, while Hansard evidence is admitted as relevant to the background and purpose of the legislation, courts must remain mindful of the limited reliability and weight of such evidence (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 35; *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484; *Sullivan*, at pp. 608-14). Hansard references may be relied on as evidence of the background and purpose of the legislation or, in some cases, as direct evidence of purpose (*Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 44, per LeBel and Cromwell JJ.). Here, Hansard is advanced as evidence of legislative

intent. However, such references will not be helpful in interpreting the words of a legislative provision where the references are themselves ambiguous (*Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715, at para. 39, per LeBel J.).

[137] In 2020, the Supreme Court of Canada identified that the persons directly responsible for the introducing the legislation may give relevant evidence of legislative purpose.

[46] While this Court has recognized that the statements of particular Members of Parliament cannot necessarily be taken as expressing the intention of Parliament as a whole (*R. v. Heywood*, [1994] 3 S.C.R. 761, at pp. 788-89), the statements recounted here were made by those directly responsible for introducing the three-card monte prohibition, and as such provide relevant evidence of legislative purpose. (*Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at para 46)

[138] The Hansard statements from the Associate Minister of Red Tape Reduction during debate on the second reading of the *Red Tape Reduction Implementation Act, 2019*, SA 2019 show the Government was continuing its initiative to remove red tape and to eliminate regulatory burden for municipalities and other government partners and to eliminate or modernize outdated and redundant rules. The Associate Minister clearly and unambiguously provided the reason for including amendments to the *MGA* in the *Red Tape Reduction Implementation Act, 2019*, being to streamline provisions that hamper administrative efficiencies for municipalities.

Thank you, Mr. Speaker. It's a pleasure to be able to rise today for the second reading of Bill 25, the Red Tape Reduction Implementation Act, 2019. The proposed legislation reflects our government's commitment to cut red tape and to make Alberta one of the freest and fastest moving economies in the world. It also reflects our commitment to reduce red tape in order to make life better for everyday Albertans. The Red Tape Reduction Implementation Act, 2019, builds on the momentum established by actions already taken by our government to reduce red tape. It makes changes to several pieces of legislation. Generally speaking, the changes proposed by Bill 25 can fit into three themes: to encourage investment by speeding up regulatory approvals, to reduce regulatory burden for municipalities and other government partners, and to eliminate or modernize outdated and redundant rules. Under the first theme..

Moving on to our next theme, to reduce regulatory burden for municipalities and other government partners, Bill 25 proposes an amendment to the *Municipal*

Government Act to streamline provisions that hamper administrative efficiencies for municipalities.... (emphasis added)

Now, this concludes my overview of Bill 25, Mr. Speaker, the Red Tape Reduction Implementation Act, 2019. These changes are designed to encourage investment, reduce regulatory burdens, and streamline, eliminate, or modernize outdated or redundant rules, allowing government to move quicker. Together the changes proposed in Bill 25 represent a conscious and coordinated effort to reduce red tape across government, to free up the creativity of our partners in businesses and government, our job creators and innovators, and to make life better for all Albertans. (Alberta Hansard, 30th Leg, 1st Sess, 26 November 2019 (Morning) at 2527 (Hon. Grant Hunter))

[139] Statements from Opposition Member Hon. Joe Ceci and other government members during debate on the bill and on third reading reaffirm the mischief being addressed was to remove administrative inefficiencies and provide more flexibility. See: Alberta Hansard, 30th Leg, 1st Sess, 26 November 2019 (Evening) at 2571 – 2574 and Alberta Hansard, 30th Leg, 1st Sess, 27 November 2019 (Morning Session) at 2587-2589.

[140] A review of resultant changes to the *MGA* supports my view that these changes were not substantive but did increase flexibility and decrease administrative burdens for municipalities. Examples of the changes in the *MGA* included:

- allowing the clerk of the subdivision development appeal board to be appointed as clerk of the assessment review board,
- deleting the obligation for the minutes of the meeting to record the names of those persons and the reasons for allowing them to attend,
- allowing for continuous tax bylaws, rather than annual approval,
- allowing a council to delegate its powers to any person,
- giving municipalities ability to agree they do not need an intermunicipal development plan,
- adding section 631(9) to allow matters in an intermunicipal development plan to be included in an ICF,
- relaxing section 708.27 to amend the purpose of Part 17.2 away from requiring ICFs to providing for ICFs,

- clarifying the deadline date for ICFs, rather than requiring a calculation of time in section 708.28,
- enabling the Minister to give exemptions rather than give orders to complete an ICF,
- giving members of a growth management board the option to create an ICF,
- enabling municipalities to review their ICF at any time with mutual agreement,
- enabling municipalities to create an ICF by resolution or bylaw, not just bylaw,
- simplifying the arbitration process and role of the arbitrator, and
- removing all reference to matters in the Intermunicipal Collaboration Framework Regulation.

[141] The changes provide more flexibility for municipalities within the existing legislative intent in Part 17.2. They do not demonstrate a legislative intent to change the substance of Part 17.2. There was no expressed or implied intent in the *Red Tape Reduction Implementation Act, 2019* to alter the three purposes of the ICF or to narrow the collaborative or financial obligation of municipalities to identify and fund intermunicipal services.

[142] Woodlands relies heavily on the removal of the clauses 709.29(1)(f) and (g) dealing with infrastructure. The two clauses dealt with the discretion of municipalities to include those provisions in an ICF. The removal of the statutory discretion does not alter the definition of intermunicipal services. The broader language of sections 708.27 and 708.29 in the *MGA* today leave the municipalities with all the same discretions they previously held. However, the mandatory obligations which were regulatory or administrative were relaxed, giving the municipalities more flexibility to determine which services they wish to discuss and include in the ICF, how the services will be delivered and how they will be funded.

[143] The *Red Tape Reduction Implementation Act, 2019* also removed the obligation of municipalities to address in every ICF the services related to water and wastewater, transportation, emergency services, recreation, solid waste. This reduced administrative burden by not requiring municipalities to spend the time or resources preparing an ICF with an arbitrary list of subjects only because the statute said they had to address them in the ICF. There is no suggestion by either party that these services could no longer be part of an ICF. The current *MGA* gives the municipalities wide flexibility on the subject matters of their

intermunicipal services and more flexibility about the content of the ICF. The ICF will only contain reference to these topics if they involve intermunicipal services that benefit the residents of the other municipality.

[144] Similarly, the removal of the definition of “service” in the Regulation did not narrow the definition of “intermunicipal services”. The definition did not restrictively define a service anymore than the *MGA* does. Common legislative drafting conventions show that definitions can be used to establish that a term is not being used in a usual meaning or is being used in only one of several usual meanings. (Canadian Legislative Drafting Conventions, Uniform Law Conference of Canada, <https://ulcc-chlc.ca/Civil-Section/Drafting/Drafting-Conventions> at section 21)

[145] The definition in the Regulation used the word “includes” rather than “means”. Again, the drafting conventions recommend using “means” to define terms exhaustively and using “includes” to either extend the ordinary meaning of the defined term or to merely give examples. The former definition potentially gave guidance on what a service includes: “any program, facility or infrastructure necessary to provide a service”. The items in the list refer to the systems or things making a service possible. The list did not include reference to people, products, equipment or background support also related to providing a service but there is no dispute here that all things “operational” would be discussed in relation to intermunicipal services. The ordinary meaning of “intermunicipal services” I adopt is sufficiently broad to incorporate all those aspects and provides the maximum flexibility to the municipalities.

[146] The drafting conventions also recommend a defined term should never be used in the same Act in a different sense. If the term “service” as part of “intermunicipal service” were defined as Woodlands suggests, it would mean one thing in Part 17.2 (to exclude facilities, capital, etc.) but would have its ordinary meaning in the remainder of the *MGA*. This would create a different meaning for “intermunicipal services” in section 708.27 and section 3, when both use the same term.

[147] As part of creating an ICF the parties must identify the services. Municipalities will have a variety of ways of describing services which may be more or less specific. For example, the residents of municipality A use the public pool in municipality B for public swimming and swimming lessons and community team swimming. The municipalities may describe the intermunicipal service as: public swimming and swimming lessons and community team swimming, recreation, pool, or other ways. The parties to the ICF describe the service in any way that they understand and is enforceable by them in the ICF. Then they need to determine funding contributions, which is where any reference to capital, infrastructure,

facility, equipment or people is more relevant.

Purpose of Part 17.2

[148] I turn now to how the proposed meanings of “intermunicipal services” harmonize with the purpose of part 17.2 and the intent of the Legislature. A broad meaning of “intermunicipal services” without exclusions harmonizes with the purpose of Part 17.2, and the intention of the Legislature, whereas the restrictive meaning does not.

[149] In *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, at paras. 50 - the Court explained that the interpretation that best reflects the underlying aims of the legislation is the preferred interpretation:

[50] The modern principle of interpretation requires that courts approach statutory language in the manner that best reflects the underlying aims of the statute. This follows from the obligation to interpret the words of an Act harmoniously with the object of the Act and the intention of Parliament. As Professor Sullivan notes, “[i]n so far as the language of the text permits, interpretations that are consistent with or promote legislative purpose should be adopted, while interpretations that defeat or undermine legislative purpose should be avoided” (§9.3).

[51] The clear statement of purpose set out in the Code must guide our interpretation ...

[150] Part 17.2 has three stated purposes, set out in section 708.27:

- to provide for the integrated and strategic planning, delivery and funding of intermunicipal services,
- to steward scarce resources efficiently in providing local services, and
- to ensure municipalities contribute funding to services that benefit their residents.

[151] In his paper, *Cooperation and Capacity: Inter-Municipal Agreements in Canada*, Zachery

Spicer of the Institute on Municipal Finance and Governance, University of Toronto⁶ comments on inter-local agreements. Part 17.2 captures the key aspects of this paper in requiring municipalities to enter into ICFs while generally retaining their local government authority. Intermunicipal cooperation does not replace or detract from municipal authority. It increases municipal capacity by expanding opportunities. It replaces rigid institutional reform and decreases intervention of senior levels of government.

American local government literature extensively uses the Institutional Collective Action (ICA) framework—introduced by Feiock (2004,⁶) as a “second-generation” rational choice explanation for voluntary cooperation—to explain cooperation, competition, and policy variation within metropolitan areas.⁷ As a rational-actor approach, the ICA framework ignores cultural or normative variables that may also affect cooperation.⁸ Instead, the framework is concerned with identifying factors that could tangibly affect the nature of cooperation between two (or more) municipalities.

Cooperation is the most flexible alternative to formal institutional reform, as it allows local governments to decide which regional issues should be addressed collectively (Nelles 2009, 22). In many cases, externalities can spill over jurisdictional borders, necessitating cooperation between two or more governments to mitigate the impact on both communities.⁹ For example, growth and development often spill over borders, creating common challenges for planning and servicing land. The ICA framework aims to resolve such dilemmas.

Cooperation is attractive to local governments because it allows for partnerships generally without the intervention of senior levels of government. Hulst and van Montfort (2007) argue that local cooperation leaves the policy domains of local government intact and typically does not result in a permanent transfer or loss of local policy capacity, which they contend prevents local democracy from being “hollowed out.”

Most municipalities practice some form of inter-local cooperation.¹⁰ When the benefit is clear or the goal is unreachable alone, cooperation is likely to occur.

[152] The paper also addresses four general incentives for pursuing inter-governmental

⁶ Zachary Spicer, “Cooperation and Capacity: Inter-municipal Agreements in Canada”, in Institute on Municipal Finance and Governance Papers on Municipal Finance and Governance, No. 19, 2015 Munk School Toronto, available at: https://munkschool.utoronto.ca/imfg/uploads/318/1623_imfg_no.19_spicer_online.pdf

agreements: overcoming limited fiscal resources, addressing services gaps, addressing overlapping planning and servicing dilemmas and to meet mandates imposed by senior levels of government. Part 17.2 advances similar purposes.

Aside from these general motivations, there are three general incentives for pursuing inter-governmental agreements, outlined in Table 2.

The first incentive is fiscal. Municipalities often experience challenges providing services on limited budgets. Partnering with another municipality to share the cost of delivering a service can be one way of saving money. Contracting services is often seen in the same light. When one municipality does not have the resources to deliver a new service, it may contract another municipality to provide that service within its jurisdiction, thereby avoiding the initial start-up costs associated with service delivery.

An excellent example is transit. Several communities around Edmonton have agreements in place for transit extension from the city. Establishing a transit system is very costly—both for capital and operating expenses—so contracting services from a municipality that has already made an investment has financial benefits.

Finally, partnering with another municipality on infrastructure projects can help reduce capital costs. For example, two municipalities could divide the construction and operating costs of a recreation complex, thereby avoiding the large costs associated with building the facility independently.

Second, policy and service cooperation may help some municipalities overcome geographic and environmental challenges and fill service gaps. Simply put, some municipalities cannot deliver some services to residents. For example, some municipalities may not have access to source water for the entire community. Partnering with another municipality to provide this service will ensure service continuity, overcoming problems with geographic and environmental isolation that may otherwise limit community size. York Region and Toronto have an agreement for water servicing, overcoming York's distance from Lake Ontario and its lack of adequate sources of water.

The third incentive is to control externalities. Municipalities close to each other often experience common servicing or policy dilemmas. Growth and development, for example, often spill over borders, creating a need for common policy cooperation or regional growth initiatives. Creating mechanisms to jointly

manage these externalities can avoid the long-term fiscal burden of improper planning. Cooperation can also help monitor shared natural resources, such as trans-boundary waterways.

Finally, cooperation can be mandated by central authorities. Ontario's Consolidated Municipal Service Manger (CMSM) system is one example. The provincial government downloaded social services to municipalities under the CMSM system, thereby mandating a local role in the delivery and partial funding of social services, which necessitated a need for municipalities in certain regions to form inter-local agreements to manage the array of services. In such instances, the provincial government provided the directive to cooperate, but allowed the details of the arrangement to be sorted out locally.

[153] In Part 17.2 the Legislature mandated most municipalities to create an ICF. The subject matters and details of the arrangement are left to the municipalities. Having a broad meaning of "intermunicipal services" harmonizes with the Legislature's intent to give municipalities wide flexibility about how to plan, deliver or fund these services. It promotes the stewarding of scarce resources by enabling municipalities to explore a variety of ways to provide local services. The broad meaning of "intermunicipal services" also gives the municipalities wide latitude to discuss funding contributions which enhances their fiscal stewardship. A broad meaning of "intermunicipal services" supports local cooperation while retaining local authority. It promotes relationships and harmonizes with the principles of fiscal accountability for services

[154] On the other hand, the proposed meaning which excludes facilities, capital and infrastructure costs related to the delivery of the services does not harmonize with the stated purposes in Part 17.2. The narrow meaning removes the flexibility of the municipalities by restricting the services to services that are not reliant on facilities, capital or infrastructure for their delivery or by restricting funding discussion to only the operating costs of the services. It would restrict the nature of the planning or delivery or funding of services. Limiting the scope of either the services or the funding from the outset would favour those municipalities whose residents are benefitting from the services by artificially limiting the content of the ICF. Municipalities could face a difficult decision to either refuse services to anyone outside their municipality (which does not appear neighborly) or risk subsidizing another municipality. It would disincentivize municipalities from delivering services accessible to residents of other municipalities, which would impact relationships and drive-up overall costs to individual municipalities.

[155] The broad meaning of "intermunicipal services" also supports the purposes of

municipalities in section 3 which I discussed earlier.

Offered within only one municipality

[156] Generally, a municipality only has authority to offer services within its own boundaries. Sections 7 and 8 set out the bylaw powers of a municipality, including the power to pass bylaws for municipal purposes relating to services provided by or on behalf of the municipality (section 7(f)). Section 12 limits the geographic scope of municipal bylaws to the municipality's boundaries unless an agreement of another municipality or a statutory provision extends that power.

[157] Section 54 creates a scenario for one municipality to extend the range of its services, if the other municipality agrees. The fire services agreement between these parties is an example. Whitecourt's fire department provides fire services within Woodlands as a result of their agreement.

[158] Section 54(5) also deems an ICF to be an agreement for the purposes of section 54.

(5) The existence of a framework relating to a service constitutes agreement among the municipalities that are parties to the framework for the purposes of section 54.

[159] The effect of section 54(5) and the arbitration provisions of Part 17.2 enables an arbitrator to direct an ICF to include services offered in another municipality if they otherwise meet the requirements of intermunicipal services. Such an award would rely on section 54(5), rather than agreement of the parties.

[160] Section 708.29(3) specifically allows the parties to an ICF to offer an intermunicipal service in only one part of a municipality. Historically, these parties have cost shared fire services provided by Whitecourt which service is restricted to residents within a defined service area within Woodlands. They have also cost shared recreation services offered only in Whitecourt located at a particular facility or location, such as a swimming or skating. They have cost shared community and social services offered by Whitecourt in Whitecourt. They have cost shared airport services offered by Woodlands in Woodlands. It follows that in most instances the services offered by one municipality will become the topic of ICF discussions when the residents of another municipality begin accessing the services where they are offered and benefitting from those services.

[161] Section 10 of the *Interpretation Act* requires the parties and arbitrator to give Part 17.2 the fair, large and liberal construction and interpretation that best ensures the attainment

of its objects. There is no express limitation in Part 17.2 on the geographic location of intermunicipal services. A fair, large and liberal construction would include recognizing a range of options such as providing intermunicipal services within one municipality, within both municipalities and within only part of a municipality. Requiring the services to be offered in more than one municipality would undermine the purposes of Part 17.2. Most recreation services dependant on a facility would be excluded from ICF's. For example, public swimming would be excluded because the provision of services in the second municipality would require a pool located in the second municipality. This would be contrary to the express purpose in section 708.27 to steward scarce resources.

Current or Future Services?

[162] I turn next to Woodlands' argument that "intermunicipal services" are services provided at the time of entering into the ICF and ongoing. Neither the language of the statute nor the broad meaning of intermunicipal services supports such a conclusion.

[163] The *MGA* obliges municipalities to work collaboratively with neighboring municipalities to plan, deliver and fund these services. An ICF is intended to provide for the integrated and strategic planning, delivery and funding of intermunicipal services and to steward scarce local resources. If the parties are required to plan for these services, the ordinary sense of the word "plan" would include preparing for future circumstances. Those circumstances may involve alterations to existing services or new services that will assist to steward scarce local resources and benefit residents. Different planning activities may require payment of costs. Planning for future services could occur incrementally and would not necessarily compel a municipality to commit itself to all aspects of the future service from the outset. Sometimes the planning exercise could reveal that the planned service would not assist in stewarding scarce local resources or would not benefit the residents in the way contemplated.

[164] Section 153 also requires councillors "to promote an integrated and strategic approach to intermunicipal land use planning and service delivery with neighbouring municipalities" A strategic approach would involve planning which further supports the ordinary meaning that services are those being provided and planned to be provided in the future.

[165] Section 708.29 also requires the ICF to include the services to be provided. This speaks to a forward-looking approach which will include services currently being provided and services planned to be provided.

[166] In relation to historical services, the *MGA* does not provide direction, but the context of sections 3, 708.27 and 708.29 would suggest that historical services are no longer providing

a benefit to residents of the other municipality. Realistically, after the first ICF is complete, the matter of historical services or contribution to historical services should be replaced by planning for services and their funding.

Provided by a Municipality

[167] I turn next to Woodlands' argument that intermunicipal services must be provided by a municipality, not a third party. Although Woodlands proposed and I have used a meaning which includes "services delivered by or on behalf of a municipality", Woodlands objects to funding any services provided by a third party, such as a library board or the RCMP or the Agricultural Society.

[168] It appears Woodlands changed its position on this point when it advanced its proposed meaning of "intermunicipal services". If so, I would not have to deal with this point and would rely on the stated meaning provided by Woodlands in its closing comments. In the event I am in error, for the following reasons, I agree with Whitecourt that intermunicipal services include services delivered by or on behalf of a municipality (that otherwise meet the requirements of Part 17.2) and are not limited to services delivered directly by a municipality.

[169] Nowhere in the text of Part 17.2 is there reference to services provided by a municipality directly. The obligation in section 708.29 is to identify "which municipality is responsible for providing the services". The ordinary meaning of "responsible for" is not restricted to "by the municipality" or "provided directly by". Being "responsible for" suggests a broader meaning that includes both doing it directly or overseeing someone else who does it for the municipality. In either case, the ordinary meaning of "responsible for" suggests decision making over and accountability for the service. For example, the *MGA* contemplates circumstances where a municipality may control a third party. Under section 1(2), a municipality controls a corporation if the municipality appointed all or a majority of its members or directors. If the Legislature wanted to restrict the services in Part 17.2 to those provided by directly a municipality, it would have said so.

[170] Woodlands says each municipality is a separate legal entity and their legal authority cannot be restricted by an ICF without its agreement and cannot be imposed by an arbitrator. In this regard, Woodlands says it must either agree to fund a service provided by a third party or it must be statutorily obliged to do so. The ICF process includes both concepts: mutual agreement and statutory obligation. The parties are to work collaboratively and attempt to conclude an ICF. If they are unable to do so by agreement, the *MGA* provides a binding process before an arbitrator to resolve their disputes. The *MGA* gives the parties and the arbitrator the same criteria to apply. Certainly, the parties

could agree to expand that criterion, however the arbitrator applies the criteria in the legislation. If the service qualifies as an intermunicipal service that benefits the residents of more than one of the municipalities and one of the municipalities is “responsible” for that service, then it must be included in the ICF. From there section 708.4 requires the parties to adopt an ICF in accordance with the arbitrator’s award. It further prohibits municipalities from amending, repealing or revising its bylaws to be inconsistent with an ICF to which it is a party or with an award of an arbitrator applicable to the ICF.

[171] Section 7(f) of the *MGA* enables municipalities to pass bylaws for municipal purposes respecting “services provided by or on behalf of the municipality”. The *MGA* does not limit who may provide services on behalf of a municipality. There is no definition of “third party” in the *MGA* and no references to “third party” in the *MGA*. Again, if the Legislature wanted to exclude services provided by a party who is not a party to the ICF or the dispute, it would have said so in light of the provisions in section 7(f).

[172] Section 708.33(1) requires municipalities to pass either a bylaw or a resolution to adopt the ICF. Section 7(f) accords with the municipality’s ability to pass a bylaw to approve an ICF. Section 9 provides that this bylaw power generally gives broad authority to councils and respects their right to govern the municipality within their jurisdiction under the *MGA* or other legislation and to enhance their ability to respond to present and future issues in their municipalities. When a municipality, whose residents receive the benefit of the services in the ICF, passes a bylaw to approve the ICF, it is acknowledging that those services are being provided to its residents “on its behalf”. These provisions support the autonomous authority and decision-making capacity of the municipality because the municipality either negotiated the content or defined the issues before the arbitrator.

[173] Woodlands also relies on the content of the ICF Workbook to reveal an intention to exclude services provided by third parties. The ICF Workbook in a text box labelled “Something to Consider” in chapter 1.1 says:

In determining which services are of benefit to residents in more than one municipality, it is helpful to determine whether a service is provided by a third party. For example, library boards and RCMP services are provided by a third party and therefore would not need to be identified in an ICF. However, an intermunicipal service operated by a municipality, such as a peace officer service, would need to be identified.

[174] The ICF Workbook does not provide any explanation for this statement. It contains an ambiguity and does not assist with interpreting the statute. It may refer to the fact that ICF’s no longer need to list services provided by third parties. As a result, I do not rely on

the Workbook as an aid for interpretation on this point.

[175] This statement has existed in the Workbook since the first version which was created when section 708.29 required the parties to list in an ICF the services provided by each municipality, the intermunicipal services and which municipality was responsible for that service, and any services provided by third parties. Today an ICF must only identify the intermunicipal service, which municipality is responsible for the services and outline how the services will be delivered and funded. In my view, the existence of the third party is relevant to how the services will be delivered but does not replace or override the obligation that a municipality must be responsible for the services.

[176] For example, The *Libraries Act*, RSA 2000, c L-11 and the *Police Act*, RSA 2000 c P-17, both contemplate services that could be provided by a third party on behalf of both municipalities or by one municipality on behalf of another municipality. The broad meaning of “intermunicipal services” would capture both.

[177] The *Libraries Act*, RSA 2000, c L-11 does not define library services. In section 1(k), “municipal library means a library that provides public library services under the control and management of a municipal library board or an intermunicipal library board”. Under sections 2 to 10 of the *Libraries Act*, the municipality establishes and appoints the municipal library board. The library board operates the library to provide the public library services and is empowered to organize, promote and maintain comprehensive and efficient library services in the municipality. The library board is maintained in whole or in part by property taxes. The board creates an annual budget and estimates the money required during the ensuing fiscal year to operate and manage the library. The board submits the budget and the estimate of money to the municipality, who may approve the estimate in whole or in part. When money is required for the purpose of acquiring real property for the purposes of a building to be used as a municipal library or for erecting, repairing, furnishing and equipping a building to be used as a municipal library, the council may, at the request of the board, take all necessary steps to furnish the money requested or the portion of it that the council considers expedient. Money approved by the council may be borrowed by the council under the authority of a bylaw and on the security of debentures. If a municipality with a municipal library is dissolved, the rights, assets and liabilities of the library board revert to the municipality. Similar provisions apply when the library board is not functioning and needs to be dissolved. The *Libraries Act* does not prohibit residents of another municipality from accessing the services. Overall, the provisions of the *Libraries Act* support an interpretation that the municipality is responsible for the library services, although the services are provided by an established library board who is a distinct entity different from the municipality.

[178] Similar provisions govern intermunicipal library boards. Under sections 12.1 to 12.7 of the *Libraries Act*, two or more municipalities may agree to establish an intermunicipal library board with approval of the Minister. The councils appoint an intermunicipal library board, who has full control and management of the library and is empowered to organize, promote and maintain comprehensive and efficient library services in the municipalities. Each year the intermunicipal library board submits to each municipality that is a party to the agreement a budget and an estimate of the money required during the ensuing fiscal year to operate and manage the intermunicipal library board, including the amounts to be paid by each municipality in accordance with the agreement. Unlike the municipal library board estimate, the respective councils do not approve the estimate in whole or in part, because the respective shares of funding are already set out in the intermunicipal library agreement approved by the municipalities.

[179] The intermunicipal library option describes a form of intermunicipal service. The service benefits the residents of both municipalities. Neither municipality provides the service directly. Each municipality agrees that a third party, the intermunicipal library board, will provide the service. However, both municipalities are responsible for the service through their agreement, their appointments to the board and the funding of the service.

[180] Similarly, the *Police Act*, RSA 2000 c P-17 governs the provision of police services. Section 22 enables the Government of Alberta to enter into an agreement with a municipality to provide policing services specifically for the municipality by the provincial police service. Subject to the prior approval of the Minister, a municipality may enter into an agreement with the Government of Canada for the employment of the Royal Canadian Mounted Police (who are a third party), or another municipality to provide policing services to the municipality. There is no restriction on one municipality providing police services to another municipality using its RCMP service provider. The agreement with another municipality to provide police services demonstrates another form of intermunicipal services.

Summary on the meaning of “intermunicipal services”

[181] In summary, I concur with the amended meaning proposed by Whitecourt that “intermunicipal services” are things the public needs, public activities or commodities (often intangible and consumable), delivered by or on behalf of one municipality that benefits the residents of one or more other municipality. It is a broad meaning that harmonizes with the purposes of Part 17.2 and the intention of the Legislature.

[182] Intermunicipal services have the following characteristics. They:

- can be planned, delivered and funded,
- must benefit the residents of more than one of the municipalities party to the ICF,
- must be the responsibility of a municipality,
- will be funded by a municipality,
- must be capable of being described concerning how they will be delivered and funded,
- may be provided by or on behalf of a municipality, and
- may be delivered in one municipality, one part of a municipality, or in multiple municipalities.

[183] Next, I address the question of the costs included in the discussion about funding of intermunicipal services.

2. What costs does “funding” include?

[184] The second aspect of Woodlands’ interpretative argument addresses the costs to which the recipient municipality can be required to contribute. In essence, Woodlands seeks to limit its funding obligation to only the direct operating costs of services. It seeks to exclude all costs related to capital, debt obligations for capital, infrastructure, life cycle planning (maintenance), administrative overhead, indirect costs, planning costs, construction costs, and accounting costs.

[185] Whitecourt argues Part 17.2 enables the parties to discuss all costs. It seeks to do so in this case using a full cost recovery model which includes all the costs Woodlands seeks to exclude.

[186] To bring the provisions into focus for this discussion, I repeat sections 708.27 and 708.29.

708.27 The purpose of this Part is to provide for intermunicipal collaboration frameworks among 2 or more municipalities

(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.

708.29(1) A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework.

(2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

[187] Part 17.2 does not specify what inputs (costs or revenues) form the foundation of the funding decisions included in the ICF. The *MGA* gives the municipalities the widest latitude to frame their own ICF (or an arbitrator to frame it if required). The ordinary meaning of funding means the money to be contributed for the particular purpose of having another municipality provide services that benefit the first municipality's residents (intermunicipal services). Funding focuses the discussion on the costs and revenues. Those costs and any revenues should be determinable and related to the services. However, the actual contribution could take the form of money or services in kind.

[188] As described earlier, intermunicipal services generally involve things, needs, activities or commodities. The provision or supply of activities or products by a municipality does not occur in a vacuum. The service provider will need an organization or system, people, places for the people to operate or the services to be provided, and infrastructure for the activities to occur in or be delivered through.

[189] For example, for a municipality to supply an activity to residents (of its municipality or another municipality) it will need people. Those people may market or create awareness of the activity, set up the activity at approved times and places, and provide temporary access to any products or equipment used during the activity. They will monitor the public access to the activity at allowed times and places, monitor health and safety requirements for the attendees, respond to attendee inquiries and needs, and provide for clean up before and after activities. People will collect any applicable fees, issue applicable receipts, record and monitor attendance limits, and record attendance (or use) by residents of another municipality, where required. People will complete any accounting and reporting requirements related to the activities, provide supervision to employees, and resolve disputes with the users. If the activity is provided by the municipality, insurance and legislative compliance will be important components to supplying or providing the activity,

which will require people to review policies, complete applications, file claims, and monitor compliance. Generally, these activities will be performed by paid staff or contractors, not volunteers.

[190] Similar rationale applies to the delivery of products or commodities. People need to also deliver or oversee the delivery of the product. Products or commodities may be tangible or intangible. They may be consumable. Products may include advice or assistance filling out an application. It might involve processing an application, completing a search, providing tourism information, booking campsites, or providing a permit. Delivery of commodities include providing fresh water, removing wastewater, removing or receiving and processing solid waste, receiving and processing recycling products, fire suppression or prevention, emergency response, or providing temporary use of municipal equipment or property (such as a pool, ice rink or meeting rooms).

[191] In the ordinary sense, for a municipality to deliver services to its residents or the residents of another municipality, the municipality will likely require some infrastructure, capital or facilities, in addition to people. Today a municipality does not arrange for public skating at a resident's ice rink or a local pond. It does not merely place a large sheet of synthetic ice panel on the ground and spray on a glide additive so people can skate on it. Nor does it arrange for a local volunteer firefighter to provide their own equipment and fire truck. It does not arrange for public swimming at a local pond or a resident's private swimming pool. Nor does the municipality set up an inflatable or above-ground store-bought pool for public swimming.

[192] Today's municipal services are more complex and require structure provided by the municipality. For example, fire suppression requires not only fire fighters but fire and water trucks, fire fighting equipment and products, and safety equipment and training for the fire fighters. Fire suppression requires direct or indirect connection to a municipal water system, a fire hall to house the fire trucks, supervisory personnel, and computer and phone systems to set up and respond to emergency calls, and a dispatch system and equipment, etc.

[193] Similarly, to provide recreational swimming activities or the consumable access to a swimming pool, the municipality must plan for, construct, maintain and replace the swimming pool. To operate, the swimming pool needs a structure or facility and supporting infrastructure, such as water systems, wastewater disposal systems, roads to transport people to the facility, and public parking at the facility. The facility needs more than a pool; it needs entrances and exits, changing rooms, washrooms, and places for the parents or other support persons, lifeguards, instructors, coaches and referees to operate. Without all

these things and many more, the municipality cannot provide the activity or product which is the service.

[194] Construction of the facility and infrastructure requires funding. Sometimes municipalities have sufficient lead time to plan and raise all or most of the money before construction begins. Sometimes they can wait for a developer to install the infrastructure in a new subdivision before constructing a facility. Sometimes they have to arrange financing to provide the funds required for the infrastructure or facility. When the municipality arranges financing, the financing costs are relevant costs to the provision of the service.

[195] The AUMA and RMA have published information about ICF's and how municipalities might approach the ICF process. On the matter of costs, the guidance is to include all the costs.

Which Costs to Include

The expenses related to a facility, service or piece of infrastructure aren't limited to just the day-to-day operational costs such as staffing and utilities, or the upfront capital cost. Be sure to look at the overall costs to your municipality including:

- Net operating expenses (i.e. subsidies)
- Long term debt payments (i.e. principle and interest)
- Repairs and maintenance
- Any operating grants

You may also consider that facilities will eventually need to be repurposed and/or replaced and that new facilities will be built. You and your neighbour may wish to discuss what steps you can take today prepare for this future need.

[196] For similar reasons stated earlier I do not find any of the other sections of the *MGA* to restrict the meaning of "contribute funding" in section 708.27 and 708.29. Section 3 does not restrict the costs of delivering services to just operating costs. Sections of the *MGA* that deal with capital costs will not be rendered redundant if the ICF includes a contribution by funding that indirectly recognizes the capital costs of the services being delivered. Provisions in Section 243 will not be redundant because operating budgets will continue to show either an expense arising from an obligation to pay a sum under the ICF or other revenue arising from the ICF. In my view, the Legislature intended to facilitate a change in how municipalities discuss capital costs, just as it intended to facilitate a change in the

municipality's budget disclosure.

[197] Section 708.38 is also relevant to the determination of funding. Under section 708.38 an arbitrator may consider "equitable sharing of costs among municipalities". The *MGA* does not define "costs". Merriam-Webster's dictionary defines "cost" as "the price of something: the amount of money that is needed to pay for or buy something" or "an amount of money that must be spent regularly to pay for something (such as running a business or raising a family)". An ordinary meaning of "costs to provide a service" would be the amount of money required or regularly spent to provide that service. This ordinary meaning of "costs" harmonizes with the ordinary meaning of "funding" in section 708.27 and 708.29.

[198] In summary, to determine what funding should be contributed and to determine if the sharing of costs is equitable, the parties need to be able to explore and discuss all the costs involved in providing the intermunicipal services. The *MGA* does not restrict the costs except that they must relate to the services provided.

[199] Although I find costs are not restricted, I do not include the Administrative Overhead costs claimed by Whitecourt in any of the intermunicipal services in this award. Mr. James Richardson of MNP LLP testified as an expert witness in municipal government finance strategy and operations and life cycle plans. He said administrative overhead is a proven approach as part of full cost accounting, but it is not the only way or the best way to discuss and allocate costs. Woodlands does not currently allocate administrative overhead costs to its services and Whitecourt has only recently started doing so. Ms. Miller of Wilde and Company said determination of administrative overhead does not carry over to all elements of municipal accounting and it is not applied broadly in municipalities, although it is used when setting water rates. In her opinion, tracking of administrative overhead generates so much data that it defeats the purpose of accountability because the data not audited and because it is not affordable to gather the data. Essentially the discussion turns into an accounting exercise rather than a discussion about what the municipalities are trying to accomplish concerning intermunicipal services. I agree with and adopt her opinion in this regard. In this first ICF, factoring in administrative overhead costs will add a further administrative and financial burden to both parties. There is also a significant difference in the level of administrative overhead created by these two parties that cannot be balanced by merely applying an administrative overhead factor. In my view, including administrative overhead costs would also detract from the collaborative efforts between these municipalities by reducing discussions to pure monetary considerations.

[200] On the matter of how to allocate costs, there are various models, and the parties could

create their own model. The AUMA and RMA provide guidance about four common types of cost allocation, with the catchment model being the most common in the province.

Assigning Costs

Looking across the province there are already a number of models of how to handle splitting the costs of a facility, service or infrastructure asset amongst multiple municipalities. Each approach comes with their own positives and negatives.

Generally, these models include:

1. User ratios - Tracking which municipality a user originates from to determine overall usage by municipalities' residents.
2. Catchment area - Determining an acceptable catchment area for a facility or service and apportioning costs based on the populations in that area.
3. Lump-sum - Determining a set amount of funds to share and dispersing that set amount on an agreed upon schedule.
4. Percentage of costs - Agreeing on a set percentage of costs to apportion to each municipality (can be based on population, revenue-generating ability, level of funding in other agreements, etc.).

The catchment area model is the most prevalent across the province. This model also best reflects the availability of municipal services to residents in certain areas by acknowledging that not all rural residents have the same access to urban services. This model also offers an easy way to quantify the population of a service area and it acknowledges that a service or facility is open and accessible to any residents within a defined area. Catchment areas also recognize the concept of "general benefit" which suggests that even though an individual from another municipality may not use a specific service, they still benefit from the fact that it is publicly available in the region.

[201] The particular model applicable may vary with the intermunicipal service. The municipality seeking a particular model must be able to explain and justify the model as appropriate for the service. In each of the dispute service areas, I considered and applied a model appropriate for the service.

Applicable Factors for the Arbitrator's Consideration

[202] I will later deal with each service area and matter in dispute. Before doing so, I address the factors in section 708.38(1) and how I have generally applied them to the matters in dispute.

[203] Section 708.38(1) of the *MGA* sets out the various items the arbitrator may consider in resolving a dispute.

708.38(1) In resolving a dispute, an arbitrator may have regard to

- (a) the services and infrastructure provided for in other frameworks to which the municipalities are also parties,
- (b) consistency of services provided to residents in the municipalities,
- (c) equitable sharing of costs among municipalities,
- (d) environmental concerns within the municipalities,
- (e) the public interest, and
- (f) any other matters that the arbitrator considers relevant.

I deal with each factor separately.

Services and infrastructure in other frameworks

[204] Whitecourt is not party to other ICFs. Woodlands is party to seven other ICFs. The ICFs were not provided in evidence. There is little or no information about the content of those ICF's to which Woodlands is a party, so it is not possible to consider those ICFs.

Consistency of Services

[205] Consistency relates to conformity in the application of something, in this case to the application of services. On the matter of consistency of services provided to residents in the municipalities, the parties state they will provide intermunicipal services to the residents of the other municipality without differentiation.

Equitable sharing of costs

[206] An important factor in this dispute is the equitable sharing of costs among the municipalities. The *MGA* does not define or give guidelines for the concept of "equitable" although the term is used in other sections in the *MGA* (sections 293(1), 324(1)(b), 347(1),

359.4, 467(3), 499(3)(b), 598, 708.36(7)(f)(ii). The Interpretation Act does not define “equitable” either, therefore, I look for the ordinary meaning of the term “equitable” in a dictionary.

[207] Merriam-Webster’s dictionary defines “equitable” as “having or exhibiting equity: dealing fairly and equally with all concerned”⁷. It incorporates the definition of “equally” which the same dictionary defines as “in an equal or uniform manner: evenly”. The synonyms and antonyms for “equitable” from Merriam-Webster dictionary can also provide some comparisons and contrasts to better assist with defining “equitable”.

“Synonyms: candid, disinterested, dispassionate, equal, evenhanded, fair, impartial, indifferent, just, nonpartisan, objective, square, unbiased, unprejudiced.

Antonyms: biased, ex parte, inequitable, nonobjective, one-sided, partial, partis pris, partisan, prejudiced, unjust.”

[208] To have equitable sharing of costs would be to share the costs in a similar way, in an equal, even-handed, fair, objective and nonpartisan way. The input costs applicable to intermunicipal services apply regardless of which municipality provides the service.

[209] To achieve an equitable sharing of costs, there must be disclosure and discussion of all the costs. An “equitable sharing of costs” presumes the contributed funding will follow the benefit received. There should be a reasonable relationship of the costs to the service and the benefit. The municipality providing the service will bear the onus to justify the costs and how they relate to the provision of the services. The recipient municipality will bear the onus to justify why it should contribute less than the proportionate costs of the services relative to the benefit its residents receive from the services or to justify why a different cost share or different calculation model applies.

[210] An equitable sharing of costs also presumes that revenue sources related to the service should be factored. For example, user fees may bring in revenue that can offset some of the costs. Grants and donations may also be relevant to the discussions. If appropriate non-municipal funded revenue sources were not considered, the municipality providing the service would be in a financially superior position or potentially a windfall situation. It would have additional sources of revenue related to the service while still seeking an equitable cost share from another municipality. The other municipality could be

⁷ [Equitable | Definition of Equitable by Merriam-Webster](#)

contributing proportionately more than the providing municipality after consideration of the additional revenue sources.

[211] The equitable sharing of costs removes considerations that are arbitrary, one-sided or motivated by political or economic motivations. The recipient municipality would be restrained from limiting funding based on its own past practices (such as imposing arbitrary application criteria) or limiting funding because it prefers not to spend the money or may have to raise taxes or has its own spending priorities. It restrains the recipient municipality from denying or undervaluing the costs of the services. Equitable sharing restrains municipalities who are or would provide services that could be intermunicipal services from also acting solely in their own interest or attempting to arbitrarily impose intermunicipal services. Equitable sharing encourages both municipalities to be practical, fiscally responsible and considerate of the other.

Environmental concerns

[212] There were no environmental concerns raised by either party so that factor is not relevant in this dispute.

Public interest

[213] On the matter of public interest, the *MGA* does not define public interest. It is a broad term that can incorporate many things. Public interest can be simply described as “likely to help the public”⁸.

[214] The purposes of an ICF set out in section 708.27 reflect matters within the public interest. Intermunicipal collaboration serves the public interest because such collaboration creates the potential for additional services for the public. An ICF potentially reduces the tax burden through cost sharing or enables municipalities to shift a portion of their own revenues to other local priorities. An ICF will result in fewer intermunicipal disputes by managing expectations and responsibilities around intermunicipal services and setting out clear dispute resolutions provisions and timelines.

[215] Similarly, section 3 of the *MGA* sets out the purposes of a municipality to provide good government, and work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services. The public interest is advanced when municipalities meet

⁸ Merriam-Webster dictionary <https://www.merriam-webster.com/dictionary/in%20the%20national/public%20interest>

their municipal purposes.

[216] Fiscal responsibility is part of the public interest because the rate payers of the municipalities pay for services. Transparency is within the public interest so that residents are aware of the decisions made by their elected councillors that affect them. Clear communication between the parties to an ICF advances the public interest when it manages expectations between the parties, results in timely and fulsome sharing of relevant information, provides clarity in disputes, and results in efficient and effective resolution of disputes. Accountability is within the public interest because residents elect their councillors and councillors want to make decisions in the best interests of their residents. The list could go on.

[217] The *MGA* requires each municipality to contribute funding towards the intermunicipal services that benefit its residents. This also serves the public interest. Contributions to intermunicipal services introduces an element of fairness between municipalities. It is in the public interest that the parties know the amount of funding each party will contribute to the other for the intermunicipal services their respective residents receive. It is also in the public interest that both parties are able to plan and budget with certainty. Public interest requires that one municipality is not required to subsidize another municipality to a greater extent than the subsidizing municipality can agree or the law requires. However, the funding contribution must be transparent so as to prevent future intermunicipal disputes.

Other factors the arbitrator considers relevant

[218] Collette Miller, of Wilde and Company, recommended the principle of accountability and documentation, specifically that costs share contributions be reconciled to the audited financial statements. However, she also observed that the respective Directors of Corporate Services for Woodlands and Whitecourt appear to have been communicating transparently and calculating amounts accurately in accordance with the terms of a cost sharing agreement. She observed they have the financial expertise to accurately track the amounts owing and paid and would resolve discrepancies in a congenial and professional manner. She observed that gaps in understanding and communication occurred at other levels. Reconciling the cost share contributions to the audited financial statements will likely impose additional administrative and financial costs on the parties. The ICF should not impose significant burdens on either municipality to provide invoices or receipts to justify every expense or revenue. In my view, there is no need to reconcile the contributions to the audited financial statements if the Directors of Corporate Services are already doing their work accurately and transparently.

[219] Ms. Miller recommended the principle of affordability on a go-forward basis to assist the municipalities to make decisions base on what services they can afford and need versus what was committed to in the past. Mr. James Richardson, MNP LLP, was the other financial expert at the hearing. In Mr. Richardson’s opinion, affordability is not a factor if the cost was incurred, and the service and cost share is defined. The two opinions actually align because Ms. Miller speaks to the future and Mr. Richardson speaks of the past. The principle of affordability would be applicable to the planning activities for the municipalities who are party to an ICF, but planning is generally not within the scope of the arbitrator. Affordability can be a reality check on visions. It can assist in distinguishing between services that are required and those that are desired. During the planning and delivery phases, the municipality providing the services should be attuned to the affordability of the services it is providing. There is no point in providing a service that no one can afford. Sometimes it behooves the municipality providing the services to work with the contributing municipality in the short term to resolve issues of affordability by finding ways to reduce the costs of delivering the services.

[220] Affordability is less applicable when determining the cost share because evidence about the service and benefit will influence that calculation, not whether, in hindsight, one municipality has the ability to pay or wishes to pay for the services. As Ms. Miller said, once the cost share is determined, the contributing municipality may have to increase revenues or cut costs in other areas to meet its funding obligation. In her words, “Financial difficulties too will pass. The parties are in it together and need to solve it together”.

[221] Ms. Miller recommends the principle of reciprocity in terms of how the parties value their facilities and the respective contributions they make to the facilities and services. In a negotiation or mediation, the parties can be prompted to expand on this, but in arbitration this principle is largely dependent on the evidence provided by the parties.

[222] There are several other factors that I find relevant in this arbitration. First, this is the first round of ICF negotiations and arbitration. The parties have not had the time or opportunity to fully exercise their obligations to engage in strategic and integrated planning or delivery of the intermunicipal services. In this arbitration they are seeking determinations on whether some matters are even intermunicipal services.

[223] Second, some of the disputed intermunicipal services arise from historical cost sharing or revenue sharing or revenue transfer agreements. The financial focus of some of those agreements could be viewed differently by the parties. One municipality could view the agreement as a way to limit costs while the other saw it as a way to offset costs. The ICF will perhaps add a common focus for both municipalities centred more on the benefit for

residents and the stewarding of scarce resources.

[224] Third, the parties will not necessarily have had opportunity to identify and obtain the appropriate data about how much the services benefit the residents of the other municipality. This may require some estimation rather than precise calculations. Under future ICFs the parties will be able to negotiate what data is appropriate and how to allocate the administrative costs of gathering the data.

[225] Fourth, *MGA* sets the criteria for the content of the ICF. As an arbitrator the focus is on the statutory content of the ICF and providing direction, where required, so the parties can complete the ICF process. However, the ICF need not detail all aspects of each intermunicipal service. Rather, the parties are probably advised to have separate agreements that detail aspects of the service so that if a detail or clause is amended, the parties do not need to pass a new resolution or bylaw to amend the ICF. Therefore, for each service area I make determinations about what should be in the ICF based on the statutory content.

[226] Fifth, the ICF results in an on-going relationship concerning the intermunicipal services. Unlike other cost sharing or revenue sharing or transfer agreements, the ICF does not terminate and neither party can terminate it for their own purposes. The parties will regularly review and update or amend their ICFs. As a result, the ICF will likely change over time. Change may occur when a service is added or discontinued. Change may occur to refine communication, disclosure, decision making or dispute resolution provisions. In essence, the ICF created by arbitration will be the starting point for future collaboration.

[227] Sixth, arbitration to create an ICF or any agreement between municipalities is not a usual process for municipalities. Municipalities may commonly use arbitration or litigation to enforce agreements, not to create them. They normally negotiate the content of their agreements on terms satisfactory to the municipal council. Negotiation does not normally involve either party getting everything it proposes. The parties adjust their perspectives based on the information shared, their respective interests, their relationship and the importance of the outcomes. They make trade offs to achieve desired outcomes. The prior history of the parties, on shared services or costs or lack of it, is relevant as a tool to assess what the parties have and would reasonably reach as compromises. It can also disclose what data and evaluation tools they have expressly or impliedly used.

[228] Generally, municipalities are used to exercising their own autonomy and discretion when determining what services to offer, what capital or infrastructure to approve, what equipment to purchase and what contributions to make to another municipality. Arbitration to create an ICF under Part 17.2 is akin to interest arbitration in the labour relations context

where the arbitrator determines the disputed content of the collective agreement between an employer and union. It is not purely a scientific process and there is no magic formula. In arbitration, the party advancing a position has the obligation to present cogent evidence and argument to support it.

[229] I turn now to the different service areas in dispute between the parties. For each service area I outline the positions of the parties, provide an overview of the service area and then provide my findings and analysis. The order of the services will match the order set out in the list of matters for decision at the beginning of the award.

1. Water and Wastewater

[230] Whitecourt seeks to continue all existing terms of the parties' Water/Wastewater Agreement from January 1, 2020. It also seeks to continue two other intermunicipal services agreements to provide water and wastewater services from Whitecourt to subdivisions in Woodlands, being the Sak de Wah Intermunicipal Services Agreement, signed October 31, 2006 (the Sak de Wah Agreement) and the Deer Park Intermunicipal Services Agreement signed June 6, 2016 (the Deer Park Agreement). As a new item, Whitecourt also argues Woodlands should transfer to Whitecourt 30% of Woodlands' non-residential property tax revenues generated from the non-residential properties in Woodlands which are capable of connecting to the water and wastewater systems provided by Whitecourt.

[231] Woodlands characterizes the Water and Wastewater Agreement as "intermunicipal services with specialized arrangements". It seeks to remove or amend the connection fee for properties in the Woodlands Business Park from the Water and Wastewater Agreement. Woodlands suggests this requirement in the Water and Wastewater Agreement was not approved by a quorum of the Woodlands Council in 2013. In the alternative, Woodlands says the connection fee is too high and gives a windfall to Whitecourt. Woodlands also says under an ICF it should not contribute to Whitecourt for these services as it is not an equitable sharing of costs. It disputes paying a sum equal to 30% of its non-residential property tax revenue. Woodlands seeks a direction that the Water and Wastewater Agreement must be submitted to the Alberta Utilities Commission for approval under the *Public Utilities Act*, RSA 2000, c P-45. However, Woodlands wants the dispute resolution provisions of the ICF to apply to the water and wastewater services, with recourse to the AUC. It wants to remove any reference to a joint liaison committee from the dispute resolution process. Finally, Woodlands says the agreement should not have a term expiry or termination provisions.

[232] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Steve Hollett, Manager of Environmental Services for Woodlands,
- Joan Sloomweg, Manager of Community and Planning Services for Woodlands,
- Andre Bachand, Director of Infrastructure Services for Woodlands,
- Jennine Scheck Loberg, Director of Planning & Development for Whitecourt
- Peter Smyl, Chief Administrative Officer for Whitecourt.

Overview of the water and wastewater agreements

[233] In 2006 the parties agreed to the Sak de Wah Agreement for Whitecourt to provide water and wastewater services to Woodlands who would distribute it to the identified lands. At the time Whitecourt owned and operated the only water and wastewater systems. Woodlands had to construct their systems and all infrastructure required to connect the systems to Whitecourt's systems. Each party owns and operates their own water and wastewater systems. The transfers occur at the municipal boundary. Under the Sak de Wah Agreement, Woodlands pays a connection fee and a utility fee. The agreement specifies the amount of the connection fee, which has not changed since 2006. Woodlands also pays Whitecourt for the utilities at the utility rate set by Whitecourt. This agreement has no end date and no termination provisions, but Whitecourt may temporarily suspend service for non-compliance with testing, maintenance, or payment obligations.

[234] Whitecourt had a rural utilities policy that enabled Woodlands to become a utility customer of Whitecourt. Under the policy, Whitecourt would provide water and sewer services to rural customers beyond its municipal boundaries for a specific fee and ongoing payment of the current water and wastewater rates. The specific fee, calculated using the off-site levy, was essentially a connection fee. The connection fee was equivalent to twice Whitecourt's off-site levy rate. An off-site levy is normally charged when the developer of land begins the development process. In the policy, the connection fee was a contribution for treatment and trunk facilities, which is similar to the purposes of an off-site levy. However, Whitecourt would not be able to collect an off-site levy from developers of land in Woodlands, so the connection fee was a way to collect funds to address capacity issues related to increasing demands on the water and wastewater systems. The policy continues today.

[235] On March 11, 2013, the parties entered into the Water and Wastewater Agreement for Whitecourt to provide water and wastewater services to Woodlands so it could extend municipal services to a second service area within Woodlands' boundaries. Within the

service area are new and existing residential developments, new and existing Airport related developments, existing non-residential developments, and non-residential development within Woodlands Business Park (lands described as NE 30-59-12-W5). Water and wastewater services provided to Woodlands are restricted to the specific service area and cannot extend beyond the service area; Woodlands cannot transfer or sell water outside the service area and cannot deliver wastewater from any other source.

[236] Under the Water and Wastewater Agreement, each party still owns and is responsible for their own water and wastewater systems, and their operations, including any invoicing to its own ratepayers. The transfer of water and wastewater between Whitecourt and Woodlands occurs at specified points of delivery on the municipal boundary where meters are installed to measure the volume delivered, for contractual and invoicing purposes.

[237] Again, Woodlands was and is responsible for all costs or expenses incurred to connect to Whitecourt's systems. This included constructing a utility crossing at the CN rail tracks in the southwest corner of Whitecourt. The utility crossing line exclusively services Woodlands. One Whitecourt property, owned by CN Rail south of the tracks has potential to connect to this service in future, but is currently vacant and undeveloped. At the time, Whitecourt reimbursed Woodlands for costs related to other utilities constructed near this railway right-of-way.

[238] Woodlands was and is responsible for obtaining and maintaining any regulatory approvals or permits to construct, install, operate and maintain its systems and connect to the Whitecourt systems, or to divert water from the Whitecourt water system. In the event Woodlands is unable to obtain or maintain the required approvals, Whitecourt may cease to provide water to or accept wastewater from Woodlands and may terminate the Water and Wastewater Agreement.

[239] For these services:

- Woodlands paid a \$400,000.00 capital contribution in recognition of past capital contributions incurred by Whitecourt to ensure its systems had sufficient capacity to allow Woodlands to connect to it, and in lieu of connection fees (off-site levies) payable to Whitecourt,
- Woodlands pays for water and wastewater at the same rates as Whitecourt's utility rates under Whitecourt's water and sewer bylaw, and
- for properties in the Woodlands Business Park, when the property connects to the Woodlands water and wastewater systems, Woodlands pays a connection fee

equal to two times Whitecourt's current offsite levy rates.

[240] The dispute resolution provisions contain four steps towards resolution with the option to add mediation or facilitation to the process. First, the CAO's attempt resolution. Then the dispute escalates to the Joint Liaison Committee and next to the two Councils. The final step is arbitration. The Joint Liaison Committee is not defined but I infer refers to the Joint Liaison Committee in the 2008 Cost Sharing Agreement. This agreement contains termination provisions.

[241] In 2016 the parties signed the Deer Park Agreement making Woodlands a water and wastewater utility customer of Whitecourt for a third area. Again, Whitecourt provides water and wastewater services to Woodlands who distributes them to residents and businesses in the specified area. In this agreement, Woodlands also pays a connection fee (called a "service fee") for applicable development, which includes reference to an "off-site levy". The amount of the levy is also set in this agreement. Woodlands also pays Whitecourt for the utilities at the utility rate set by Whitecourt. This agreement has no end date and no termination provisions, but Whitecourt may temporarily suspend service for non-compliance with testing, maintenance, or payment obligations.

[242] On August 29, 2019, Whitecourt served Woodlands with two years notice to terminate the Water and Wastewater Agreement. On January 12, 2021, Whitecourt advised Woodlands it was prepared to withdraw the termination notice. On February 5, 2021, Woodlands included the Water and Wastewater Agreement in the ICF dispute. In May 2021, the parties agreed and asked me to extend this Water and Wastewater Agreement pending the outcome of this award. I made that interim order on May 27, 2021. The Sak de Wah Agreement and Deer Park Agreement have not been terminated.

Analysis and Findings on water and wastewater services

[243] There is no dispute Whitecourt provides water and wastewater services Whitecourt to Woodlands that benefit the residents and businesses in Woodlands. The three water and wastewater agreements establish the services and identify the Woodlands residents and businesses who do or can benefit. Therefore, the water and wastewater services are intermunicipal services included in the ICF and I direct the parties to include water and wastewater services in the ICF. Whitecourt is the municipality responsible for providing the water and wastewater services to Woodlands. The three existing agreements also place obligations on both municipalities as specified in the agreements. The three agreements also identify Woodlands' funding contributions for these services. I turn to the particular items in dispute.

Validity of the connection fees in Woodlands Business Park

[244] This item is limited to the Water and Wastewater Agreement. Woodlands argues the connection fee for Woodlands Business Park should be removed. It claims the Woodlands Council did not approve this fee. In support of its claim, Woodlands relies on the evidence of Joan Sloomweg. In 2012 Joan Sloomweg was the Subdivision Officer for Woodlands and was involved in reviewing the draft Water and Wastewater Agreement. She reviewed an earlier draft of the agreement which did not contain the provisions for the ongoing payment of off-site levies on the described lands. She did locate records of a meeting of the joint liaison committee (comprised of representatives of both councils) where the committee agreed to add the off-site levies to the draft agreement. Ms. Sloomweg agreed that Woodlands' CAO, Luc Mercier was responsible for negotiating the agreement for Woodlands and ensuring the correct version of the agreement was provided to Woodlands Council for approval. On March 5, 2013, Woodlands Council unanimously approved the Water and Wastewater Agreement as presented. However, Ms. Sloomweg was unable to locate a copy of the agreement presented to the Woodlands' Council for approval and was unsure if Woodlands' Council had approved the off-site levies. Mr. Mercier was present during the council meeting on March 5th and later signed the agreement.

[245] Woodlands has the obligation to bring cogent evidence to substantiate its claim. Ms. Sloomweg's evidence does not satisfy the evidentiary obligation. Minutes show the Woodlands Council approved the agreement before it was signed, and Mr. Mercier was present at the council meeting. If Woodlands Council approved an agreement with different content, Woodlands has not provided the evidence to substantiate such a fact.

[246] The Water and Wastewater Agreement attached to the written statements of Mr. Hollett and Ms. Sloomweg contain the signatures of Woodlands' Mayor J. Rennie and CAO, L. Mercier. Both have ostensible authority to bind Woodlands to legal agreements. It is improbable they would bind Woodlands to an indeterminate contract without being aware of the contents and having approval from the Woodlands Council. As a result, I find the Water and Wastewater Agreement was approved by Woodlands Council with the form and content signed by the Woodlands Mayor and CAO. The express provisions in paragraphs 29(d) and 51(d) require that Woodlands pay connection fees for the lands within Woodlands Business Park.

Amount of the connection fees

[247] Woodlands argues the connection fee is too high and gives Whitecourt a windfall unrelated to the benefit to Woodlands or the businesses in Woodlands Business Park. I disagree.

[248] The parties expressed their rationale for setting the connection fee at the rate they did. Paragraphs 29 and 51 of the Water and Wastewater Agreement identify three purposes for the connection fee. Combined, the parties' three stated reasons justify the connection fee being set at twice the rate of Whitecourt's offsite levy. First, the connection fee compensates for future costs to ensure sufficient capacity to meet service demands as the developments proceed. The connection fee provides Whitecourt a sum to defray costs which it would normally collect from developers in its municipality towards upgrades to the facilities to address capacity and meet future service needs. The rural utility service policy relates these fees to a contribution for future treatment and trunk facilities. Second, the sum is also, in part, recognition that Whitecourt cannot access provincial grant funding for these properties, only Woodlands can. Third, this connection fee also allows Woodlands to exceed the daily water and wastewater volume limits for water and wastewater to the Woodlands Business Park. All other lands within the service area are restricted to the daily volume limits.

[249] It is a prudent step for the parties to plan for future capacity expansion and to steward resources to meet those future costs. Upgrading capacity in these systems is expensive. Whitecourt's facilities and infrastructure include the sewer treatment plant, wastewater treatment plant and water treatment plant valued at over \$18 million. The last water system capacity upgrade Whitecourt completed was in 2011 at a cost of roughly \$11 million before grants. In 2000 Whitecourt upgraded its wastewater system for a rough cost of \$3.1 million before grants. Recently Woodlands also received a report that demonstrates how expensive it is to upgrade water and wastewater systems to respond to service needs and growth in the airport area. In late 2018 Woodlands received a Stantec report on the Whitecourt Airport Water Distribution System Analysis. The preliminary estimate of the probable cost of existing upgrades and future growth infrastructure in the airport area was \$14.7 million.

[250] The connection fee is calculated using a formula based on Whitecourt's off-site levies. In 2017 Opus Stewart Weir Limited completed an Off-Site Levy Rates Review for Whitecourt and recommended an increase to the non-resident off-site levies. Whitecourt consulted business within the town and within Woodlands about the recommended rate. Subsequently, Whitecourt substantially increased its non-residential off-site levy rate which affected all non-residential development in Whitecourt. Developers pay the off-site levy when development begins. This decision also substantially increased the connection fee Woodlands would pay under the Water and Wastewater Agreement.

[251] A recent study commissioned by both municipalities shows that Whitecourt's off-site levy is not unreasonable. In 2020 Whitecourt and Woodlands commissioned a Regional

Business Park Feasibility Study by Nichols Applied Management Inc. which compared Whitecourt's off-site levies to those of other municipalities. The report concluded Whitecourt's levies were comparable.

The Whitecourt Region is relatively inexpensive with respect to off-site levies charged on industrial properties. ... the off-site levies on industrial lands charged in the Town of Whitecourt are well below the range for similar charges in many communities in the region, with the exception of Woodlands County ... which do not charge off-site levies.

[252] The connection fee is based on a levy that has been objectively determined to be reasonable even though it is higher than Woodlands'. The connection fees compensate Whitecourt for three things, not just the connection. This connection fee enables the businesses in the defined area to exceed the daily water and wastewater limits. In my view this shifts the compensation more favourably towards an equitable sharing of the costs. Woodlands agreed to and has operated under this connection fee since 2013. It has not met its evidentiary to alter the amount of the fee. For these reasons, I make no change to the connection fees in paragraphs 29 and 51 of the Water and Wastewater Agreement.

30% revenue transfer

[253] Whitecourt seeks a sum equal to 30% non-residential tax revenue for properties in the service area of the Water and Wastewater Agreement. Woodlands disputes the revenue transfer for these services.

[254] Whitecourt relies on section 708.36(7)(f) for authority to make such an order. Whitecourt argues there is a direct link to the provision of the service by Whitecourt to Woodlands, for which Woodlands' businesses receive a direct benefit (water and wastewater) and Woodlands receives a direct benefit (property tax revenues). Without these services, the non-residential business around the airport and at the Woodlands Business Park would not exist. These businesses require access to municipal water for fire suppression and to otherwise support their operations. It is possible to construct residential properties without municipal water services, but not for industrial businesses.

[255] It also argues the Intermunicipal Development Plan (the IPD) supports the revenue transfer because the extension of water and wastewater services into Woodlands is integrally connected to the IDP. The IDP encourages development, which the water and wastewater services enable. The IDP encourages the parties to ensure properties within proximity to Whitecourt to connect to Whitecourt's municipal services and encourages the parties to use servicing agreements or tax sharing. Further, the IDP encourages

development of non-residential properties in other areas of Woodlands, including adjacent to the airport. The IDP repeatedly references the parties negotiating some form of tax sharing or other forms of compensation for services which promote development and increase tax revenue. Development will increase Woodlands' tax revenue.

[256] Whitecourt also says the parties negotiated and signed their Amended Intermunicipal Cost Sharing Contribution Agreement (the 2013 Cost Sharing Agreement) at the same time as the Water and Wastewater Agreement. Under the 2013 Cost Sharing Agreement, Woodlands agreed to transfer additional funds based on 10.4% of its total linear assessment at the current tax rate. Whitecourt saw the two agreements as contingent on each other, with the tax revenue transfer connected to the water and wastewater services. When Woodlands terminated the 2013 Cost Sharing Agreement, Whitecourt lost the shared linear tax revenue.

[257] For the reasons which follow I do not uphold Whitecourt's request for a revenue transfer related to the water and wastewater services.

[258] I consider the three water and wastewater agreements to be "servicing agreements" as the IDP contemplates. The IDP outlines the parties' goals and policies around land use and other matters. Where the IDP links water and wastewater to development, it references a variety of ways for the parties to negotiate the financial aspects. While the parties were negotiating the IDP they were also negotiating the Water and Wastewater Agreement. They did not choose to include a revenue transfer provision in the Water and Wastewater Agreement but chose to use a three-part financial arrangement: a capital contribution, payments based on usage, and connection fees for new development in a smaller area.

[259] The evidence does not support a connection between the tax revenue transfer provisions in the 2013 Cost Sharing Agreement and the Water and Wastewater Agreement. Both were negotiated and signed at the same time; however, the 2013 Cost Sharing Agreement related to other services. If the parties had intended to link tax revenue sharing to the water and wastewater services through the 2013 Cost Sharing Agreement they could have done so.

[260] I also consider the request for revenue sharing here to be premature. There is no evidence the parties have explored this themselves. To add a revenue sharing component to the water and wastewater services of the ICF now would introduce a new component that the parties have not fully explored themselves.

Dispute resolution

[261] Woodlands also wants the dispute resolution provisions of the Water and Wastewater Agreement amended to apply the dispute resolution provisions in the ICF and to remove reference to a joint liaison committee. Whitecourt says the current provisions should remain.

[262] I deal with the dispute resolution provisions in the ICF later in this award. For reasons stated later I conclude these parties would benefit from having common dispute resolution provisions in the ICF and all services and agreements referenced in the ICF. I also conclude that a clearly defined committee like the Joint Liaison Committee would serve the purposes of the ICF to promote collaborative and integrated planning. It is not a final decision-making body but has significant influence through its recommendations. Ms. Miller concluded the joint liaison committee was a good process. I agree. Such a committee would continue to assist the parties in substantive discussions and would assist the early dispute resolution efforts of the parties in the future.

Regulatory approval

[263] Woodlands seeks a direction that the Water and Wastewater Agreement be submitted to the Alberta Utilities Commission (AUC) for approval or Alberta Environment. Whitecourt acknowledges AUC approval may be required for the water portion of the Water and Wastewater Agreement under section 30 of the *Public Utilities Act*, RSA 2000, c P-45. However, Whitecourt argues the *Public Utilities Act* does not extend to wastewater utilities.

[264] I find there is no need to add another provision to the agreement. The Water and Wastewater Agreement already contains provisions which are broad enough to capture any obligation to obtain regulatory approval and it places the obligation to do so on Woodlands. Paragraphs 3 and 4 require Woodlands to:

... obtain and maintain any regulatory approvals, permits, licenses or certificates which may be required to construct or install, operate and maintain the Woodlands Water System, to connect the Woodlands Water System to the Whitecourt Water System, and to divert water from the Whitecourt Water System to the Woodlands Water System. Without restricting the generality of the foregoing, the parties hereto agree that Woodlands shall obtain all required approvals from Alberta Environment, or such other regulatory agencies as may have jurisdiction related to the above, and also acknowledge and agree that, in the event that if any approvals required by law are not obtained, or maintained,

Whitecourt may immediately cease to deliver water to Woodlands, and this Agreement shall terminate, without further notice.

4. Woodlands shall be responsible for obtaining and maintaining any regulatory approvals, permits, licenses or certificates which may be required to construct or install, operate and maintain the Woodlands Wastewater System and to connect the Woodlands Wastewater System to the Whitecourt Wastewater System. Without restricting the generality of the foregoing, the parties hereto_ agree that Woodlands shall obtain all required approvals from Alberta Environment, or such other regulatory agencies as may have jurisdiction related to the above, and also acknowledge and agree that, in the event that if any approvals required by law are not obtained, or maintained, Whitecourt may immediately cease to accept wastewater from Woodlands, and this Agreement shall terminate, without further notice.

Term, termination and dispute resolution provisions

[265] Woodlands says the Water and Wastewater Agreement should not be subject to a term or termination provisions. Whitecourt proposes to retain the current provisions.

[266] These parties have three water and wastewater agreements, with only one containing termination provisions. Under the Sak de Wah and Deer Park Agreements, Whitecourt can temporarily suspend services because Woodlands has not completed its testing, maintenance or payment obligations. However, under the Water and Wastewater Agreement Whitecourt can terminate the agreement on two years notice or immediately terminate the agreement if Woodlands does not obtain and maintain any regulatory approvals, permits, licenses or certificates required under the agreement. Both parties can terminate on 60 days notice if a default is not corrected, subject to the dispute resolution process. A notice to terminate with two years notice is not subject to the dispute resolution provisions.

[267] If the agreement is terminated, the impact on Whitecourt is largely financial, however it does not affect the services to the residents of Whitecourt. The situation is different for Woodlands, whose residents and businesses within the service area would be without water or wastewater services they had come to rely on. Within a two-year window or shorter time, Woodlands would likely be unable to replace the services. Whitecourt's notice to terminate the Water and Wastewater Agreement made the parties' poor relationship in 2019 even more difficult. Woodlands had no alternate source of water or wastewater services. It was not in financial position to provide the service itself. In the circumstances, a termination provision does not promote the purpose of the ICF to steward

of scarce resources efficiently in providing local services. A dispute could trigger the duplication of services at significant cost to the residents.

[268] Part 17.2 of the *MGA* encourages collaborative and integrated planning, delivery and funding of intermunicipal services. There is no reference to a term of the ICF, only a review. Dispute resolution provisions are mandatory. Municipalities will have long term relationships concerning intermunicipal services where disputes can be resolved without merely ending the relationship.

[269] These parties have a demonstrated history of collaborative relationships. They have received accolades and awards for their collaborative efforts. Unfortunately, events from 2018 resulted in each of them taking steps that appear arbitrary. They each relied on termination provisions giving them the one-sided opportunity to end a service or arrangement.

[270] I rely on section 708.31 which enables an arbitrator to give a direction to address conflict or inconsistencies between the ICF and existing agreements between the parties.

If there is a conflict or inconsistency between a framework and an existing agreement between 2 or more municipalities that are parties to that framework, the framework must address the conflict or inconsistency and, if necessary, alter or rescind the agreement.

[271] All three water and wastewater agreements state they shall continue indefinitely so the term will align with the ICF and does not require amendment. The ICF should prompt the parties to review these agreements when the ICF is reviewed.

[272] In my view, the termination provisions and dispute resolution provisions of the ICF are or will be inconsistent with the termination and dispute resolution provisions in the three water and wastewater agreements.

[273] The termination provisions, if any, should harmonize with the purposes of Part 17.2. An arbitrary ability to terminate with notice does not accord with these purposes. Rather it encourages power dynamics in an intermunicipal relationship. The express inability to use dispute resolution provisions in some cases of termination with notice further shows the arbitrary nature of the provision.

[274] The Sak de Wah and Deer Park Agreements are consistent with the ICF because they have no termination provisions but are inconsistent in that they have no dispute resolution provisions. The Water and Wastewater Agreement has a dispute resolution provision which

will be inconsistent with the ICF (as I explain later), and its termination provisions are inconsistent with the ICF.

[275] I direct the parties to amend all three water and wastewater agreements to use the same dispute resolution provisions found in the ICF. I further direct the parties to amend the termination provisions of the Water and Wastewater Agreement to remove any ability to terminate the agreement, except with mutual agreement. If they have mutual agreement, likely they will have planned for the termination. They should also include a provision enabling Whitecourt to temporarily suspend the water and wastewater services in the event a default by Woodlands has not been cured and the dispute resolution provisions have not been activated.

2. Solid Waste Management and Recycling

[276] Whitecourt is not seeking any changes to the agreement pertaining to the Whitecourt Regional Solid Waste Management Authority. To the extent the County is seeking changes in the voting membership on the Board, the Town submits there is no evidence to support that request.

[277] Woodlands wants equal representation on the Regional Solid Waste Management Authority Board and wants the agreement to be subject to the dispute resolution provisions in the ICF.

[278] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Juan Grande, Engineering Services Coordinator for Whitecourt,
- Peter Smyl, Chief Administrative Officer for Whitecourt, and
- Gordon Frank, Chief Administrative Officer for Woodlands.

Overview of the waste management services

[279] In 1989 Whitecourt and Woodlands' predecessor, Improvement District #15, the parties created a regional authority to provide solid waste management services to Whitecourt and part of Improvement District #15. In their 1994 Waste Management Agreement, Whitecourt and Woodlands expanded the service area to the boundaries of both municipalities. That agreement continues today.

[280] The Whitecourt Regional Waste Management Authority (the Authority) is responsible

for overseeing the construction, maintenance, control and management of a regional solid waste disposal system. It operates a regional landfill near Whitecourt and is responsible for the Whitecourt Transfer Station which collects recycling from both municipalities. All real property and assets are held in joint names. Whitecourt has day to day operational control of the landfill.

[281] Whitecourt is responsible for its own garbage collection and transportation of solids. Woodlands is responsible for any rural transfer stations, including the transportation of solids to the regional landfill.

[282] Overall control and decisions regarding the landfill are made by the Authority board. The board consists of three voting members appointed by Whitecourt and two voting members appointed by Woodlands. Each municipality also appoints one non-voting member to the board.

[283] Annually, the Board submits a final budget of estimated expenditures and revenues for the coming calendar year to both Councils for approval. The Authority is required to contract with Whitecourt to provide administrative services and to receive, disburse and account for the funds of the Authority.

[284] Both municipalities contribute to the deficit costs (operating and capital) of the regional landfill on a pro-rata per capita basis, calculated on current population. In an agreed statement of facts prepared for a 2019 litigation matter concerning the Authority, the parties agreed Whitecourt has a 68.2% stake in the operation and Woodlands County has a 31.8% stake in the operation. This stake in the operation determines the cost share contribution.

[285] Fees collected by the Waste Management Authority are credited to the point of origin, such that the County receives 100% of any revenue collected from commercial sources located in the County. Fees collected from commercial sources located outside the Town and County are used to offset the Authority's net operating cost. The collection and disposal of recycling materials is cost shared 50/50.

[286] The regional landfill operates subject to an Alberta Environment and Parks' approval. The approval sets out how the regional landfill is permitted to operate and under what conditions the landfill must operate. In addition to the direct waste disposal services for the two municipalities, the Authority also provides disposal services for other areas as required and receives waste from a variety of private commercial haulers which are not specifically associated with the two municipalities.

[287] The Whitecourt Transfer Station is included in the operations administered by the Whitecourt Regional Waste Management Authority. Woodlands County separately operates transfer stations in Fort Assiniboine, Goose Lake and Anselmo, and transportation costs to haul this waste to the Whitecourt Regional Landfill are the responsibility of Woodlands County, as well as the tipping fees per tonnage to dispose of the waste.

[288] The agreement may be terminated by either party on one year's notice to the other. There are no dispute resolution provisions.

Analysis and findings on waste management services

[289] There is no dispute the solid waste management services and recycling services provided by the Authority are intermunicipal services that benefit the residents of both Whitecourt and Woodlands. I direct that the ICF include the solid waste management services and recycling services. Whitecourt is the municipality responsible for the operations of the Authority, subject to terms in the Waste Management Agreement.

[290] Woodlands bears the evidentiary onus to establish this agreement requires changes to the composition of the board. It has not met the onus. The parties agreed to share the deficit costs of the Authority based on their respective populations. In 2019 they represented to the Alberta Provincial Court, Criminal Division that their respective stakes in the operation were 68.2% for Whitecourt and 31.8% for Woodlands. This stake is consistent with the pro-rata share of their respective populations.

[291] On the composition of the Authority board, I see a rational connection between the share of ownership and share of costs to the number of votes on the board. Whitecourt has a higher stake and bears more of the deficit costs of the Authority. The voting rights on the board reflect that higher stake and higher risk. I also appreciate that this voting arrangement was created by agreement of the parties and has been in place for at least 25 years. There is no evidence that justifies changing it now. Therefore, the voting structure of the Authority shall remain as written.

[292] On the matter of the dispute resolution provisions, for the reasons I set out under the Water and Wastewater heading, I agree the dispute resolution provisions of the ICF should apply to the Waste Management Agreement and under section 708.31 direct the parties to amend the Waste Management Agreement to that effect.

[293] The Waste Management Agreement contains a termination clause which provides one year's notice of intention to withdraw from the arrangement. Once notice is given, the agreement triggers a meeting of the Authority to begin to wind up the operations and

disperse the assets. Since the parties are sharing all costs and revenues under this Agreement, I see no conflict with this termination provision and the ICF.

3. Fire Services

[294] Whitecourt says the fire services are intermunicipal services. It does not propose to change the service area. Whitecourt is not seeking any changes to the lease agreement for WFD's fire hall. On the matter of the contribution, Whitecourt argues:

- Woodlands should contribute to all operating and capital costs for equipment associated with Whitecourt Fire Department (WFD) based on a three-year rolling average of call hours within the Whitecourt Fire District plus calls for motor vehicle accident responses elsewhere in the County;
- for responses other than motor vehicle accidents into Woodlands, outside of the Whitecourt fire district, Woodlands should reimburse Whitecourt on a cost-recovery basis for these calls (mutual aid), based on standard rates set by Alberta Transportation;
- any revenues received from outside sources or from Woodlands for mutual aid responses should be applied to WFD's operating deficit, before the cost share contributions are calculated, so that both parties benefit from these revenues;
- Woodlands should retroactively contribute to the purchase of the aerial pumper which came into service in 2020, based on the same percentage as the County's overall cost share contribution for 2020; and
- To resolve future disputes regarding equipment purchases, such disputes should be referred to a panel of three external Fire Chiefs to decide whether a particular purchase is required to meet WFD's operational requirements.

[295] Woodlands agrees the fire services are an intermunicipal service. Woodlands agrees it should contribute for these services. It takes no issue with the service area. It argues the provisions of the ICF dispute resolution process should apply to any disputes about fire services.

[296] Concerning capital assets, Woodlands wishes to keep its own capital assets and make its own decisions about what equipment to purchase for its fire department. As Woodlands' fire service evolves, the level of service it requires from WFD may change. Concerning equipment that is a capital asset, specifically the aerial pumper truck, Woodlands did not and does not agree to fund that equipment. Therefore, Woodlands' Fire Chief should be

involved in the decision making, either at the time of use or on a principled basis, to decide whether to use or engage that equipment before Woodlands is charged for the use of the aerial pumper truck.

[297] Finally, it argues a lump sum contribution is appropriate to provide it stability and certainty of costs but did not provide a dollar figure. Woodlands argues the cost share calculation should:

- be amended to reflect that Woodlands paid for 50% of the cost of the jointly owned Rescue Truck and if this Rescue Truck is used to respond to a motor vehicle accident for which Whitecourt receives payment from Alberta Transportation, 50% of the revenue should be applied to Woodlands' portion of the actual net costs of the fire services, rather than applied to the net costs before calculating the cost share.
- exclude any administrative overhead costs proposed by Whitecourt,
- exclude any costs for Whitecourt's aerial pumper, and
- exclude any capital contributions or life cycle costs.

[298] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witness:

- Doug Tymchyshyn, Director of Community Safety for Whitecourt,
- Peter Smyl, Chief Administrative Officer for Whitecourt,
- Gordon Frank, Chief Administrative Officer for Woodlands,
- Scott Webb, Manager of Protective Services for Woodlands,
- Trent West, Transitional Solutions Inc, expert on what is required for municipalities to meet safety and service standards for delivery of fire services.

Overview of the protective services

[299] Since the early 1980's Whitecourt has provided fire services to Woodlands within a defined service area. In 1999 Whitecourt provided primary fire protection service to one portion of Woodlands and secondary fire protection service (acting as back up to the Blue Ridge Volunteer Fire Protection Service) in another portion of the Woodlands. Under that cost share agreement, Woodlands contributed a percentage of costs for the services based on the population in a catchment area comprising both service areas. Costs were agreed to

be: “net costs of the fire department operations less costs benefiting the Town only (hydrant costs, equipment replacement reserve costs, honorarium for Town fires) and costs benefitting the County only (honorarium for out-of-town fires) + net honorarium for out-of-Town fires”.

[300] The 2008 Cost Sharing Agreement sets out the general agreement of the parties to cost share fire services. The parties extended this agreement to March 31, 2020. Whitecourt provided primary fire protection service to a specified area of Woodlands (the Woodlands Fire District 1 which Whitecourt calls the Whitecourt Fire District). They agreed secondary fire protection service would be provided by both municipalities as outlined in their Standard Operating Guidelines and Mutual Aid Agreements, which aid could be called upon at the discretion of the respective Fire Chief. They recognized the Whitecourt Fire Department (WFD) was operated as a single fire department with the sole discretion of equipment allocations left to the WFD Fire Chief.

[301] Each municipality was responsible to ensure adequate fire suppression apparatus was purchased to meet the fire fighting needs of the respective municipality. They recognized that three pieces of equipment (the jointly purchased pumper (P1), and the mini-pumper (P4) and tanker (T202) owned by Woodlands) met Woodlands’ pumper requirements for the extent of their useful life.

[302] As well, the parties recognized the importance of sharing resources with respect to Fire Department operations and recognized they shared the construction costs of the Fire Hall addition which houses the equipment of both parties.

[303] Under the 2008 Cost Share Agreement, Whitecourt’s fire services specifically entailed, “the operation, maintenance, repair and provision of fire prevention services including, but not limited to: a) the deployment of fire suppression personnel; (b) fire investigation; and (c) vehicle rescue and extraction.” For these services, Woodlands contributed to the same costs as in the 1999 Cost Sharing Agreement.

[304] Whitecourt and Woodlands share use of the Whitecourt Fire Hall. Under their lease agreement, in exchange for a lump sum capital investment of \$282,992.00 in 2005, Woodlands pay no rent.

[305] The following map outlines the current fire service districts in Woodlands. Whitecourt Fire Department provides primary fire protection services in area labelled “Whitecourt Fire District”. The remaining areas are the responsibility of the four Woodlands’ fire departments: Anselmo, Blue Ridge, Goose Lake and Fort Assiniboine.

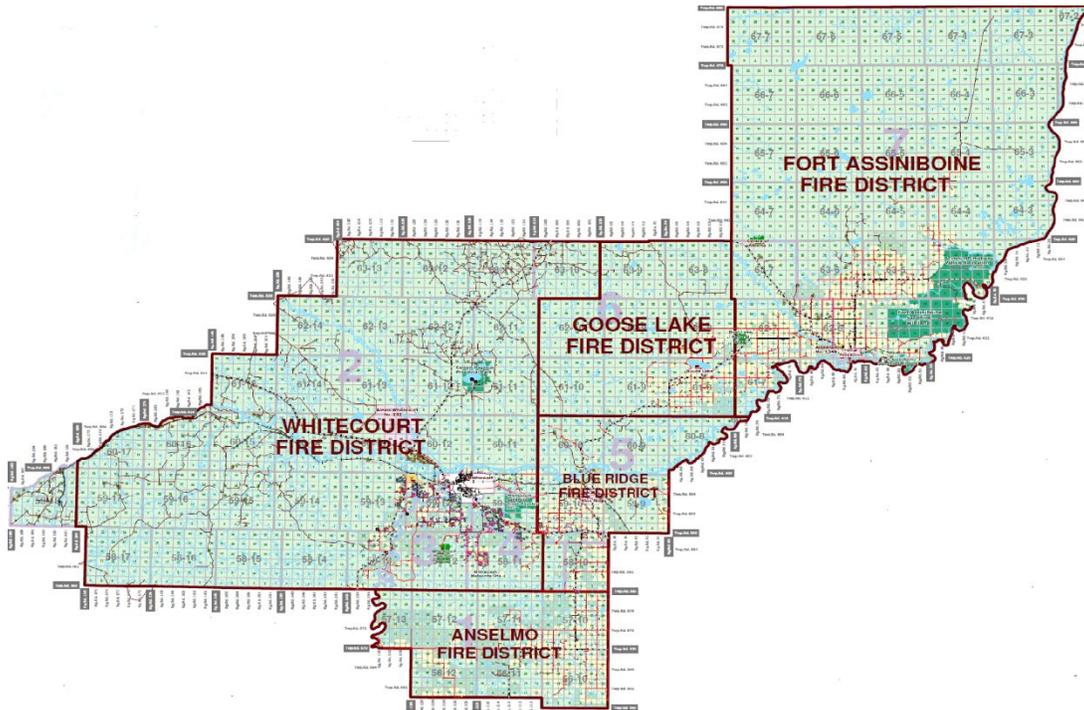


Figure 4 Woodlands Fire Districts

[306] Woodlands’ fire departments operate on a “volunteer” firefighter model where firefighters work at other paid jobs and respond to fire calls as required. These volunteers live and work around the County or in Whitecourt. They receive an honorarium for their firefighter duties. Fire department chiefs and deputy chiefs are also volunteers. Firefighters have to travel to a fire station to get equipment and vehicles before they can be deployed. Woodlands’ fire department has a variety of fire vehicles at its fire halls including a mini-pumper and tender at the Whitecourt fire hall. Woodlands’ ability to respond to emergencies varies with the availability of the volunteers and the distance they need to travel to access equipment before deployment.

[307] Woodlands’ firefighters have the opportunity to train to the NFPA 1001 standard but typically take longer to complete the training because of their volunteer status. These firefighters receive training for responding to a range of emergencies, depending on the fire hall they work out of, and the level of service provided by that fire department. The range of training includes structural fires, vehicle accidents and fires, wildland fires, farm machine rescue and extraction, swift water and ice rescue, and search and rescue. Woodlands’ fire fighters are not trained to the NFPA 1081 industrial firefighting standard. Woodlands has one trained fire instructor in Fort Assiniboine and contracts with Lac Ste. Anne and Barrhead

for additional training.

[308] Woodlands has by policy set its fire and emergency service levels. The policy does not apply to the Whitecourt Fire Department for its contracted services. Not all fire departments provide the same level of service to all incidents. If a Fire Chief determines that it is not safe to respond to an emergency, they request assistance from another fire department in Woodlands or seek mutual aid from another fire department such as Whitecourt. Woodlands asks Whitecourt to respond outside the Whitecourt Fire District only when technical or manpower assistance is necessary and cannot be provided in a timely fashion by the Woodlands' fire departments. However, Mr. Trent West opined that because WFD was trained to the technician level (meaning it could respond to any emergency), it was a Woodlands fire department would ask the WFD to respond regularly.

[309] Woodlands said it has mutual aid agreements with Whitecourt, County of Lac Ste. Anne, Yellowhead County, and Barrhead. The agreement were not in evidence except the 1987 agreement involving Whitecourt and Town of Slave Lake, which I refer to later. Woodlands was of the view that under those mutual aid agreements, if mutual aid is provided, the responding fire department historically does not charge the requesting municipality.

[310] Whitecourt has a mutual aid agreement the Province of Alberta. It is a party to the Northwest Alberta Emergency Resource Agreement which enables any signatory to request resources from another signatory at rates set out in the agreement, but the agreement does not supersede a mutual aide agreement between two parties. Whitecourt, the Town of Swan Hills and Woodlands (formerly known as the Improvement District #15) are parties to a mutual aid agreement dated April 21, 1987 which addresses mutual aid for a peacetime disaster.

[311] Woodlands considers the Fort Assiniboine Fire Department able to provide the equivalent services to Whitecourt's fire services. No other Woodlands' fire department is permitted to perform vehicle extraction or provide medical services. Woodlands has no agreement with the oil and gas industry for fire services. Mr. Webb understood the industrial businesses in Woodlands arranged for their own primary firefighting services.

[312] WFD employs one full-time Fire Chief, two full-time Deputy Fire Chiefs and 42 "volunteer" firefighters. It maintains a fire fleet including a pumper, a tender, three command vehicles, an Argo and trailer. It also uses an engine jointly owned by Whitecourt and Woodlands and a quick response unit owned by Woodlands. WFD has fire training grounds, a fire prevention vehicle, and various amounts of fire specialized equipment.

[313] In 2020 Whitecourt added an aerial pumper truck to its fire department fleet.

Woodlands did not contribute to the capital purchase. WFD used the aerial pumper truck on two fires in the Woodlands' service area.

[314] Generally, Whitecourt's fire service levels focus on life safety, incident control, property preservation and environmental protection. WFD firefighters are trained to provide aggressive fire suppression services. WFD responds to structure and vehicle fires at the airport (which is in the service area) but cannot respond to aircraft fires and rescue that require specialized fire training and equipment.

[315] As the primary responder to all calls within Whitecourt's boundaries and within the Whitecourt Fire District, Whitecourt sets its own service levels. WFD also regularly provides primary fire rescue services in Woodlands' Blue Ridge and Anselmo Fire Districts. This occurs when the Blue Ridge or Anselmo Fire Chief requests Whitecourt to take over command of the scene. WFD also responds to calls outside its service area where Woodlands' fire departments do not have the training, do not provide the service required, or do not have sufficient personnel to respond. This can include fires or motor vehicle accidents. In each case, WFD responds according to the Whitecourt service levels which often requires using more equipment and resources than would a typical service call in Whitecourt.

Analysis and findings on fire services

[316] The parties agree and therefore I find the fire services are an intermunicipal service. Throughout this arbitration the parties had very different views of what services were included and what service levels apply. As a result, it makes sense to better outline the services and expectations. Fire services includes:

- primary fire protection services and emergency responses (as the fire department which is required to respond),
- the deployment of fire suppression personnel and equipment,
- fire investigation, and
- vehicle rescue and extraction

within the Whitecourt Fire District (being the same area described in the 2008 Cost Share Agreement), but excludes:

- aircraft fires and rescue that require specialized fire training and equipment,

- major industrial fires requiring more specialized fire training and equipment than fire rescue, and
- fire prevention services.

[317] I direct the parties to include fire services in the ICF. Whitecourt is the municipality responsible for providing the services. As the primary responder, Whitecourt will set the service levels within the service area. Subject to the provisions dealing with the aerial pumper, the WFD Fire Chief has sole discretion over equipment allocations within the service area. Woodlands will be responsible for any fire related services not included in the intermunicipal services.

[318] In respect of fire service responses outside the Whitecourt Fire District, the parties had different expectations, which in my view, contributed to the dispute. Woodlands' policy on service levels restricts what its fire departments can do or how they respond. In part this is a cost saving measure. The policy encourages those fire departments outside of Fort Assiniboine to call for mutual aid where they cannot respond for any number of reasons. For the Blue Ridge and Anselmo Fire Departments the closest fire department for aid is Whitecourt, not Fort Assiniboine. The 2008 Cost Sharing Agreement obliged WFD to provide secondary fire protection services in accordance with Standard Operating Guidelines and Mutual Aid Agreements. The parties had different views about any mutual aid obligations.

[319] The 1987 Mutual Aid Agreement between these parties and the Town of Swan Hills contemplates mutual aid in the event of a peacetime disaster and requires the municipality calling for the aid to implement its Peacetime Disaster Plan and to pay for any cost incurred for the mobilization, movement and deployment of mutual aid resources. The ordinary interpretation of this agreement would suggest it does not apply to the services provided by WFD outside the service area because the WFD is responding to a single emergency call, not a disaster situation. I was not provided with any other mutual aid agreement between the parties.

[320] Woodlands cannot expect that the WFD will respond to regular calls from outside its service area at no cost to Woodlands, unless Whitecourt agrees to do so. In my view, this stretches the original intention of the mutual aid agreements because it occurs too often (320 hours in three years) and because Woodlands' really does not have the equipment or trained personnel to reciprocate the aid to Whitecourt. Additionally, such practice would result in Whitecourt subsidizing Woodlands' fire services. Such an arrangement would not result in an equitable sharing of costs. Nor would it align with the express purpose in

section 708.27 of the *MGA* that the municipality who receives the services should contribute funding for those services.

[321] On the matter of contribution, I first find that the costs, for reasons expressed earlier in this award, include all direct operational, maintenance and capital costs to provide the services, including those for equipment and facilities. These costs relate to the services and the level of services provided by Whitecourt that benefit the residents of Woodlands, not costs that only benefit the residents of Whitecourt such as fire hydrants or honorarium for calls in Whitecourt. I exclude the capital costs for 50% of the engine co-owned by Woodlands and Whitecourt. I specifically exclude the operational and capital costs for the Pierce Aerial Pumper (Tower 1) and will address those separately. Any revenues received by the WFD should offset the costs to result in net costs before cost sharing. Revenues include funds from Alberta Transportation when responding to a motor vehicle accident and any payments received from Woodlands for the Extra Services Fee described later. For reasons expressed earlier, I do not include the Administrative Overhead costs claimed by Whitecourt.

[322] I do not agree that the revenues received from use of the Rescue Unit for motor vehicle accidents should be addressed any differently than any other revenue. Woodlands seeks to have Woodlands calculate a sub-net cost total, then calculate the cost share and then deduct 50% of these revenues to result in a net contribution. It is true that the parties equally paid for the Rescue Unit. However, the additional administrative costs to calculate the contribution would likely outweigh the savings.

[323] On the matter of how to determine the contribution share, I agree with Whitecourt that Woodlands should contribute based on a formula tied to call hours. Whitecourt maintains detailed records of those call hours which creates a system that is more accurate and reflective of the service provided. Costs and contribution amounts can be easily calculated and verified. A three-year rolling average provides some predictability and stability for the contribution amount. The evidence shows that based on the hours presented by Whitecourt for the 2017 – 2019 period, the WFD spent almost the same amount of time (46%) on calls in the Woodlands service area (excluding mutual aid calls) as it did within Whitecourt's boundaries. Historically, Woodlands has contributed based on a catchment model which produced a much lower cost share (about 25%) than the current figures demonstrate is equitable in the circumstances. In this case the statistics show that an equitable cost sharing requires an adjustment to the cost share model.

[324] In the normal course the parties would plan for a change to the funding formula and provide sufficient time for the contributing municipality to adjust their budget. This

arbitration involves looking back to January 1, 2020 and looking forward to the next review. Therefore, it is appropriate that the change from a catchment model of funding to a call hours formula occur with notice. While this will not result in a fully equitable sharing of costs for the interim, it will address equity for the future while enabling Woodlands to plan for the changes and how it will address the changes. The change should occur at the next fiscal cycle, which would be January 1, 2023. The catchment model familiar to the parties will apply for the period January 1, 2020 to December 31, 2022.

[325] For the period January 1, 2020 to December 31, 2022, Woodlands shall contribute to the net direct costs of the fire services based on a catchment model identical to the 2008 Cost Sharing Agreement. The catchment model was Woodlands’ population in Areas 1 & 2 and 50% of the population in Area 3 (the Areas shown on Schedule “D” to the 2008 Cost Sharing Agreement) divided by Woodlands’ population in Areas 1 & 2 and 50% of the population in Area 3 plus the population of Whitecourt.

$$\text{contribution} = \frac{\text{was Woodlands’ population in Areas 1 \& 2 and 50\% of the population in Area 3 (the Areas shown on Schedule “D” to the 2008 Cost Sharing Agreement)}}{\text{Woodlands’ population in Areas 1 \& 2 and 50\% of the population in Area 3 plus the population of Whitecourt.}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

[326] Effective January 1, 2023 Woodlands shall contribute to the net direct costs of the fire services based on a three-year rolling average of call hours within the Whitecourt Fire District, plus calls for motor vehicle accident responses elsewhere in Woodlands divided by the 3-year rolling average number of WFD staff hours spent on responding to calls within the Whitecourt Fire District plus time spent on responding to motor vehicle calls PLUS the three-year rolling average of the call hours within Whitecourt (the Call Hours Formula).

$$\frac{\text{3-year rolling average \# of WFD staff hours spent on responding to calls within the Whitecourt Fire District plus time spent on responding to motor vehicle calls elsewhere in the County}}{\text{...}} \times \text{net costs}$$

contribution = _____ X net costs
 3-year rolling average # of WFD staff hours spent on responding to calls within the Whitecourt Fire District plus time spent on responding to motor vehicle calls elsewhere in Woodlands PLUS the 3-year rolling average # of WFD staff hours spent on responding to calls in Whitecourt.

[327] For the Pierce Aerial Pumper (Tower 1), Woodlands or its businesses and residents have benefitted from the use of that vehicle in at least two fires. When the vehicle is used, an equitable sharing of costs requires that Woodlands should pay for its use. However, in recognition of the different services levels of the parties, I agree Woodlands should have some input into when or where the vehicle is used within its boundaries. It would not be practical to make that decision for each use or when a call is dispatched. Nor would it be practical to have four fire chiefs providing input to that decision. Instead, I find Woodlands' Manager of Protective Services or designate should have input once per year. By March 1, 2022 and then by January 1 of each year going forward, the Woodlands' Manager of Protective Services or designate should in writing inform the Whitecourt Fire Chief of Woodlands' preference for the coming year Woodlands using the following options:

1. gives the WFD Fire Chief discretion to use the pumper as required,
2. does not want the pumper used on any fires within Woodlands, or
3. agrees the WFD Fire Chief can use the pumper on the following types of fires (list or description to be agreed by the Manager of Protective Services and WFD Fire Chief).

If Woodlands does not provide its written input by the stated date each year, the WFD Chief shall have discretion to use the pumper as required and Woodlands shall contribute for each hour it is used.

[328] Effective January 1, 2020, for each event where WFD utilizes the pumper within the boundaries of Woodlands, Woodland's contribution towards the cost will be \$630.00 per hour, as adjusted annually in accordance with the rates in Alberta Transportation's Guidelines For Payment Of Fire Department Emergency Response In Provincial Highway Right-Of-Ways (the Pumper Fee). Personnel and materials costs are included in the Pumper Fee. Cancelled calls will be invoiced for one hour. Invoiced time is to be based on travel from and arrival back to the stationhouse. The period is retroactive to January 1, 2020 because it is not possible to retroactively make decisions about the use of the aerial pumper. As a result of retroactively applying the Pumper Fee, I do not award any

retroactive or future capital costs for the aerial pumper truck. I consider the fee to include all contributions to the capital and operating costs of the vehicle.

[329] Effective January 1, 2023, when the WFD responds outside of the Whitecourt Fire District (the service area), not including for motor vehicle accidents, Woodlands should reimburse Whitecourt on a cost-recovery basis at the rates in Alberta Transportation's Guidelines For Payment Of Fire Department Emergency Response In Provincial Highway Right-Of-Ways (the Extra Service Fee). This method of contribution will allow Woodlands to control its costs by determining when it will seek "mutual aid" assistance or ask WFD to become the primary responder outside of the service area. It creates an equitable sharing of costs for both parties. It enables both parties to plan for the implementation of the change. It will provide certainty of costs for both parties on an objective basis using rates familiar to them. The formula provides simplicity for costing and accountability, thereby reducing administrative overhead. In my view such an arrangement is consistent with the cost-recovery approach in the 1987 Mutual Aide agreement.

4. Whitecourt Airport

[330] Whitecourt acknowledges it should continue contributing to the operating costs associated with the Whitecourt Airport but argues such contributions should be in proportion to the benefit received by Whitecourt's residents as compared to the benefits received by Woodlands and other municipalities. It says the contributions should be based on actual reasonable net costs of operating the airport and account for property taxes derived from the airport. Whitecourt argues Woodlands' evidence on the benefits realized by Whitecourt is scant, and the evidence shows that Woodlands realizes significant benefits from the airport which are not realized by Whitecourt. It also asserts the airport deficits relied on by Mr. Martin are not properly "tax-supported deficits" and do not include tax revenue from the airport, both of which would significantly reduce the deficit. To the extent Woodlands is required to contribute, it seeks meaningful input in proportion to its contribution and recourse to the ICF dispute resolution provisions.

[331] Woodlands argues Whitecourt should contribute to both the operating and capital expenses of the airport, not including administrative overhead costs. It seeks a fixed cost contribution but provided no figure. It relies on the written report of HM Aero and the expert testimony of Mr. Martin to establish the benefits Whitecourt and its residents receive from the airport.

[332] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Gordon Frank, Chief Administrative Officer for Woodlands,
- Peter Smyl, Chief Administrative Officer for Whitecourt, and
- Adam Martin, HM Aero Aviation Consulting, expert witness.

Mr. Martin was recognized as an expert in airport planning, the governance and funding of airports, airport regulatory compliance, social and qualitative economic impacts of airports in Canada, and airport management and operations.

Overview of the Whitecourt Airports services

[333] The Whitecourt Airport contains 345 hectares of land and is located between the Athabasca and Macleod Rivers. The Whitecourt Airport area is bounded by Highway 32 to the south, CN Rail right of way to the north, and Range Road 130 to the west. The existing development land comprise commercial and light industrial areas. The airport was owned and operated by the Province of Alberta between 1977 and 1995. The Province of Alberta transferred ownership and operations of the airport to Woodlands in 1995.

[334] The Whitecourt Airport offers a paved runway, four taxiways, three aircraft parking aprons, visual and electronic navigation aids, a terminal building and a NAV Canada flight service station. It is publicly available and used by a wide variety of fixed and rotary-wing aircraft operators.

[335] In 2018 Woodlands commissioned a master plan study on the airport. WSP conducted the study. WSP's initial report, the Whitecourt Airport Master Plan was released in 2019 with an update in 2020 (2020 Master Plan Update). Whitecourt also commissioned a report by HM Aero for the purposes of this arbitration. HM Aero conducted a literature review (including the WSP report), spoke with representatives of Woodlands and conduct an online survey of tenants at the Whitecourt Airport. Mr. Martin gave expert testimony about the review and the findings in the HM Aero report.

[336] The 2020 Master Plan Update contains information about the existing operations and benefits of the airport as well as the future of the airport. According to the report, the airport provides economic benefits to four municipalities: Woodlands, Whitecourt, Town of Fox Creek and Municipal District of Greenview; it is an important part of the regional economy. Businesses at the airport are heavily involved in the development of natural resources. The airport is a key part of the supply chain keeping the natural gas wells in the Duvernay Formation in production. It is a base for Alberta Sustainable Resource Development in protecting the forestry resources. At the airport is an airtanker base for

wildfire suppression for the Whitecourt area (Whitecourt, Woodlands, Fox Creek, Valleyview, etc.). There is a helicopter training school. Historically, the airport accommodated out-of-town visitors on flights between Alaska and the mainland USA. However, lack of refueling service at the airport has dissuaded general aviation users and visitors from using the airport.

[337] Mr. Martin also found the airport supports air ambulance services. It could be and has been used by the RCMP to support regional policing operations out of K-Division in Edmonton. It also hosts the Whitecourt Airshow every two years, with the last airshow held in 2018. Mr. Martin was not provided attendance numbers for the airshow but understood the airshow could be a significant driver of tourism to the region.

[338] In 2017 Northern Air began scheduled passenger air flights from the airport but discontinued the service in 2019. There is no scheduled passenger service at the airport now. Woodlands maintains the Transport Canada certification to enable passenger air service in future. The 2020 Master Plan Update discusses a variety of challenges to re-establishing air service at the Whitecourt Airport. Challenges include the post-COVID drag on air travel demand and the airline priorities post-COVID to rebuild routes and profitability, as well as price-sensitivity for the local market flying out of the airport. Additional challenges include lack of capacity in the airport terminal, leakage to relatively close alternate airports with better options and non-stop flight destinations (e.g., Edmonton International Airport) and the lack of passenger and baggage screening services approved by Canadian Air Transport Security Authority.

[339] In the 2020 Master Plan Update report, the airport and its tenants directly provide 89 full-time equivalent jobs and 84 indirect and induced employment equivalents across the four affected municipalities. There are 12 tenants' properties at the airport, nine of which are occupied; one tenant is NAV Canada, a non-profit organization providing airport advisory, vehicle control and surface weather observations at the airport, and one is the Province of Alberta. Woodlands has a storage building and utility buildings on property. The Whitecourt Airport's two main competitors are Edson Airport owned by the Town of Edson and the Slave Lake Airport owned by the Town of Slave Lake. The 2020 Master Plan Update suggests the airport could spur significant industrial development in Woodlands, including business parks and light industry.

[340] Since 2008 Whitecourt has contributed to the airport services. Under the 2013 Cost Share Agreement, Whitecourt contributed to "the operation and maintenance of the Whitecourt Airport". From 2008, Whitecourt contributed an annual lump sum of \$40,000.

[341] There is no evidence that any other municipality, other than Whitecourt, contributes to

the Whitecourt Airport. Mr. Frank confirmed Woodlands has taken no steps to obtain contributions from other municipalities.

[342] The Whitecourt Airport historically operates at a deficit. The average annual deficit between 2017 and 2020 was \$844,000. The airport revenues include aeronautical revenues including the sale of goods and services, licenses and permits, rental and lease revenues, cost recoveries and miscellaneous revenues. Revenues also include local contributions, meaning the contribution from Whitecourt. Revenues include debenture proceeds, recorded once in 2017, and transfers from reserves to support operation and capital expenditures. Property tax revenue from properties associated with the airport is not included. Airport expenses include airport administration, maintenance of non-airfield infrastructure (Woodlands' buildings, the terminal, vehicles, equipment, roadways, and general site maintenance) including associated costs of staff, equipment use, contracted services, utilities, depreciation and other expenses. Expenses also include runway maintenance, wildlife and vegetation control, snow removal, transfers to reserve and debenture repayment.

[343] HM Aero undertook, in conjunction with Woodlands' staff, an online survey of the tenants at the airport to determine the permanent residence of employees of those tenants. Six of nine tenants responded, with only four tenants responding to some questions. From the survey, Mr. Martin concluded that employees reside in both Whitecourt and Woodlands, with four of six tenants saying a majority of their employees reside in Whitecourt.

[344] Mr. Martin compared the operation of the Whitecourt Airport to three other airports he deemed comparable: Peace River, and Northern Rockies and Dawson Creek in British Columbia. Peace River and Northern Rockies airports offer regularly scheduled air passenger service. Mr. Martin did not provide explanations of the revenue and expense categories or sources of revenue for the three comparable airports. He was unable to verify if the financial positions of three comparable airports included capital expenses or contributions to capital reserves or tax revenue.

[345] Concerning intermunicipal cost sharing, Mr. Martin provided four case studies. The City of Red Deer and Red Deer County contribute equally for operating and capital costs, however their ICF did not include the airport. Between 2017 and 2020, Peace River Airport received contributions from four neighboring municipalities, averaging \$421,000 in total. Three municipalities contributed 54.6% of \$700,000 (ranging from 5% to 21.66% to 27.5%) towards that airport's operating and capital expenses, while one municipality, Town of Grimshaw, contributed a lump sum of \$35,000 toward operating expenses. For the High

Level Airport, the Town of High Level owns and operates the airport and collects all airport property taxes. Mackenzie County contributes 30% of any agreed and planned capital expenditures at the airport. At the Quesnel Airport in British Columbia, the City of Quesnel owns and operates the airport. The Cariboo Regional District contributes \$66,000 annual to the operating costs. Based on these comparators, Mr. Martin concluded Whitecourt's contribution to the Whitecourt Airport was the lowest of all partner municipalities in the comparators, except for the Town of Grimshaw.

Analysis and findings on airport services

[346] The parties agree Woodlands provides airport services that benefit the residents of Whitecourt, and those services are intermunicipal services. Relying on this agreement, I find the airport services are intermunicipal services which must be included in the ICF. I direct the parties to include airport services in the ICF. Woodlands is the municipality responsible for providing the services.

[347] Both parties wish any disputes about the airport services to be subject to the dispute resolution provisions of the ICF. Therefore, I direct that any disputes about the airport services be resolved under the dispute resolution provisions of the ICF.

[348] On the matter of the funding contribution Whitecourt should make to Woodlands for this intermunicipal service, Whitecourt wishes to contribute only towards operating costs. Woodlands seeks a contribution towards operating and capital costs. For the reasons expressed elsewhere throughout this award, I find Whitecourt should contribute towards the net direct costs of the airport services, including operating and capital expenses.

[349] The real dispute between the parties is about the amount of Whitecourt's contribution. Woodlands seeks more than what Whitecourt currently provides but did not provide an amount. It relies on the 2020 Master Plan Update, the HM Aero report and Mr. Martin's testimony to demonstrate that Whitecourt receives significant benefits from the airport services. Whitecourt does not propose an increase in its contribution either but argues the contribution must relate to the benefit received. Whitecourt disputes the conclusions of benefit in the HM Aero report or Mr. Martin's testimony. In this regard, Woodlands bears the evidentiary onus to establish a contribution level or amount.

[350] The 2020 Master Plan Update references the broad and general economic benefits provided by the airport and acknowledges those benefits apply to the region. Air ambulance, fire suppression and police services benefit the region. Economic impacts benefit the region. There are at least four municipalities who may benefit from the airport. The report does not attribute any of those benefits by municipality. Neither HM Aero nor

Mr. Martin were able to provide more details on the benefits by municipality. In this regard, I find Mr. Martin's opinions overly broad and not helpful in determining a contribution amount or formula.

[351] HM Aero could not identify how the availability of the airport influenced business retention, expansion or relocation decisions of businesses in Whitecourt. The 2020 Master Plan Update places considerable weight on the growth potential for the airport by creating more industrial and commercial properties at or near the airport. Such growth directly benefits Woodlands through tax revenue but, absent a tax or revenue transfer agreement, only indirectly benefits Whitecourt.

[352] The HM Aero report does not detail user information for the airport such as the percentage of users who are Whitecourt residents or businesses. It does anecdotally identify that four of nine businesses at the airport employ Whitecourt residents as half of their staff. This benefit is not sufficient to alter the contribution amount or formula. There is no evidence that Whitecourt residents or businesses access private air flights from the airport. Mr. Martin speculated that corporate officials from large companies would access private flights to visit their businesses in Whitecourt or Woodlands. In cross examination, Mr. Martin conceded that, other than the information in his tenant survey and the 2020 Master Plan report, his information about airport usage was anecdotal based on discussions with Woodlands' representatives.

[353] There is no current scheduled passenger air service at the airport to benefit the residents of any municipality. The 2020 Master Study Update cautions that scheduled passenger service has an uncertain future.

[354] The municipal funding comparators in the HM Aero report do not assist in determining an appropriate contribution formula or dollar amount for this airport. At best the comparators show that there is more than one model for determining a cost contribution formula or amount.

[355] In conclusion, the evidence takes me back to the 2008 Cost Sharing Agreement as the only reliable reference to benefit on which to set a contribution amount or formula. I set Whitecourt's contribution to Woodlands for the airport services at \$40,000 effective January 1, 2020. This amount is an equitable sharing of costs based on the evidence of benefit to Whitecourt's residents. The costs of the services will likely increase annually, and the lump sum should increase annually to reflect increases. It is possible to apply various cost of living formulae, but a fluctuating percentage increase is more administratively burdensome for the small lump sum. I prefer to set the percentage of increase to reduce the administrative burden. I set the annual increase at two percent (2%) to reflect an

estimated amount for increases in costs. The cost-of-living increase is applied each January 1 after 2020. For example:

January 1, 2020	\$40,000.00
January 1, 2021	\$40,000.00 + 2% (0.02 x 40,000) = \$40,800.00
January 1, 2022	\$40,800.00 + 2% (0.02 x 40,800) = \$41,616.00.

5. Recreation, Arts and Culture

[356] Whitecourt asserts Woodlands should contribute to operating and capital costs associated with recreational, arts and cultural facilities and programming that are regional in nature and were funded under the previous 2013 Cost Share Agreement, based on the proportion of Woodlands' population which resides in a catchment area comprising Electoral Districts 1-6.

[357] It also argues Woodlands should contribute to operating and capital costs associated with Mountain Bike Park and Eastlink Park. These parks were recently constructed and were not formally considered under the 2013 Cost Share Agreement. Whitecourt asserts these facilities are primarily municipally funded, unique within the cost share area, and benefit residents in Woodlands.

[358] Whitecourt suggests it should continue lump sum contributions towards Hard Luck Canyon and the Agricultural Society under the same terms as the 2013 Cost Share Agreement. It argues it should no longer be required to contribute to the Groat Creek Campground, as similar amenities already exist within Whitecourt.

[359] Woodlands agrees to a fixed cost contribution for only the indoor pool and the indoor twin ice arenas because they are unique facilities that do not exist in Woodlands. For the remainder of the recreation services, Woodlands argues the parties have substantial duplicity or reciprocity of recreation-related facilities and attractions. Woodlands claims it can provide its own services at a more affordable cost.

[360] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Chelsea Grande, Director of Community Services for Whitecourt,
- Judy Barney, Director of Corporate Services for Whitecourt,
- Kara Kennedy, Project Manager for Woodlands, and

- Collette Miller, Wilde and Company, expert in municipal government accounting.

Overview of the recreation services

[361] In their 1999 Cost Share Agreement, the parties included parks and recreation services. Woodlands contributed a share of the costs to Whitecourt based on a catchment model. Recreation services were costed as Whitecourt's "net costs of parks and recreation less net costs of local parks and outdoor rinks".

[362] Under the 2008 and 2013 Cost Share Agreements, Whitecourt provided recreation services described more narrowly as:

The operation, maintenance, repair and supervision of any property located within the Community area, whether developed or not, owned, controlled or maintained by the Town or the County that is intended to be used by members of the public for recreation and general enjoyment, including all:

- (a) pools;
- (b) arenas;
- (c) sports fields,
- (d) school fields, as they pertain to community use;
- (e) outdoor rinks; and
- (f) regional parks.

[363] The costs were calculated as Whitecourt's net costs of parks and recreation less the net costs of local parks and outdoor rinks. Revenue was offset and capital expenditures were excluded. Woodlands did not contribute to costs for neighborhood outdoor rinks, neighborhood playgrounds, Whitecourt's Enhancement Grant program, trails, or Rotary Park capital. Contribution to recreation services equated to about one third of the total Woodlands' cost share under the 2013 Cost Share Agreement.

[364] Until 2019 Woodlands contributed 50% of the costs towards the Party in the Park, which is a large annual arts and culture event held in Whitecourt.

[365] Under the Cost Share Agreement, Whitecourt contributed a lump sum (in 2019 \$22,000) to the Whitecourt and District Agricultural Society in recognition for the community programs and services provided by the Society. Outside of the cost share agreement, Whitecourt provided \$10,000 to Woodlands as contribution for Groat Creek/Hard Luck Falls. The parties also equally shared the operational costs of Eastlink Park (winter

recreation park) and the Mountain Bike Park, both built after the 2013 Cost Sharing Agreement was signed.

[366] Whitecourt lists the following facilities in its recreation portfolio:

- Allan & Jean Millar Centre (indoor pool, indoor fieldhouse, indoor track),
- Scott Safety Centre (twin arenas and restaurant),
- Sports fields (including Graham Acres, school grounds and school rinks as they pertain to community use),
- Carlan Services Community Resource Centre (gymnastics centre, food bank and skateboard park),
- Curling Rink,
- Eastlink Park (Winter Recreation Park),
- Mountain Bike Park,
- Rotary Park,
- River Boat Park,
- Arts & Crafts building (leased to the potter guild (67%) and preschool (33%) but Whitecourt is responsible for building maintenance and capital), and
- Regional parks.

[367] According to Ms. Grande, Whitecourt's parks and recreation costs included arts and culture programming, which are growing in popularity among residents. Whitecourt prepared lifecycle plans for its recreational facilities but did not include costs associated with the construction of new facilities or the replacement of existing facilities. Whitecourt prepared an inventory of Whitecourt's facilities and programs the parties have or have not historically cost shared. The list also included some Woodlands' facilities and programs which it identified what had been cost shared.

[368] The Mountain Bike Park is on the west side of Whitecourt on land leased from the Province of Alberta. The park connects to various trails which trails connect to both Whitecourt and Woodlands. It is being developed in phases. Phase 1 and part of phase 2

are completed. The remainder of phase 2 and a new phase 3 are yet to be constructed. The Mountain Bike Association operates the park under an agreement with Whitecourt. Between 2015 and 2018 Woodlands contributed about \$60,000 for capital costs towards the park. In 2016 Woodlands and Whitecourt agreed to share the operating costs on an 50/50 basis. In 2017 Woodlands reduced its contribution for operating costs to 24.8%, reflective of the same percentage as in the 2013 Cost Share Agreement. Whitecourt provides annual operating grants to the Mountain Bike Association and gravel at no charge when requested.

[369] Eastlink Park is located in Whitecourt's industrial area on land owned and leased by Whitecourt. The park's facilities include tubing runs, terrain park, downhill ski runs (beginner to advanced), T-bar, carpet lift, tot hill, a chalet (including picnic tables, washrooms, rental area and staff area). The park has complete snowmaking abilities, grooming equipment and lighting for night skiing. Whitecourt owns the buildings and equipment. Eastlink Park opened for service in the 2015/2016 ski season. In the 2020/2021 season about 18,000 persons used the park. The Winter Recreation Park Society operates the park.

[370] Whitecourt paid 65% of the capital costs to construct Eastlink Park and Woodlands paid 35%. In 2016 Woodlands and Whitecourt agreed to fund the society's operating deficit for the 2015/2016 and 2016/2017 seasons split on a 50/50 basis. In 2017 Woodlands reduced its contribution to 24.8%. Whitecourt funded the balance each year and also incurred direct costs for maintenance of the snow cat, water for the snowmaking machines and maintenance on the lodge.

[371] The Curling Club facility was first constructed in the early 1960's. A major renovation was completed in 2011 and 2012. Whitecourt and Woodlands shared the costs of the renovations. This facility includes five curling sheets, a lounge, bar, lobby and commercial kitchen. Whitecourt owns the facility but leases it to the Whitecourt Curling Club. The curling club operates the facility and is responsible for all facility operating costs except the lifecycle costs related to the building envelope. Historically Woodlands has shared the costs for repairs to the building envelope.

[372] The Millar Centre is a multi-use recreational facility located in Whitecourt. It includes three pools with waterslide, spray park, lazy river, track, fitness centre, indoor playground, fieldhouse, walking track, FCSS and childminding services. Many programs and activities are provided at the centre, including swimming lessons and fitness classes. The centre opened in 2008. Woodlands contributed to the construction costs and until the end of 2019 contributed to the ongoing operations.

[373] The Scott Safety Centre contains the twin ice arenas and restaurant. Woodlands contributed to expanding and modernizing this facility. The centre is home to the AAJHL Wolverines, Whitecourt Minor Hockey and Whitecourt Figure Skating Club. The facility is available for recreational leagues and drop-in skating and hockey performance camps.

[374] The Carlan Services Community Resource Centre was converted from an outdoor pool into the current facility. Woodlands contributed to the costs of the conversion. The centre provides multi-purpose rooms (available to community groups) and houses non-profit community programs, accessible to residents of both municipalities, including the food bank, gymnastics club, youth services and FSCC programming.

[375] The Arts and Crafts Building houses the pottery club and a pre-school. This is the only pottery studio and pre-school in the proposed catchment area. Woodlands has historically cost shared for this facility.

[376] River Board Park in Whitecourt is the only facility which allows for the launch of jet boats. Woodlands has docks and boat launches, but not any that accommodate jet boats.

[377] Whitecourt Rotary Park is a multi-use public park. It includes a splash park, beach volleyball courts, two inground water slides, washroom buildings (8 washrooms with 2 being year-round washrooms), concession, rocks and ropes park and playground, a pond (cleared for skating in the winter), three picnic pavilions, a sun shelter, a dog park, and festival way. The park is capable of hosting large regional events. RC Strategies found that 63% of Woodlands' residents accessed the park in the previous year.

[378] The only school sites in the proposed catchment area are in Whitecourt. The sport fields and outdoor rinks on these school sites are available for public use. Green Acres is an outdoor sports-oriented facility which contains slo-pitch, baseball and fastball diamonds, tournament facilities, score clocks, a football field and soccer pitches. It hosts the Whitecourt Minor Ball League, the Whitecourt Soccer Association, the Football League, a Slo-Pitch League and various tournaments open to all Woodlands' residents.

[379] Whitecourt compiled available data to show use of some of the facilities. The data shows the following percentage of Whitecourt and Woodlands users.

Facility	Whitecourt residents use (%)	Woodlands residents use (%)

Millar Centre	73	27
Mountain Bike Park	62.5	37.5
Eastlink Park ³	56	44
¹ memberships and registered programs ² memberships ³ passholders, not including drop-in users or school visits		

[380] Woodlands provided membership statistics for Mountain Bike Park which show that in 2018 (the latest statistics available) 25% of memberships were for Woodlands' residents.

[381] In 2016 Woodlands published a recreation research report. According to the 2016 State of Recreation Research Report, Woodlands has the following recreation services. Woodlands does not own or operate all the facilities. For example, the community halls are owned and operated by community organizations. Woodlands operates two campgrounds.

Community Halls	6
Curling Rinks (Facilities)	1
Curling Rinks (Sheets)	3
Ice Arenas	1
Ball Diamonds	15
Campgrounds	7
County Recreation Areas	11
County Recreation Sites	24
Ice Rinks	2
Motocross Parks	1
Protected Natural Areas	2
Provincial Parks	1

[382] There is a curling club in Fort Assiniboine which is in Woodlands Electoral District 7. It has three sheets of ice. In 2016 the facility was 45 years old and in need of repair. Based on a survey of Woodlands residents in 2016, 90% reported they did not use the curling club. Fort Assiniboine also has an indoor ice rink.

[383] Woodlands has the following recreation areas which it operates:

- Blue Ridge Recreation Area
- Goose Lake Day Use
- Groat Creek Recreation Area & Day Use Site
- Hard Luck Canyon
- McLeod River Tubing Access/Pick-up & Day Use Site
- Mouth of the Freeman Day Use
- Schuman Lake
- Fort Assiniboine Park
- Fort Assiniboine Boat Launch
- Berry Nice Spray Park

[384] The 2016 recreation report reveals that Woodlands County provides some direct programming to enhance utilization and knowledge of County recreation sites and amenities, but most recreation opportunities accessible to residents are provided by non-profit community groups. The report contains numerous references to the existence and value of partnerships Woodlands maintains with urban municipalities (Whitecourt, Mayerthorpe and Barrhead) as well as other groups to enable Woodlands' residents wide access to recreational services. This report also contains information about a survey Woodlands conducted of its residents. Ninety-one percent (91%) of the residents responding believed that the municipalities in the area should work together to provide recreation opportunities for residents (63% strongly agree; 28% somewhat agree).

[385] Over one-quarter (28%) of Woodlands' respondents reported they leave the County for recreation activities because the activities cannot be done in the County. When asked to identify the specific activities in which they leave the County for, swimming, camping, and fishing were the top mentions. Sixty-one percent (61%) of residents use the Miller Centre in Whitecourt. Thirty-two percent (32%) use Whitecourt Rotary Park while 16% use Eastlink Park and 34% use the Scott Safety Centre arenas and 12% use the curling rink. Eight percent (8%) of residents use the Barrhead ice arena, four percent (4%) the Mayerthorpe curling rink, and three percent (3%) use the Barrhead aquatic centre.

[386] In its 2021 budget survey, Woodlands' residents reported that about 68% were satisfied

with or wanted to improve the current recreation opportunities.

[387] Ms. Kennedy admitted Woodlands does not have a facility like the Millar Centre with indoor pool, indoor fieldhouse and indoor track. Within Electoral Districts 1, 2 and 3 Ms. Kennedy acknowledged Woodlands has no indoor ice arenas, curling rink, indoor pool, school grounds or gymnastic centre. Woodlands also does not host events the size and scale of Party in the Park.

[388] Woodlands gathered statistics for use of five of its recreation sites, namely McLeod River Tubing Put-In, Hard Luck Canyon, Blue Ridge Spray Park, Blue Ridge Recreation Area and Schuman Lake. The study was conducted between 10 am and 4 pm on different days at different locations during the period June 26, June 27 and July 12, 2021, by students or staff inquiring of users where they lived. Ms. Kennedy admitted that sometimes it was too busy to inquire or people slipped by the staff or students. The questions did not ask for addresses and she acknowledged that Woodlands' residents who live in subdivisions close to Whitecourt often say they are from Whitecourt. The survey results show no Whitecourt residents used Schuman Lake those dates. Users who identified themselves as "Whitecourt residents" used the other four facilities along with Woodlands' residents and visitors from the region and province. Depending on the day, persons who identified themselves as "Whitecourt residents" generally used the facility more than those who identified themselves as Woodlands' residents.

[389] A RC Strategies Threshold Research report in 2019 found that individuals (residents in Halifax and Germany) are willing to spend a maximum of 14 -35 minutes travelling to access facilities or amenities, depending on the type of activity. Ms. Kennedy agreed people use facilities and services closest to them. She also agreed a "large amount" of Woodlands' residents live within 10 kilometers of Whitecourt. She acknowledged that for those residents the closest indoor arena was the Scott Safety Centre, the closest indoor pool was the Millar Centre, and the closest curling club was the Whitecourt Curling Club.

[390] Whitecourt prepared the following information about the distance and driving times for the electoral districts where Woodlands' residents reside to available recreation services Woodlands supports through cost share contributions.

County Districts & Drive Times To Service Areas:

District 1: Anselmo:

- To Mayerthorpe = 17 Minutes
- To Whitecourt = 25 Minutes

District 2, 3, And 4 (Whitecourt West, Central, & East):

- All Within Proximity To Whitecourt & Use Services On Daily Basis

District 5: Blue Ridge:

- To Mayerthorpe = 17 Minutes
- To Whitecourt = 18 Minutes

District 6: Goose Lake:

- To Whitecourt = 39 Minutes
- To Mayerthorpe = 40 Minutes
- To Barrhead = 41 Minutes

District 7: Fort Assiniboine:

- To Barrhead = 26 Minutes
- To Westlock = 46 Minutes
- To Whitecourt = 58 Minutes

[391] The following chart compares the population in the Woodlands' Electoral Districts to the travel distances to Whitecourt services.

Electoral District	Population	30km Radius (% of Population)	60km Radius (% of Population)	10km Radius (% of Population)
1 - Anselmo	460	60%	100%	0%
2 - Whitecourt West	868	100%	100%	80%
3 - Whitecourt Central	748	100%	100%	100%
4 - Whitecourt East	1157	100%	100%	100%
5 - Blue Ridge	661	80%	100%	20%
6 - Goose Lake	403	15%	100%	0%
7 - Fort Assiniboine	457	0%	0%	0%
Total	4754	3772	4297	2558

Figure 5 Electoral Districts Population in Radius to Whitecourt

Analysis and Findings on recreation services

[392] Each municipality provides some recreation services that benefit the residents of the other municipality.

[393] For over 30 years Woodlands has recognized that Whitecourt provides recreation services that benefit Woodlands' residents. Its own documents from as recent as 2016 and 2019 confirm the benefit. Woodlands bears the evidentiary onus to establish that those recreation services are now limited to the indoor pool and ice arena or has been

reciprocated by relatively equal services it provides. The evidence does not support Woodlands' position. The recreation services provided by Whitecourt are not limited to the indoor pool and ice arenas. Whitecourt's 2020 statistics show Woodlands' residents are still accessing broader recreation services offered by Whitecourt.

[394] Woodlands' own recreation study demonstrates the extent to which Woodlands relies on other municipalities to give its residents the recreation services they use. In its own documents Woodlands refers to these municipalities as "partners" for recreation services. Woodlands' own studies also substantiate Whitecourt's figures of use of the Whitecourt recreation services. In addition, Woodlands' studies reveal that only a small percentage of its residents access recreation services in Mayerthorpe or Barrhead. Woodlands' Recreation Master Plan recognizes that some facilities and services are regional in nature. Regional is defined in the plan as "a specialized level of service or infrastructure that, due to its nature, is provided in a single location in order to most cost effectively and appropriately serve all county residents".

[395] I find Whitecourt provides recreation, arts and culture services that benefit residents of Woodlands. Specifically, I include the following items in the services: Allan & Jean Millar Centre, Mountain Bike Park, Rotary Park, Eastlink Park, River Boat Park, Scott Safety Centre, Whitecourt Curling Rink, Arts & Crafts Building, Carlan Services Community Resource Centre, sports fields (including Graham Acres, and schools grounds including school rinks as they pertain to community use), and regional recreational and arts/cultural programming, including large-scale events targeted to the entire region, such as Canada Day celebrations and Party in the Park. These programs and the recreation services at these facilities or sites are intermunicipal services. I direct the parties to include these services in the ICF. Whitecourt is the municipality responsible for providing the services.

[396] Woodlands also provides recreation services that benefit residents of Whitecourt, specifically the services at the Blue Ridge Recreation Area, Blue Ridge Spray Park, Groat Creek Recreation Area, Hard Luck Canyon and McLeod River Tubing Put-In. I consider these facilities to have unique or regional characteristics even though Whitecourt has some facilities with similar services. Historically, Whitecourt also recognized that Woodlands provided recreation services through the Whitecourt and District Agriculture Society who hosts a regional rodeo. I also include these services provided through the Agricultural Society. All these recreation services are intermunicipal services. I direct the parties to include these services in the ICF. Woodlands is the municipality responsible for providing the services.

[397] From the list of intermunicipal services I exclude neighbourhood outdoor rinks, local

parks, neighborhood playgrounds and parks, community halls, hiking trails, tubing take-outs, public campgrounds. Equivalent facilities and associated programs are located within Woodlands. I also exclude any municipal grants to organizations for these services.

[398] For these intermunicipal services, the respective party also provides services to maintain the facilities. These services to maintain the facilities are also intermunicipal services and should be included in the ICF. Whitecourt is the municipality responsible for providing maintenance services to its facilities. Woodlands is the municipality responsible for providing maintenance services to its facilities.

[399] Turning to the respective contributions from each municipality, I again include all net direct costs of providing the services including maintenance and capital costs as set out in the respective life cycle plans for any facilities or buildings owned by the respective party. For reasons expressed elsewhere in this award, I exclude the Administrative Overhead costs sought by Whitecourt. The costs must be offset by all revenues including lease payments received from other organizations and grants received for the service, program or facility.

[400] On the proportion of contributions, I start with Woodlands' contribution. Whitecourt proposes a contribution based on a catchment area described as Electoral Districts 1 – 6. This would represent over 90% of Woodlands' population. Woodlands seeks a lump sum amount but again provided no figure. Historically the parties have used a catchment model, but the catchment area was smaller than Whitecourt now proposes.

[401] The evidence of current use or benefit for residents in areas outside the historical catchment area is not sufficient to justify a modification to the approximate boundaries of the historical catchment area. A catchment area that is easily identifiable reduces the administrative burden on both parties. It provides a fair and predictable way to calculate the contribution. A catchment area is more administratively simple and predictable than relying on user statistics, which both parties have demonstrated are difficult to gather. In other segments (Library and Cemetery) I found that Woodlands' Electoral Districts 2, 3 and 4 approximate the historical catchment area. I apply the same catchment area here. This catchment area captures Woodlands' residents who live within 10 kilometers of Whitecourt, thereby increasing the probability of them using the Whitecourt recreation services. This catchment area includes some residents of Electoral District 2 that live outside the 10 kilometer radius but also excludes other residents of Electoral District 5 that live within the 10 kilometer radius.

[402] Woodlands shall contribute to Whitecourt a portion of Whitecourt's net direct costs for providing and maintaining the recreation, arts and culture services and services to maintain the recreation facilities calculated by dividing the population in Electoral Districts 2, 3, and 4

by the total population of Whitecourt plus Electoral Districts 2, 3, and 4.

$$\text{contribution} = \frac{\text{Population of Woodlands Electoral Districts 2, 3 and 4}}{\text{Population of Whitecourt + Population of Woodlands Electoral Districts 2, 3 and 4}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

[403] Concerning the contribution of Whitecourt to Woodlands, there is no basis on which to set a catchment area. Woodlands' statistics are not sufficiently reliable to establish a percentage or dollar figure. I therefore apply the principle of equity of costs and find that Whitecourt will contribute to Woodlands applying the same formula used in calculating Woodland's contributions. This means that Whitecourt will contribute to Woodlands on the same percentage as Woodlands contributes to Whitecourt.

[404] To calculate the percentage of Whitecourt's contribution I apply the same formula applied above. Whitecourt shall contribute to Woodlands a portion of Woodlands' net direct costs for providing and maintaining the recreation services and services to maintain the recreation facilities calculated by dividing the population in Electoral Districts 2, 3, and 4 by the total population of Whitecourt plus Electoral Districts 2, 3, and 4.

$$\text{contribution} = \frac{\text{Population of Woodlands Electoral Districts 2, 3 and 4}}{\text{Population of Whitecourt + Population of Woodlands Electoral Districts 2, 3 and 4}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

[405] In relation to the services provided through the Whitecourt & District Agriculture Society, there is no evidence that a change to the concept of annual lump sum contribution is required. In the previous agreement, Whitecourt paid the contribution directly to the Agriculture Society. Neither party has requested a change to that practice. I therefore direct that Whitecourt pay an annual lump sum to the Whitecourt & District Agriculture Society as contribution for the intermunicipal services provided to its residents. In 2019 the

sum was \$22,000.00. Effective January 1, 2020 I set the amount at \$25,000 with an annual increase. It is possible to apply various cost of living formulae, but a fluctuating percentage increase is more administratively burdensome for the small lump sum. I prefer to set the percentage of increase to reduce the administrative burden. I set the annual increase at two percent (2%) to reflect an estimated amount for increases in costs. The cost-of-living increase is applied each January 1 after 2020. For example:

January 1, 2020	\$25,000.00
January 1, 2021	\$25,000.00 + 2% (0.02 x 25,000) = \$25,500.00
January 1, 2022	\$25,500.00 + 2% (0.02 x 25,500) = \$26,010.00.

6. Ancillary Police Services

[406] Whitecourt advances three arguments on policing services. First, Woodlands should contribute its prorated share of costs related to Whitecourt’s Royal Canadian Mounted Police (RCMP) detachment under the same terms as the previous Cost Sharing Agreement from January 1, 2020 to March 31, 2020. Second, from April 1, 2020 going forward, Woodlands should contribute to costs associated with the Community Liaison Officer, the Crime Prevention Coordinator, and the support staff (0.48 of a full time position) associated with ancillary services (e.g. criminal record checks, fingerprinting, fines and fees collections, recovered property, security clearances, etc.) provided at the Whitecourt RCMP detachment, based on the proportionate share of the County’s population which resides within the Whitecourt RCMP detachment’s service area.

[407] Woodlands argues services delivered at the RCMP detachment, including general reception and fingerprint services are user pay services for which the Province of Alberta does not provide funding. Whitecourt is not required to provide any of these services to the public except “vulnerable sector screening” records checks. Whitecourt determines the user fees, which are not sufficient to cover the costs of the services. Woodlands has only one voice on the Whitecourt Protective Services Committee so cannot influence the user fees. The School Resources Officer/Community Liaison services are provided (entirely or in part) by a full-time RCMP officer. Some programs are also offered by a civilian employee of Whitecourt and a Whitecourt bylaw officer. Whitecourt has also contracted the victims’ services to Eagle Tower Victims Services. There is no reliable evidence that Woodlands’ residents benefit from Whitecourt’s crime prevention strategies.

[408] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witness:

- Doug Tymchyshyn, Director of Community Safety.

Overview of the protective services

[409] The RCMP provides police services to Whitecourt under an agreement between the RCMP and Whitecourt. Whitecourt's RCMP detachment provides police services to Whitecourt and a defined area of Woodlands, being Electoral Districts 1 through 5. Woodlands does not have its own contract with the RCMP and does not have its own detachment.

[410] Under the 2013 Cost Share Agreement, one of the services Whitecourt provided was "policing services, including, without restriction, Victims Services and Crime Prevention Services within the Community Area (a defined area)". Woodlands' share of costs for police protection was based on population in the service areas, based on the following inputs:

Total police expenditures
Less Revenue
Less Victim Services Grant
Net expenditures (excluding major capital)

[411] Effective April 1, 2021, both municipalities are required to pay a portion of their front-line policing costs to the Province under a formula in the *Police Funding Regulation*, Alta. Reg. 7/2020. Whitecourt pays for the ancillary services and provides the facilities for the detachment in addition to its portion of the policing costs.

[412] The Community Liaison Officer / School Resource Officer is a full-time position filled by a police officer (1 Full Time Equivalent "FTE"). This position was created in 2012 after discussions at the joint liaison committee for the two parties. The position focuses on crime prevention within the schools. Students living in both Whitecourt and Woodlands attend the schools. The position is also involved in other crime prevention initiatives throughout the detachment's service area (Whitecourt and Woodlands). The functions of the position are beyond the general policing services provided by the RCMP.

[413] Whitecourt also provides a half-time position of Crime Prevention Coordinator. This position is directly related to coordinating and organizing crime prevention strategies in Whitecourt and Woodlands. The position works in conjunction with the Community Liaison Officer.

[414] Under its contract with the RCMP, Whitecourt also provides and pays for support staff positions at the detachment, who provide the ancillary police services to the residents of Whitecourt and Woodlands and support for the officers. Mr. Tymchyshyn calculated ancillary police services occupy 0.48 of a full-time position. The ancillary police services

include criminal record checks, civil fingerprinting, vulnerable sector screening, fines and fees collections, recovered property, and security clearances. These services are not provided anywhere else in Whitecourt or Woodlands. Whitecourt charges user fees for these services but the fees do not fully cover the costs.

[415] Whitecourt provides the detachment facility which houses all the RCMP and support staff servicing Woodlands and Whitecourt. Whitecourt receives rent from the Province of Alberta under a lease agreement which requires the Province to pay rent reflective of only maintenance and operating costs. Capital costs are excluded.

Analysis and findings on protective services

[416] The first topic is the services in the first quarter of 2020. The evidence from Mr. Tymchyshyn establishes that between January 1, 2020 and March 31, 2020 Whitecourt continued to provide policing and protective services to Woodlands that duplicates the services provided to December 31, 2019 under the 2013 Cost Sharing Agreement. Under the 2013 Cost Sharing Agreement, Woodlands acknowledged these services benefitted the residents of Woodlands. I infer the same benefit extended into the first quarter of 2020. Woodlands brought no evidence to demonstrate any change after December 31, 2019 or between January 1, 2020 and March 31, 2020. As a result, I find Whitecourt provided policing services to Woodlands, including victim services, crime prevention services and ancillary services between January 1 and March 31, 2020. Those services benefitted the residents of Woodlands. These are intermunicipal services.

[417] I direct the parties to include in the ICF policing services to Woodlands, including victim services, crime prevention services and ancillary services for the period January 1 to March 31, 2020. Whitecourt was the municipality responsible for providing the services.

[418] On the matter of funding contribution for this service, I again include all direct costs related to providing the services, including maintenance and capital costs as shown in the 20-year life cycle plan Whitecourt prepared or must prepare. For reasons already stated, I exclude Administrative Overhead costs. Any revenues received from providing these services, any capital grants and any rent received by Whitecourt for the facility must be offset.

[419] I find the catchment model is appropriate for determining Woodlands' share. The catchment model recognizes the residents who do or can benefit from the services. I limit the catchment area to the area serviced by the Whitecourt RCMP detachment. Between January 1, 2020 to March 31, 2020 Woodlands shall contribute to Whitecourt a portion of Whitecourt's net direct costs for Whitecourt's policing and ancillary services calculated by

dividing the population in Electoral Districts 1, 2, 3, 4 and 5 by the total population of Whitecourt plus Electoral Districts 1, 2, 3, 5, and 5.

$$\text{contribution} = \frac{\text{Population of Woodlands Electoral Districts 1, 2, 3, 4 and 5}}{\text{Population of Whitecourt + Population of Woodlands Electoral Districts 1, 2, 3, 4 and 5}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

[420] I turn now to the services provided from April 1, 2020. The services have changed and would be described as:

- ancillary police services including crime prevention programming (including the Crime Prevention Coordinator), School Resource Officer, and administrative services provided at the detachment (criminal record/police information checks, fines and fee collection, recovered property, security clearances, vulnerable sector screening, next of kin notification, civil fingerprinting, etc.), and
- providing and maintaining the detachment building.

[421] I find the ancillary police services and services of providing and maintaining the detachment building are intermunicipal services. I rely on the evidence of Mr. Tymchyshyn to find that these services benefit Woodlands' residents. The RCMP and staff who service Woodlands work out of this detachment. This is the only place the services are provided in Woodlands. Children who are residents of Woodlands attend the schools where the programs are offered. Woodlands has a history of benefitting from these services and has provided no evidence of changed circumstances from April 1, 2020 (other than its on-going financial strain). Therefore, I direct the parties to include in the ICF the following intermunicipal services:

- ancillary police services including crime prevention programming (including the Crime Prevention Coordinator), School Resource Officer, and administrative services provided at the detachment (criminal record/police information checks, fines and fee collection, recovered property, security clearances, vulnerable sector screening, next of kin notification, civil fingerprinting, etc.), and

- providing and maintaining the detachment building.

Whitecourt is the municipality responsible for providing the services.

[422] On the matter of contribution for these services, I again include all direct costs. I also specify that the positions reflected in the costs for the ancillary police service relate to one FTE School Resource/Community Liaison position, one 0.5 FTE Crime Prevention Coordinator and one 0.48 FTE administrative position. I again include all direct costs related to providing the services, including maintenance and capital costs as shown in the 20-year life cycle plan Whitecourt prepared or must prepare. For reasons already stated, I exclude Administrative Overhead costs. Any revenues received from providing these services, any capital grants and any rent received by Whitecourt for the facility must be offset.

[423] Effective April 1, 2020 Woodlands shall contribute to Whitecourt a portion of Whitecourt’s net costs, for Whitecourt’s ancillary policing services and for providing and maintaining the detachment building, calculated by dividing the Woodlands population in the Whitecourt RCMP detachment servicing area (Electoral Districts 1, 2, 3, 4 and 5) by the total population of Whitecourt plus the Woodlands population in the Whitecourt RCMP detachment servicing area (Electoral Districts 1, 2, 3, 4 and 5).

$$\text{contribution} = \frac{\text{Population of Woodlands in Whitecourt Electoral Districts 1, 2, 3, 4 and 5}}{\text{Population of Whitecourt + Population of Woodlands in Electoral Districts 1, 2, 3, 4 and 5}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

7. Forest Interpretive Centre

[424] Whitecourt argues Woodlands should cover 50% of capital and operating costs associated with the Forest Interpretive Centre and related amenities, with the exception of the portion of the facility which houses Whitecourt’s Council Chambers, for which the Whitecourt would remain responsible. It also argues the Joint Economic Development Committee should be reconstituted with representation from both the Whitecourt and Woodlands to oversee the facility and joint economic development initiatives in both municipalities.

[425] Woodlands asserts the benefits to its residents from the Forest Interpretive Centre are negligible or not proportional to the costs therefore this service should not attract a contribution from Woodlands. In addition, Woodlands maintains its own visitor information centre and museum in Fort Assiniboine which offset contributions to Whitecourt.

[426] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Chelsea Grande, Director of Community Services for Whitecourt, and
- Shannon Wharton, Executive Assistant and FOIP Coordinator for Woodlands.

Overview of the Forest Interpretive Centre

[427] The Forest Interpretive Centre (the FIC) is located in Whitecourt. It is dedicated to educating the public on the role of and the importance of the forest and the forestry industry in Whitecourt and Woodlands region. The FIC maintains paths outside the building with interpretive signage describing the regional forestry section and past practices. Staff give presentations on different subjects and answer visitors' questions. Local schools bring students from Woodlands and Whitecourt to the FIC on field trips to learn about the forest and the history of the forestry industry.

[428] Between 1990 and 2009 the Whitecourt and District Heritage Society operated the FIC and museum. The Province of Alberta owned the land. In 2007 the society transferred ownership of the FIC to Whitecourt. In 2009 the Province of Alberta transferred the land to Whitecourt.

[429] The FIC facility houses a museum, a multimedia gallery, offices, meeting rooms, and the Whitecourt Council chambers/public auditorium. The artifacts in the museum belong to the Whitecourt and District Heritage Society. The grounds include an outdoor picnic area, a playground, walking trails and a sani-dump station. Adjacent to the FIC is Heritage Park, a collection of historical buildings from the region. Also located on site is the Visitor Information Centre. Whitecourt provides the staff at the FIC and visitor information centre.

[430] The visitor information centre promotes Woodlands' and Whitecourt's events to the travelling public through brochures, website, and inquiries. The staff update the provincial Travel Alberta website for all tourism events, products, and services offered in Woodlands and Whitecourt. They also provide daily updates on snowline operations in the winter season, information relied on by the snowmobile club. The visitor information centre provides booking and payment information services for Groat Creek Recreation area and Eagle River Staging Area. Groat Creek Recreation area is owned and operated by

Woodlands. Eagle River Staging Area is located in Woodlands but maintained and operated by the Whitecourt Trailblazers Snowmobile Club.

[431] Whitecourt is responsible for the operation and maintenance of the FIC and the road and parking lot next to the building.

[432] From 2008 to the end of 2019 Whitecourt and Woodlands agreed to cost share the costs of joint economic development. Included in the net costs for economic development was the costs of the Forest Interpretive Centre and Tourism Booth (visitor information centre). Costs were shared 50/50. Revenues included the annual Chamber of Commerce grant and rental fees from the public's use of meeting rooms in the FIC, not including rental fees for the council chambers room.

[433] At one time the parties established a joint economic development committee and tourism committee. Both have been disbanded.

[434] Woodlands operates a visitor information centre and museum in Fort Assiniboine, one hour from Whitecourt.

Analysis and findings on FIC

[435] The evidence establishes that the FIC facility is integral to the provision of the services at the FIC. The FIC provides a unique service in the region that promotes the forest and forestry industry. Forestry is a major industry in the region and therefore the FIC benefits the residents of both Whitecourt and Woodlands. FIC also houses a museum that reflects and promotes the history of both Woodlands and Whitecourt. Woodlands suggests it does not benefit from the FIC because its staff rarely use the free meeting rooms at the FIC. Whether or not Woodlands makes use of the free meeting rooms at the FIC for its uses, the undisputed evidence shows its residents benefit from the forest education and museum services offered by the FIC. Whitecourt provides services to maintain the FIC and grounds. I therefore find the services to operate and maintain the FIC facility and grounds are intermunicipal services. I direct the parties to include in the ICF the services to operate and maintain the FIC facility and grounds. Whitecourt is the municipality responsible for providing the services.

[436] On the matter of contribution, I rely on the 21-year history of the parties to find that Woodlands should contribute 50% of the net costs of operating and maintaining the FIC and grounds. I include the costs related to Heritage Park. I exclude the costs related to the museum and visitor information centre because Woodlands also has a visitor information centre and museum. Revenues include any room rentals in the FIC (other than rental of the

council chambers/auditorium) and any grants for the FIC. Costs include capital costs as captured in the FIC lifecycle plan. For reasons already expressed I exclude the Overhead Administration expenses. I also exclude any costs and revenues related to the Whitecourt Council Chambers/auditorium. Finally, I exclude any costs related to economic development as the parties now provide their own economic development activities.

[437] Finally, I do not direct the parties to re-constitute a joint economic committee. The committee has no relationship to the operation of the FIC, museum, visitor information centre and grounds.

8. Family and Community Support Services

[438] Whitecourt argues Woodlands should contribute to direct costs incurred by the Town to provide family and community support services (FCSS) programming, with contributions calculated based on the percentage of Woodlands' population which resides within a catchment area that comprises Electoral Districts 1-6. Both parties should separately operate their own grant funding programs for third parties which provide FCSS-related services, and those grant funding programs would not be subject to cost sharing.

[439] Woodlands argues FCSS programming is not an intermunicipal service. Each municipality provides and pays for its own FCSS programming. It would not be an equitable sharing of costs to require Woodlands to also pay for part of Whitecourt's FCSS programming.

[440] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Chelsea Grande, Director of Community Services for Whitecourt, and
- Heather Anderson, Community Services Coordinator for Woodlands.

Overview of the FCSS services

[441] Funding of FCSS programming is a partnership between municipal governments and the Province of Alberta under the *Family and Community Support Services Act*, RSA 2000, c F-3. Section 2.1 of the *Family and Community Support Services Regulation*, Alta. Reg. 218/1994 sets out the service requirements of FCSS programming. This Regulation identifies the types of programming which are eligible for provincial FCSS funding. Generally, funds are directed for services under a program that are preventative in nature and enhance the social well-being of individuals and families through promotion or intervention strategies provided at the earliest opportunity.

[442] Whitecourt has provided FCSS programming to Woodlands' residents since the early 1990's. The first agreements date back to 1991 for preventative social services. The 2008 Cost Sharing Agreement (renewed in 2013) included an obligation for Whitecourt to provide "Family and Community Support Services" in the defined service area. The service area included the area incorporating Electoral Districts 2 to 5 and accounted for 26.5% of the Woodlands population based on the 2016 census numbers. Under that agreement, Woodlands' residents could access FCSS programs and activities on the same basis as Whitecourt's residents.

[443] Woodlands does not directly provide most of its own FCSS programming. According to Ms. Anderson, Woodlands does directly provide some FCSS programming, such as volunteer appreciation celebrations and an annual senior's day. It also provides Woodlands' grants to third party providers for some services and transfers FCSS funding to other municipalities so its residents can access FCSS programming in those other municipalities.

[444] Whitecourt gathered statistics between 2016 and 2021 identifying Woodlands' residents as users of the Whitecourt FCSS programs. Ms. Anderson agreed that Whitecourt is the most significant provider of FCSS programming to Woodlands' residents. She also agreed most Woodlands' residents who use FCSS services would access the services in Whitecourt. She also agreed the Woodlands' residents would access FCSS services closest to them.

[445] Woodlands provides FCSS funding to the Town of Barrhead (for FCSS services for residents in the Fort Assiniboine and Goose Lake areas of Woodlands) and to the Town of Mayerthorpe. Ms. Anderson was not able to describe the FCSS services Woodlands' residents obtain from those municipalities because Woodlands did not receive reports from those municipalities.

[446] In its July 15, 2019 Facebook post Woodlands explained FCSS funding and how Woodlands allocated its 2018 funding. Of its \$372,665 FCSS funding available in 2018, Woodlands transferred \$143,513 to three other municipalities and spent \$152,164 on its own programs and grants to third party providers. The post states: "Transferring FCSS funds to other municipalities that have the infrastructure and capacity to host larger programs allows our residents to access services outside of the County". In 2018 Woodlands transferred \$125,013 to Whitecourt FCSS which was its largest municipal transfer.

[447] Woodlands provided its annual FCSS reports from 2015 to 2019. In 2019 Woodlands spent \$18,491.38 on its internal programs, including administration. It spent \$203,906.00 on programs provided by external providers of which \$133,846.00 went to Whitecourt

FCSS, \$7,100.00 to Mayerthorpe FCSS and \$12,500.00 to Barrhead FCSS.

[448] Whitecourt is responsible for all FCSS programming under the direction of the Community Services Advisory Board. Forty percent of the members on the board are Woodlands' residents and until 2021 the chair of the board was a Woodlands' resident. Whitecourt owns the vehicles FCSS staff access for programming. The vehicles are shared with Whitecourt's recreation department. Whitecourt's FCSS offices are located in the Millar Centre and Carlan Services Community Resources Centre in the town.

Analysis and findings on FCSS programming services

[449] The evidence indisputably shows Whitecourt provides FCSS programming and activities that Woodlands' residents access and benefit from. Whitecourt has done so for over 30 years. Woodlands has entered into multiple agreements with Whitecourt authorizing it to provide those services. Woodlands has also contributed to Whitecourt for those services by providing a contribution equal to the largest portion of its FCSS funding to Whitecourt.

[450] Woodlands does very little direct FCSS programming and service delivery.

[451] The historical cost share agreements with Whitecourt shows that until the end of 2019 FCSS services provided by Whitecourt benefitted Woodlands' residents. Ms. Anderson's admissions confirm the services, and the benefits continue past the termination of the 2013 Cost Sharing Agreement. Therefore, I find the FCSS programming provided by Whitecourt is an intermunicipal service and direct the parties to include it in the ICF. Whitecourt is the municipality responsible for providing the services.

[452] Turning to the contributions from Woodlands, I again include all net direct costs of providing the services including maintenance and capital costs as set out in the respective life cycle plans for any buildings owned by Whitecourt. A portion of the vehicle costs should also be included as determined by pro-rata use. For reasons expressed elsewhere in this award, I exclude the Administrative Overhead costs sought by Whitecourt. The dollar value of any Woodlands' FCSS-funding transfers to other municipalities and its grants to third-party providers for FCSS-related services cannot be used in calculating its funding obligations to Whitecourt. Whitecourt's grants given to organizations for FCSS-related services do not qualify as costs. Each party will operate their own granting programs separate from this ICF provision.

[453] As it has been a point of significant dispute for Woodlands in this arbitration, I clarify that I am not directing Woodlands to transfer any portion of its provincial or municipal FCSS grant funding to Whitecourt. Woodlands determines which sources of funding it will use to

meet its ICF contribution.

[454] In terms of the catchment area, the evidence is clear that Woodlands' residents in Electoral Districts 6 and 7 will not normally access FCSS services in Whitecourt. There is some evidence that residents in Blue Ridge or Anselmo (within Electoral Districts 1 and 5) will travel to Mayerthorpe to access services and Woodlands has contributed to Mayerthorpe for those services. I therefore set the service area for FCSS programming to be the area known as Woodlands' Electoral Districts 2, 3, and 4. Effective January 1, 2020, Woodlands shall contribute to Whitecourt a portion of Whitecourt's net direct costs for Whitecourt's FCSS programming calculated by dividing the population in Electoral Districts 2, 3, and 4 by the total population of Whitecourt plus Electoral Districts 2, 3, and 4.

$$\text{contribution} = \frac{\text{Population of Woodlands Electoral Districts 2, 3, and 4.}}{\text{Population of Whitecourt + Population of Woodlands Electoral Districts 2, 3, and 4.}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

9. Library Services

[455] Whitecourt argues Woodlands should contribute to direct costs incurred by Whitecourt to provide necessary ancillary services to the Whitecourt Library, based on the percentage of the County's population which resides within Electoral Districts 2, 3 and 4.

[456] Whitecourt also argues that Woodlands should contribute to the operating costs of Whitecourt Library but could do so through an operating agreement it negotiates with the Whitecourt and District Library Board. To date, no agreement has been executed, and the County has suggested it may decide to not provide operating funds to the library. Whitecourt is asking for an order allowing it to bring the issue of operating costs for its Library back to the arbitrator for consideration in the future if Woodlands fails to reach an agreement with the Library Board, or otherwise elects to not provide contributions to the Whitecourt Library Board.

[457] Woodlands argues both municipalities provide library services through their independent library boards. It asserts there is no evidence that residents of Woodlands receive a benefit from the library services provided by the Whitecourt Library Board. Woodlands also says it has offered to contribute grant funding directly to the Whitecourt

Library Board in exchange for access to library services for its residents. The grant funding should preclude any other funding contribution under the ICF.

[458] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Chelsea Grande, Director of Community Services for Whitecourt,
- Gordon Frank, Chief Administrative Officer for Woodlands, and
- Judy Barney, Director of Corporate Services for the Town.

Overview of the library services and ancillary supports services for the library

[459] Whitecourt established the Town of Whitecourt Library Board (the Library Board) in 2016. However, as early as 1984 Whitecourt had a library board and had agreements with the Minister of Municipal Affairs, as Council for Improvement District #15 and later Woodlands to share costs for the municipal portion of the library expenses. In 1994 Whitecourt and Woodlands entered into their first agreement to “recognize that citizens of the Municipal District access the facilities and programs operated” by Whitecourt, including “Public Library services as provided by the Whitecourt and District Library Board”. The 2013 Cost Sharing Agreement retained the recognition of library services and cost share of the operation of the library building.

[460] The library is located at 52nd Avenue and 49th Street, is adjacent to the Central Elementary School and is in close proximity to the downtown core and borders residential areas. The original facility was constructed in the spring of 1981. In 1996 a 2,500 square foot addition was completed adding a staff room, meeting room, an upgrade to the front service desk and more shelf space for books. This building has not undergone a significant renovation since this time. The facility has a gross building area of 590 square metres.

[461] On May 20, 2021, Woodlands’ Mayor John Burrows sent a letter to the Board Chair of the Library Board enclosing a five-year agreement for grant funding to “provide additional library services to residents throughout Woodlands County”. On May 31, 2021, the Board Chair of the Library Board wrote to Woodlands’ Mayor and Council enclosing the signed five-year agreement for “grant funding to provide library services to Woodlands County residents”. The Board Chair also acknowledged Woodlands’ “kind recognition in Woodlands County’s May 27 news release confirming council’s approval of the funding agreement”.

[462] The five-year agreement prepared by Woodlands and signed by the Library Board includes several preambles that reiterate its desire to ensure its residents have access to

the library and library services. Woodlands agreed to provide an annual grant starting in 2021 for \$65,000 plus a two percent cost of living increase. Under the five-year agreement, library services expressly do not include “building upkeep and custodial costs currently covered by the Whitecourt-Woodlands cost share agreements, nor future capital expenditures such as the construction or renovation of buildings.

[463] Woodlands also established its own library board that provides library services to residents of Woodlands from a library in the Hamlet of Blue Ridge (Electoral District 5) about 31 kilometers from Whitecourt. There is no evidence Woodlands’ library board provides services to residents of Whitecourt.

Analysis and findings on library services

[464] First, I find the library services provided by the Whitecourt Public Library are an intermunicipal service. The history of agreements and the 2021 letter from Woodlands to the Library Board Chair show Woodlands recognized that the Whitecourt Public Library did provide library services to its residents.

[465] Woodlands asserts there is no evidence at the hearing establishing that the library services benefit the Woodlands’ residents. I disagree. The evidence is overwhelming. The evidence is in Woodlands’ own agreements, letters, draft grant funding agreement and news release. The most current evidence of benefit is the May 21, 2021 letter from Woodlands’ Mayor to the Library Board Chair, attached to the written statement of Woodlands’ CAO. Woodlands did not provide any evidence to the contrary.

[466] I direct that the parties include library services in the ICF. Whitecourt is the municipality responsible for the services. Although the Library Board is the entity responsible for providing the library services, the Library Board was established by Whitecourt and under the *Libraries Act*, if the Library Board cannot continue, responsibility reverts to Whitecourt.

[467] On the matter of contribution funding for the library services, I find Woodlands has committed publicly (through the May 27, 2021 news release) and in writing to the Library Board Chair to provide grant funding of a specified sum for five years. Woodlands communicated that commitment to the Library Board Chair in its letter of May 20, 2021 enclosing a draft of the agreement. The Library Board Chair accepted the funding, signed the funding agreement and returned the signed agreement with a letter to Woodlands’ Mayor on May 31, 2021 as requested. Woodlands expressed its commitment and the Library accepted the terms offered. I accept this funding arrangement would meet the expressed purposes in Part 17.2 and may be a form of contribution funding for operating costs. In the event that Woodlands does not honour its commitment, I reserve my

jurisdiction to hear from the parties about the contribution funding for library services and decide the matter.

[468] Second, I find the services of providing and maintaining the library building are services provided by Whitecourt and are also intermunicipal services. Without the library building, the Library Board would be unable to provide the library services benefiting residents of both municipalities.

[469] Like some of the other services in dispute here, the parties have a long history of acknowledging the intermunicipal nature of the services described as “providing and maintaining the library building”. The 2008 Cost Sharing Agreement (as amended in 2013 and terminated December 31, 2019) included “the provision of library services” and set out Woodlands’ contribution to those costs based on the catchment area model as follows:

Based on the annual budget for the operation of the library building, annual grants to the board are outside of the agreement.

Total Building Expense

Total Building Revenue

Net Expenditures

[470] The 2021 five-year grant funding agreement prepared by Woodlands expressly excludes the building upkeep and custodial costs currently covered by the Whitecourt-Woodlands cost share agreements and future capital expenditures such as the construction or renovation of buildings. Therefore, the construction and maintenance of the library building is not part of the operational funding contribution. In these exclusions Woodlands acknowledges that the building upkeep and custodial costs at least have been cost shared between it and Whitecourt, which would not be necessary without Woodlands’ acknowledgement that the library building was necessary to the library services and therefore the maintenance of the building was a service to which Woodlands should contribute.

[471] I therefore direct the parties to include the services of providing and maintaining the library building in the ICF as an intermunicipal service. Whitecourt is the municipality responsible for providing the service.

[472] On the matter of contribution funding, I find the costs should include all costs of providing and maintain the library building. This includes operational-type maintenance such as custodial, groundskeeping services, snow removal and minor maintenance. The costs also include all costs outlined in 20-year life cycle plan prepared by Whitecourt which

includes the capital costs. For reasons expressed earlier, these costs do not include Administrative Overhead expenses.

[473] For this service, a catchment model makes sense because the residents who are more likely to use and benefit from the library building are those in closer proximity to the building. Woodlands' residents who are closer to the Hamlet of Blue Ridge will likely use that library. I agree with Whitecourt that the catchment area should comprise the Woodlands Electoral Districts 2, 3 and 4, which approximates the historical catchment area in the 2013 Cost Sharing Agreement. I therefore set the catchment area for the services of providing and maintaining the Whitecourt library building as the area described as Woodlands Electoral Districts 2, 3 and 4.

[474] Woodlands shall contribute to Whitecourt a portion of Whitecourt's net direct costs for providing and maintaining the Whitecourt library building calculated by dividing the population in Electoral Districts 2, 3, and 4 by the total population of Whitecourt plus Electoral Districts 2, 3, and 4.

$$\text{contribution} = \frac{\text{Population of Woodlands Electoral Districts 2, 3 and 4}}{\text{Population of Whitecourt + Population of Woodlands Electoral Districts 2, 3 and 4}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

10. Cemetery Services

[475] Whitecourt argues Woodlands should be required to contribute to operating and capital costs associated with the Whitecourt Cemetery based on a catchment area that comprises Woodlands' Electoral Districts 1-6, which would include all residents with an approximately 30-minute drive from Whitecourt.

[476] Woodlands argues this is not an intermunicipal service; it is a municipal service delivered independently for which no cost share contributions should flow. It says there is no evidence of general benefit to Woodlands' residents and Woodlands operates its own cemeteries.

[477] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Jennine Scheck Loberg, Director of Planning & Development for Whitecourt, and
- Gordon Frank, Chief Administrative Officer for Woodlands.

Overview of cemetery services

[478] Section 1(c) of the *Cemeteries Act* RSA 2000, c C-3 says “cemetery services” means the supplying of any service to be rendered at a cemetery in respect of any lot or plot or grave stone, grave marker or monument.

[479] Since June 1963 Whitecourt has owned and operated the Whitecourt Cemetery. Currently the cemetery has 1207 plots and 120 niche compartments, with 153 plots and 38 niches available. Each plot can hold one casket and up to three urns. The cemetery has space to expand and can add up to 170 more plots. Whitecourt expects it will need to expand by 2025, which will require Whitecourt to install “runners”.

[480] The cemetery contains a Field of Honour reserved for burial of veterans as defined by Veterans Affairs Canada. One family member’s urn may be placed with the veteran’s casket in a plot. Plots for in the Field of Honour are free. Veterans receive discounted rates in columbarium niches. The Whitecourt Legion undertakes maintenance of the gardens in the Field of Honour. In 2017 the Legion assisted with improvement projects in the Field of Honour.

[481] Under Whitecourt Bylaw No. 1552-2 Appendix “D”, residents of Whitecourt and Woodlands pay the same fees for plots, niches and internment services. A resident can purchase multiple plots and niches, which allows them to create “family plots” and include persons residing outside the two municipalities. Purchasers providing addresses outside the two municipalities pay higher fees.

[482] Ms. Scheck Loberg said residents of Woodlands were buried in the Whitecourt Cemetery. Prior to 2020 Whitecourt did not capture statistics showing whether the purchases related to residents of Whitecourt or Woodlands. As fees were the same, the distinction was more difficult to track. Further, many purchasers provided only their mailing address, not their civic address. From 2020 Whitecourt began to track the civic address of purchasers and learned that in 2020 an equal number of Whitecourt residents and Woodlands’ residents bought plots and niches.

[483] There is little evidence about Woodlands’ cemetery services. According to Ms. Scheck Loberg Woodlands has two cemeteries, one in Anselmo (Electoral District 1) and one in Blue Ridge (Electoral District 5). There is no evidence these cemeteries sell niches in a columbarium. Gordon Frank said residents of Whitecourt pay the same rates paid by

residents of Woodlands.

[484] Since 1999 the parties have included the Whitecourt Cemetery in cost sharing agreements. Woodlands has contributed to operating and capital costs of the cemetery. Under the 1999 Cost Sharing Agreement Woodlands cost shared a percentage of the “net costs of the cemetery” based on population numbers in catchment area. In the 2008 Cost Sharing Agreement Woodlands cost shared “the operation, maintenance, repair and provision” of the cemetery using a similar catchment model. The 2013 Cost Sharing Agreement extended the cemetery provisions from the 2008 Cost Sharing Agreement until the end of 2019.

[485] In 2019 Woodlands paid its share of the cemetery costs and in 2020 Woodlands’ Council approved a cost share contribution towards the capital purchase of a new columbarium at the Whitecourt Cemetery.

Analysis and Findings on Cemetery Services

[486] The evidence establishes that the cemetery service Whitecourt provides to Woodlands is an intermunicipal service. It benefits the residents of Woodlands in that they or their family members are buried or may be buried at the Whitecourt Cemetery. Woodlands’ residents pay the same rates for a plot or niche as Whitecourt residents, which is a benefit to Woodlands’ residents. The long history of cost share agreements for cemetery services demonstrates that Woodlands acknowledges the benefit their residents receive from the cemetery services.

[487] Woodlands has not met its onus to establish that each municipality provides a service only to its own residents or that Woodlands’ cemetery services benefit residents in Whitecourt. There is no basis on which to uphold either claim by Woodlands. There is some 23 years of history showing that both parties viewed the Whitecourt cemetery services as benefiting residents of both municipalities. In 2020 an equal number of Woodlands and Whitecourt residents bought plots or niches at the Whitecourt Cemetery. The 2020 data establishes that the cemetery service continues to be an intermunicipal service. Therefore, I direct the parties to include the Whitecourt Cemetery services in the ICF. Whitecourt is the municipality responsible for the intermunicipal cemetery services provided at the Whitecourt Cemetery.

[488] The evidence convinces me that the costs to be shared here include all operating costs, and all capital costs to maintain, repair, replace, expand or improve the cemetery and its services. There is the long history of cost share agreements and previous cost sharing on operating and capital costs, coupled with Woodlands’ approval of the 2020 capital

expenditure. The capital costs are outlined and will be updated in the lifecycle plan Whitecourt developed for the cemetery. For the reasons stated earlier, I do not include the Administrative Overhead expenses claimed by Whitecourt. Revenues will be applied against the costs to determine the net costs before determining Woodland’s contribution. This has been the common practice by the parties in their cost share agreements over the last 23 years.

[489] The parties are used to cost sharing cemetery services on a catchment area model. It makes sense to continue this model. The catchment area is a simple, efficient method. However, I find Whitecourt’s proposed catchment area is too wide and encompasses electoral districts, such as Anselmo, Blue Ridge and Goose Lake. Whitecourt has not proven the cemetery services benefit residents further than the catchment area in the 2013 Cost Sharing Agreement. I therefore set the catchment area for the cemetery services as the area described as Woodlands Electoral Districts 2, 3 and 4, which I estimate to closely replicate the historically agreed service area.

[490] Woodlands shall contribute to Whitecourt a portion of Whitecourt’s net costs for Whitecourt’s cemetery services calculated by dividing the population in Electoral Districts 2, 3, and 4 by the total population of Whitecourt plus Electoral Districts 2, 3, and 4.

$$\text{contribution} = \frac{\text{Population of Woodlands Electoral Districts 2, 3 and 4}}{\text{Population of Whitecourt + Population of Woodlands Electoral Districts 2, 3 and 4}} \times \text{net costs}$$

Population numbers will use the official census as registered with Alberta Municipal Affairs for the current year.

11. Transportation

11.1 Fringe Roads

[491] Whitecourt seeks a direction that Woodlands pay all the costs associated with the construction and maintenance of three fringe roads which are located within the town but primarily service and benefit Woodlands’ residents who commute to town. The three roads are the portions of West Mountain Road, Tower Road and Blue Ridge Road located within Whitecourt’s boundaries. The same arrangement exists under the Public Highway Agreement, which Woodlands sought to repudiate in 2020. Since the Town had no choice but to do winter maintenance on these roads after the County communicated its intention

to no longer observe its obligations under the Public Highway Agreement, the County ought to be required to reimburse the Town for those costs retroactive to January 1, 2020.

[492] Woodlands says the maintenance of these roads is not an intermunicipal service. Each municipality maintains its own roads. The Public Highway Agreement contained reciprocal arrangements but when Whitecourt annexed Flats Road, the reciprocity ended so Woodlands repudiated the agreement.

[493] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Peter Smyl, Chief Administrative Officer for Whitecourt, and
- Andre Bachand, Director of Infrastructure Services for Woodlands.

Overview of the construction and maintenance service for “fringe roads”

[494] The construction and maintenance on three collector or arterial roads (the fringe roads) dates back to 1988, before Woodlands existed. In 1988 Whitecourt and the then Ministry of Transportation and Utilities entered into a Public Highway Agreement for the management, maintenance and construction of certain fringe roads. Whitecourt was responsible for Flats Road, which at the time was outside Whitecourt’s boundaries. In exchange, the Ministry was responsible for the portions of West Mountain Road (also known as Govenlock Road) and Tower Road located within Whitecourt’s boundaries.

[495] In 1999, Woodlands was formed as a municipality. Woodlands became responsible for the Province of Alberta’s obligations for West Mountain Road and Tower Road, although the Public Highway Agreement was not updated to reflect Woodlands’ status. In 2020 Whitecourt annexed the portion of Flats Road, incorporating Flats Road within Whitecourt’s boundaries, and continued responsibility for maintaining the portion of Flats Road.

[496] Blue Ridge Road is another collector road within Whitecourt’s boundaries. Whitecourt maintains this road as a rural collector road, defined under current design standards as an open ditch gravel road.

[497] The following diagram shows the location of the four roads within Whitecourt and Woodlands.

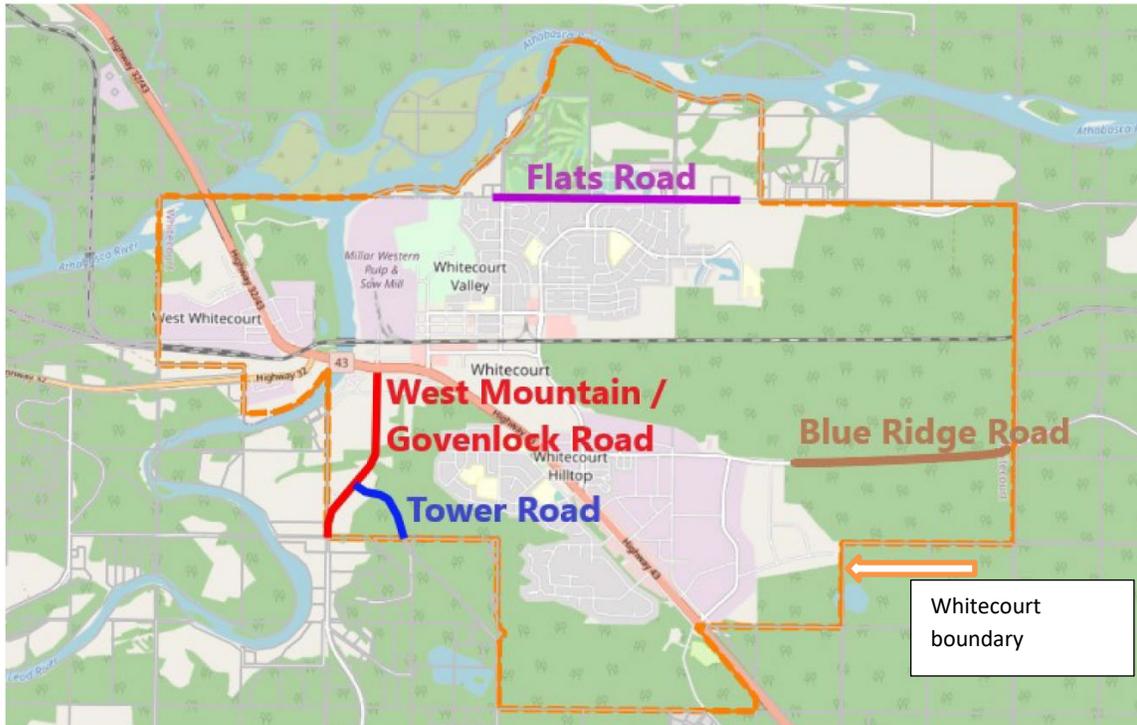


Figure 6 Fringe Roads

[498] Each party performed its obligations under the Public Highway Agreement and Whitecourt maintained the portion of Blue Ridge Road within its boundaries. In 2012 Woodlands complete road base construction at Tower Road and West Mountain Road. In 2014 Woodlands completed the paving project at Tower Road.

[499] On November 3, 2020, Woodlands Council accepted a recommendation from Mr. Bachand to declare the Public Highway Agreement void. Mr. Bachand advised Woodlands Council that when Whitecourt annexed Flats Road, the mutual road maintenance obligations ended. He unsuccessfully attempted to negotiate a new contract with Whitecourt that would involve Woodlands using Whitecourt’s salt shed.

[500] On November 3, 2020, Woodlands Council directed its administration to send a letter to Whitecourt advising that Woodlands would be withdrawing from the Public Highway Agreement. There is no evidence such a letter was sent by Woodlands or received by Whitecourt. From then, Woodlands decided it would not perform any construction or maintenance on the portions of West Mountain Road or Tower Road located within Whitecourt’s boundaries. Whitecourt had to step in to perform winter maintenance on these roads.

[501] In 2021, Woodlands did allow a contractor it had engaged on a three-year road servicing agreement to complete work under that agreement on West Mountain Road or Tower Road.

[502] Whitecourt has different road maintenance standards for these roads than Woodlands did. Whitecourt would maintain them as rural collector roads, like Blue Ridge Road. Mr. Smyl and Mr. Bachand disagree on the costs to maintain roads based on the different standards used by the two municipalities.

[503] According to Mr. Smyl, West Mountain Road, and Tower Road primarily benefit Woodlands' residents and provide access to Woodlands' residential properties in the area. Similarly, Blue Ridge Road primarily benefits Woodlands' residents in the area. Whitecourt provided maps with Woodlands' population to demonstrate the proximity of these roads to Woodlands' residences. Mr. Bachand confirmed there is little development in Whitecourt adjacent to these roads and the roads connect the town to residential areas in the county. Mr. Smyl and Mr. Bachand said some Whitecourt residents and businesses use these three roads. Some tourists also use these roads.

[504] Whitecourt also services other collector and arterial roads within its boundaries at its own costs. About 44% of its road system is classified as arterial. These roads give access to commercial areas and other services sites (e.g. schools, churches, provincial buildings, hospital) used by both Whitecourt and Woodlands' residents. When it completes traffic studies to determine the level of service to provide on the roads, it included the traffic from outside Whitecourt's boundaries.

[505] Whitecourt used a portion of the linear tax revenue shared in the now terminated 2013 Cost Sharing Agreement to offset costs for maintaining collector and arterial roads.

Analysis and findings on services to construct and maintain fringe roads

[506] This arbitration is not about whether Woodlands could repudiate the Public Highways Agreement. In this arbitration, I accept that Woodlands did repudiate the agreement.

[507] Whitecourt has established that the construction and maintenance of specific collector and arterial roads, particularly West Mountain Road, Tower Road, and Blue Ridge Road are intermunicipal services. These roads benefit residents of Woodlands by providing them access to their properties and access to Whitecourt. For 20 years Woodlands recognized this benefit on West Mountain Road and Tower Road by adhering to its obligations in the Public Highway Agreement.

[508] I direct that the services of construction and maintenance of West Mountain Road,

Tower Road, and Blue Ridge Road be included in the ICF. Considering how and when Woodlands repudiated the Public Highway Agreement, I am reluctant to use the reciprocal responsibility model in that agreement because it would only create a potential for future disputes. The roads are in Whitecourt's municipal boundaries; therefore, Whitecourt is the municipality responsible for providing the service. The parties have different standard levels for road construction and maintenance and disagree on potential costs. To clarify, Whitecourt will set the standards for the service levels for the portion of these roads located within Whitecourt's boundaries.

[509] Turning to the funding contribution of Woodlands towards this service, I find Woodlands should contribute towards the costs of constructing and maintaining West Mountain Road, Tower Road, and Blue Ridge Road. Until November 2020, Woodlands paid 100% of the costs on West Mountain Road and Tower Road while Whitecourt paid the costs on Blue Ridge Road. I direct Woodlands, from January 1, 2020, to contribute to Whitecourt funding to cover 80% of all the net costs of constructing and maintaining the portions of West Mountain Road, Tower Road and Blue Ridge Road located within Whitecourt's boundaries. This percentage reflects that some Whitecourt residents and businesses also benefit from occasional use of these roads.

[510] If Whitecourt increases the standards of service levels on these roads, which would increase the contribution required from Woodlands, Whitecourt must give one fiscal years' notice of the change and in the interim, Woodlands will not be required to contribute costs attributable to the increase in standards.

11.2 Rail Crossings

[511] Whitecourt says it has to maintain the rail crossings that Woodlands' residents and businesses use. It says this maintenance of the rail crossings is an intermunicipal service. Whitecourt argues the evidence shows that Woodlands' residents and businesses derive a much greater benefit from the presence of the railroad than Whitecourt residents and businesses, and yet the Town is obligated to pay costs associated with these rail crossings. Whitecourt seeks a contribution from Woodlands for 50% of the costs associated with maintaining rail crossings in the Town.

[512] Woodlands says the maintenance of the rail crossings is not an intermunicipal service. It argues that since rail services are provided by Canadian National Railway, any costs borne by Whitecourt with respect to the rail crossings fall outside the scope of an ICF. Whitecourt alone determines where to build its roads and where the road will cross the rails. The parties have never agreed to cost share such services.

[513] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witness:

- Peter Smyl, Chief Administrative Officer for Whitecourt.

Overview of the maintenance of the rail crossings

[514] Canadian National Railway (CN) has 7.5 kilometers of rail line through Whitecourt, which includes five roadway crossings (three municipal, one provincial and one private). The rail line runs from Edmonton to just outside Fox Creek. The rail line services four businesses located within Whitecourt and other businesses located in Woodlands County and MD of Greenview.

[515] A municipality is responsible for paying costs to maintain railway crossings over local roads within its borders and is required to respond to new infrastructure obligations imposed by Transport Canada. The Canadian Transportation Agency specifies that Whitecourt is responsible for all costs associated with the following rail crossings over local roads:

- 47 Street
- Dahl Drive
- 51 Street.

Whitecourt is planning to construct a rail crossing at 33 Street in 2025.

[516] By 2017 Whitecourt completed a 47th Street pedestrian overpass at the rail crossing, which was a requirement from CN into order to proceed with the section of roadway across their tracks. The roadway was required for future growth and the rail crossing was outside of the scope of what would normally be required from a developer, therefore Whitecourt funded the pedestrian overpass from its off-site levies.

[517] Whitecourt's costs include annual maintenance and capital costs. Due to higher volumes and heavier loads in the rail cars, rail crossing life spans have shortened. CN standards for railway crossing continue to change and include timelines for municipal actions. Whitecourt has applied for grant funding for two recent upgrading projects but neither was successful.

[518] Whitecourt conducts annual municipal inspections and maintenance of road surfaces, vegetation and drainage. CN conducts monthly signal and gate maintenance for which CN

bills Whitecourt \$1,571.50 per month. Whitecourt also incurs costs associated with planning and development to work around the impacts of rail traffic on land use planning and emergency services associated with rail car training, dangerous goods training and costs incurred during an incident event.

[519] In 2009 Whitecourt, through the parties' joint liaison committee, supported Woodlands establishing a large-scale gravel pit within the county west of Whitecourt (the Silver Creek Gravel Pit).

[520] Woodlands receives annual gravel levy revenues from this gravel pit. Under section 409.1(2) of the *MGA*, a municipality may impose a levy on all sand and gravel businesses operating in the municipality to raise revenue to be used toward the payment of infrastructure and other costs in the municipality. Woodlands passed a bylaw imposing the levy and required all businesses to report their tonnage. In 2019 the levies generated to Woodlands were \$295,200. The average annual levy revenue between 2015 and 2019 was \$269,438.

[521] When the gravel pit began the number of rail cars operating on the rail line increased. This increased vehicle and pedestrian traffic disruption at the rail crossings. Whitecourt's rail crossing maintenance costs increased. In 2011 CN required Whitecourt to construct a pedestrian footbridge at the 47 Street rail crossing to account for increased rail traffic. The joint liaison committee requested Woodlands share expense for the footbridge.

[522] Although the joint liaison committee discussed the impact of Whitecourt's increasing maintenance costs, the parties did not agree to cost share the rail crossing maintenance services. In the 2013 Amended Cost Sharing Agreement the parties agreed Woodlands would transfer 10.4% of its linear assessment to Whitecourt (an increase from the minimum \$300,000 lump sum transfer from the 2008 Cost Sharing Agreement). Mr. Smyl considered this revenue to offset, in part, the costs of the rail crossing maintenance so Whitecourt saw some reciprocity in that agreement.

[523] Whitecourt compiled statistics from CN and the businesses in Whitecourt, Woodlands and MD of Greenview which use CN to ship materials. The information is not precise. Based on these statistics, businesses in Whitecourt account for 14% of the total rail cars passing through the town. MD of Greenview businesses account for 6%. Businesses in Woodlands account for 80% of all rail cars shipped.

[524] In 2010 the parties entered into the Tax Revenue Sharing Agreement where they agreed to share 30% of municipal taxes on all new non-residential development in a specified area in and around Whitecourt. Whitecourt also used a portion of this revenue to offset the

maintenance of the rail crossings.

Analysis and findings on rail crossing maintenance services

[525] I find the maintenance of the rail crossings at local roads is an intermunicipal service provided by Whitecourt that benefits the residents and businesses in Woodlands. Whitecourt provides maintenance services on three CN rail crossings to keep the rail crossing safe and useable. Businesses in Woodlands use the rail line to transport, among other things, gravel and sand from the gravel pit located in Woodlands, west of Whitecourt. Woodlands obtains levy revenue from the businesses who use the rail line. Those rail crossings also enable the Whitecourt Fire Department to access properties in the Woodlands fire service area and enable Woodland's residents to access schools in Whitecourt and the Whitecourt Hospital. They enable Woodland's residents to access the Whitecourt downtown for retail businesses or other services. I direct the service of maintaining rail crossings at local roads be included in the ICF. Whitecourt is the municipality responsible for providing the service.

[526] I also find Woodlands should contribute to the costs of providing this service. The costs include all direct annual maintenance and capital costs to maintain the rail crossings at 47 Street, 51 Street and Dahl Drive. For the reasons stated earlier, I do not include the Administrative Overhead expenses claimed by Whitecourt. The uncontradicted evidence is that the businesses in Woodlands use the rail line four times more than businesses in Whitecourt. Woodlands seeks only a 50% cost share. An equal sharing of costs in the circumstances is equitable and reasonable. I direct that Woodlands contribute funding to Whitecourt for the service of maintaining the rail crossings at 47 Street, 51 Street, and Dahl Drive equal to 50% of the annual maintenance and capital costs for these crossings.

[527] On the prospective 33 Street rail crossing, I direct the parties to include the maintenance of this rail crossing in their ICF as part of the projects to be discussed and planned for the construction and maintenance and funding of this crossing in the future.

11.3 Transit

[528] Whitecourt argues Woodlands ought to contribute to the Town's transit service (operating and capital costs) based on a catchment area comprising Woodlands' Electoral Districts 2, 3 and 4. These residents live immediately adjacent to Whitecourt and regularly commute to town. Most of Woodlands' population lives in Electoral District 2. Transit services were specifically not included in previous cost share agreements, but Whitecourt submits Woodlands' residents regularly use and benefit from the Whitecourt transit service.

[529] Woodlands argues transit services are not intermunicipal services. The transit service operates only within the boundaries of Whitecourt. It is a user pay system that requires municipal subsidy. It argues Whitecourt's best evidence of benefit to Woodlands' residents is hearsay evidence gathered by bus drivers and shared with the Director of Community Services. There is also a list of purchasers of ticket packs and bus passes that put Woodland's residents among a small minority of users.

[530] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witness:

- Chelsea Grande, Director of Planning & Development for Whitecourt.

Overview of the transit services

[531] Transit services have existed in Whitecourt since 2005. A society ran the first transit services as a dial-a-bus service but transferred the operations to Whitecourt in 2007. Whitecourt continues to offer transit services through its Community Services Department with advice from the Community Services Advisory Board. The board includes one representative from Woodlands' Council and public members of either Whitecourt or Woodlands within any of the cost shared service areas.

[532] In 2009, at Woodlands' request, Whitecourt started a trial period for transit services into Woodlands on Fridays. Woodlands paid \$19,000.00 for the service. The service ended in 2010 because Woodlands felt the use was not sufficient. Except for this project, the parties have never cost shared transit services.

[533] In 2014 Whitecourt began to offer public transit services. The transit system operates only within Whitecourt's boundaries. The route has 42 stops, including proximity to schools and the Millar Centre. Regular transit service operates six days per week. Dial-a-bus operates five days per week.

[534] Whitecourt owns and operates the transit system. Users pay for individual tickets, group tickets or regular passes. The 2019 to 2021 budgets estimate an annual loss of approximately \$440,000.

[535] Whitecourt has limited data on transit use by Woodlands' residents. Ms. Grande received anecdotal information from bus drivers about Woodlands' residents carpooling to town and using the transit service to access medical appointments, schools, events or to do errands. In 2020 Whitecourt compiled statistics from unique purchasers of bus passes and ticket books. Single fares were not tracked. The results show 17% of the unique purchasers (46 purchasers) were Woodlands' residents. In addition, the Whitecourt Seniors Circle

charters the transit services and 27% of its members are Woodlands' residents.

Analysis and Findings on transit services

[536] The evidence establishes that the Whitecourt transit service is an intermunicipal service. Whitecourt provides the service, and it is municipally funded. It is available to all Woodlands' residents without distinction. There is no price differentiation between Whitecourt and Woodlands' residents. The statistics of unique purchasers of bus passes and ticket books shows Woodlands' residents use and benefit from the transit system. Seniors also benefit from the service when the Whitecourt Seniors Circle charters the transit services. Therefore, I direct that the Whitecourt transit services be included in the ICF. Whitecourt is the municipality responsible for the intermunicipal service.

[537] On the question of what contribution Woodlands should make to this service, I find this is an appropriate time to use the lump sum contribution model. There is insufficient data about use or benefit to justify a catchment model or a percentage of costs model.

[538] I set the Woodlands' contribution for the transit service as an annual lump sum payment which includes an annual increase. A lump sum will not require extensive budgeting, accounting or justification by either municipality. For this service area, a lump sum will reduce the potential for future disputes about how to justify the claimed costs, particularly where the sum is not large.

[539] The percentages resulting from 2020 data on purchases and Whitecourt Seniors Circle membership is not an accurate reflection of usage that can assist with calculating a lump sum contribution. While the percentages appear high, the actual numbers are low. Most Woodlands' purchasers bought ten-ticket packages or special event packages, rather than annual passes. However, the principle of equitable sharing of costs demands that Woodlands contribute some amount to the transit services. Based on the evidence before me, I set a nominal lump sum amount of \$20,000 on January 1, 2020. This sum represents less than 5% of the net costs but recognizes Woodlands' obligation to contribute.

[540] The costs of the service will likely increase annually, and the lump sum should increase annually to reflect increases. It is possible to apply various cost of living formulae, but a fluctuating percentage increase is more administratively burdensome for the small lump sum. I prefer to set the percentage of increase to reduce the administrative burden. I set the annual increase at 2% to reflect an estimated amount for increases in costs of personnel, equipment and products for the transit system. The lump sum effective January 1, 2020 is \$20,000.00 with a 2% increase on the previous year's amount each January 1 thereafter. For example:

January 1, 2020	\$20,000.00
January 1, 2021	\$20,000.00 + 2% (0.02 x 20,000) = \$20,400.00
January 1, 2022	\$20,400.00 + 2% (0.02 x 20,400) = \$20,808.00.

12. Ecole St. Joseph School

[541] Whitecourt argues it constructed infrastructure required to build the Ecole St. Joseph School (the school) and the construction of the infrastructure are an intermunicipal service. Whitecourt has ongoing costs relating to three debentures associated with that construction. It asks for a direction requiring Woodlands to contribute a proportionate share of the ongoing debenture payments. Woodlands suggests using a catchment model to calculate the contribution based on the percentage of Woodlands' population which resides within Electoral Districts 2, 3 and 4.

[542] Woodlands argues the construction of the infrastructure services related to the school is not an intermunicipal service. It asserts Whitecourt is seeking a contribution for a past capital project for which there was no agreement between the parties.

[543] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Jennine Scheck Loberg, Director of Planning & Development for Whitecourt, and
- Shannon Wharton, Executive Assistant and FOIP Coordinator for Woodlands.

Overview of the construction services for Ecole St. Joseph School

[544] Ecole St. Joseph School is in Whitecourt. Students from Whitecourt and Woodlands attend the school.

[545] In 2006 Whitecourt began efforts to secure land on the fringe of Whitecourt to construct future projects. Whitecourt called this area the Athabasca Flats East development area. It consulted Woodlands Council on the land. In 2007 Whitecourt approved an area structure plan for the subdivision.

[546] Between 2006 and 2009 the parties discussed the possibility of combining a new high school with a performing arts centre.

[547] In 2012 the parties held discussions with the Province of Alberta which led to a decision to construct the school. In 2014 the Province of Alberta announced funding for the school. Whitecourt began to plan for construction of the necessary infrastructure in the subdivision

to enable the school construction. At the time, developers had not come forward to develop the Athabasca Flats East subdivision, so Whitecourt had to proceed with construction of infrastructure without the usual developer involvement. Normally, the developer of the new subdivision would provide a fully serviced school site to the municipality, without the municipality incurring costs for construction of the infrastructure.

[548] In July 2014 Whitecourt, Woodlands and the school district agreed to cost share a partnership for the project. The shared costs did not include the costs associated with the infrastructure.

[549] In 2015 Woodlands supported Whitecourt's application for grants to defray the development costs for the subdivision. By this time the performing arts centre had been removed from the plans.

[550] In 2015 and 2016 Whitecourt borrowed \$10 million to pay for the infrastructure construction, resulting in three debentures with terms ending in 2035 and 2036. Whitecourt pays \$627,000 per year on debenture payments.

[551] Eventually, Whitecourt provided the school division with a fully serviced site for the school and a playground.

Analysis and findings on the construction of infrastructure for Ecole St. Joseph School

[552] In this case, I do not find it necessary to determine if the construction of the infrastructure is an intermunicipal service. The contribution question determines the answer to this dispute. Assuming the construction services would qualify as an intermunicipal service and the debt financing costs were related to the infrastructure construction, I would not direct Woodlands to contribute to the debenture costs in the circumstances.

[553] Section 708.38(1)(f) enables the arbitrator to have regard to any other matter they consider relevant. On this matter, I consider the passage of time relevant.

[554] Concerning the time, I again rely on the history of the parties. The history does not favour Whitecourt. During the decade or more this school was being discussed, the parties negotiated two amendments to their cost sharing agreements (2008 and 2013). In 2005 the parties knew the Athabasca Flats subdivision would be the likely location of a new school. The subdivision did not yet exist. For several more years the parties continued to plan for the school. By November 2012 the parties and the school division anticipated the approval

of a new school. The parties did not include any reference to the school site or the infrastructure required for the site in either cost share agreement, although they did amend other funding contributions.

[555] In 2014 the parties and school division discussed and agreed on other project funding, but again excluded the infrastructure construction costs. Whitecourt decided to proceed with the infrastructure construction with little more than an understanding of general support from Woodlands. Since it obtained the financing in 2015 and 2016, Whitecourt has not actively pursued Woodlands' contribution to the debenture costs. In my view, too much time has passed and I, as the arbitrator, should not impose these costs now.

13. Municipal Centre

[556] Whitecourt asserts Woodlands should contribute to costs associated with the performing arts component of the new Municipal Centre based on a catchment area that includes the County's entire population, since the Performing Arts Centre component of this project is unique within the Town and County. Also, Whitecourt asserts Woodland should be required to contribute to costs associated with the construction of the new Library to be housed in the Municipal Centre based on the proportion of the County's population which resides within Electoral Districts 2, 3 and 4. Whitecourt is not seeking any contributions from the County for the portion of the Municipal Centre which will house Whitecourt's administration offices and new council chambers.

[557] Woodlands argues the Municipal Centre does not exist and there is no evidence of benefit to its residents. It argues Whitecourt is merely seeking a capital contribution for a future service.

[558] On this topic, in addition to the general evidence from all sources, the parties provided sworn witness statements and oral testimony from the following witnesses:

- Chelsea Grande, Director of Community Services for Whitecourt, and
- Shannon Wharton, Executive Assistant and FOIP Coordinator for Woodlands.

Overview of the services

[559] Whitecourt proposes to build a new facility, the Municipal Centre, to house a performing arts centre with multipurpose rooms, kitchen, bar and art gallery, new library and new Whitecourt municipal and administration offices, including council chambers. Currently, Whitecourt's library is housed in a separate library building (discussed in the segment on Library Services). Whitecourt's administration offices (including council

chambers) are partially housed in the Forest Interpretive Centre (discussed in the segment on Forest Interpretive Centre). The performing arts centre does not exist.

[560] Since 2008 the parties have had ongoing discussions and studies about various configurations of the performing arts centre. In reviewing the history of the discussions and various configurations, I have relied on the original documents, where provided, rather than Ms. Grande's written statement which characterizes the facility as the "Municipal Centre" throughout.

[561] One initial plan was to incorporate the performing arts centre into the Ecole St. Joseph high school proposed to be built on land jointly purchased by the two municipalities for new development on the outskirts of Whitecourt. As noted in the earlier segment in this award dealing with the school, eventually the school was built without the performing arts centre.

[562] In early 2009 Whitecourt established an Arts and Culture Committee to explore the concept of an arts and culture centre. Woodlands had one representative on the committee. This is the common representation that Woodlands receives on any of Whitecourt's advisory committees dealing with services that benefit residents of both municipalities.

[563] In February 2009 Woodlands Council discussed the Arts Centre and heard a report about the Joint Liaison Committee's discussions pertaining to the creation of the Arts Centre Steering Committee. Woodlands appointed Councillor Caron to the Arts Centre Steering Committee.

ARTS CENTRE STEERING COMMITTEE

Mayor Rennie presented an overview of the discussion held during the recent Joint Liaison Committee meeting pertaining to the development of the Arts Centre Steering Committee.

Councillor Caron noted interest in becoming the Council representative on this committee, further noting the importance of reviewing the potential of proceeding with the development of a facility for arts performances, etc.

[564] In October 2009 the Joint Liaison Committee discussed capital projects, specifically the Arts Centre. The one Woodlands' representative recommended the importance of setting aside reserves for the project to avoid stagnation of the project.

[565] On October 21, 2009 the Joint Liaison Committee received a report concerning the Arts Centre. The arts centre committee was preparing to obtain a feasibility study. One

Woodlands representative expressed the view that the arts centre needed to be a facility that drew well known performers and would enable larger audiences, not a multi-use facility.

[566] In 2009 Whitecourt commissioned Bannister Research to conduct a survey of residents of Whitecourt and Woodlands to determine the level of interest in development of an arts facility and in a public transit system. Concerning the arts facility, Bannister Research reported:

- 42% of responding households would “likely” use an arts and culture facility for performing arts. Within that group, the support for other uses of the facility was:
 - 32% for visual arts,
 - 29% for viewing and appreciation, and
 - 38% for multi-purpose and meeting spaces.
- 78% support of respondents would support construction of an arts and culture facility if it meant increased taxes.

[567] In 2011 Whitecourt commissioned RC Strategies Inc. (RC Strategies) to obtain a Performing Arts Centre Feasibility Study. RC Strategies recommended that, if Whitecourt and Woodlands decided to proceed, the performing arts centre (either 250 or 500 seat configuration) be a stand-alone facility (not attached to a school) developed in two phases. Phase 1 would build the performing arts aspects with some meeting rooms. Phase 2 would add more meeting rooms, gallery spaces, museum and archive space and a banquet facility. RC Strategies presented two operational models: operated by a society or operated by a municipality. RC Strategies recommended a society be formed to oversee the project, raise funds and operate the facility, although a municipality could do so if no partner was available. It observed that the society model would incur less public tax support (potentially saving over \$400,000 per year). The society option included leveraging volunteer involvement and use of non-municipal staffing leading to lower fixed costs. At the time, no society existed. The projected capital costs in 2011 were \$12 million to \$15.3 million, depending on the size of the facility.

[568] RC Strategies recommended a plan of action for Whitecourt and Woodlands concerning the performing arts centre, including:

- forming a society to begin fundraising, oversee the project and

potentially operate the facility,

- making a commitment by both Councils to move forward with design and development of a chosen facility option (likely based on community affordability) and achieving internal financing commitments,
- continuing external grass roots fundraising,
- conduct major funding including corporate sector sponsorship, government grant application and internal financing options,
- once necessary funds were committed, soliciting the help of design and construction professionals to design and construct the facility, and
- developing a detailed business plan once the design process was initiated.

[569] In 2012, Group 2 Architecture (Group 2) was commissioned to conduct a needs assessment for the Whitecourt & District Public Library. Group 2 recommended Whitecourt revitalize the 20-year-old library. The report did not include details of how to do the revitalization but gave preliminary ideas for options. The report specified that pursuing any of the options would require a concept study to be completed to thoroughly investigate all impacts and requirements of the selected option. The preliminary options included:

- expansion and renovation in the existing location,
- construction of a new facility in the existing location,
- relocation of the library as a standalone facility, and
- partnership with a new performing arts centre, town hall, school facility or senior's centre.

[570] In October 2013 the local newspaper reported from an interview with the chair of the school division. The chair discussed the possibility of a performing arts centre partnering with the new school. According to the chair's statement, Whitecourt and Woodlands' resources would fund the performing arts centre portion of the project.

[571] In 2015 the two Councils approved similar but different motions about the arts centre. Whitecourt approved a motion to develop a detailed business plan for the Arts and Culture Centre to submit to both municipal Councils. Woodlands approved a motion to have its

administration bring the detailed business plan for a Cultural Arts Centre to council for review. Whitecourt agreed to promote, in partnership with Woodlands, the Arts and Culture Centre at the upcoming Whitecourt Trade Fair; Woodlands only agreed to redistribute information about the Cultural Arts Complex at the trade fair.

[572] In 2015 Whitecourt continued public consultation on an arts and culture centre through two open houses and an online survey. Woodlands included general information on the performing arts facility concept at a station at three of its budget open houses and recorded public feedback.

[573] In late 2015 Whitecourt retained Webb Management Services (Webb) to develop a business plan for the proposed Arts and Cultural Centre. Webb's report (January 2016) relied on the public support presented in Bannister Research's 2009 report and repeated in RC Strategies' 2011 report. It also relied on Whitecourt's feedback from the 2015 open houses and online survey. Webb looked at comparable facilities in comparable municipalities. Edson, 97 kilometers from Whitecourt, had a 141-seat centre for a population almost the size of Whitecourt. Jasper, 297 kilometers away, was building a centre for a population half the size of Whitecourt. Camrose and Grande Prairie had multiple facilities, but their populations were about two to five times larger than Whitecourt. Webb recommended Whitecourt proceed with a larger facility if it could partner with the schools as a financial partner (capital, fees or operating grants). If a school partner was not available, Webb recommended proceeding with a smaller venue. Webb recommended Whitecourt operate the facility but form a society to attract private sector support. The report projected a requirement for \$300,000 public funding from Whitecourt and provincial and federal governments plus school contributions and large private sector funding. The report contains no findings and makes no recommendations concerning municipal partners or Woodlands' contributions. The report was presented to Whitecourt's and Woodlands' Councils and discussed at two joint meeting in 2016. Both Councils decided to initiate the planning process.

[574] In 2016 Woodlands supported Whitecourt's application for an Alberta community partnership grant for the "Regional Recreation and Culture Integration Plan Project". The project involved starting on schematic and detailed designs for the performing arts centre and library.

[575] In July 2016, Whitecourt retained BR2 Architecture (BR2) to "develop a concept design for the new Town of Whitecourt Municipal Cultural Centre". The report, issued in mid 2017, said the proposed new facility was to include: "A new Town Administration Office; a Public Library; and as a future option, an Arts and Cultural Centre, including a major

performing arts theatre and related amenities.” BR2 assumed it would be one integrated facility but was confident the concepts could be adapted to three single buildings, if required. BR2 provided a detailed review of the concepts for all three buildings.

[576] BR2 met regularly with Whitecourt Council, a building committee, an adhoc building committee, an administration building committee, a theatre building committee, and a library building committee. Woodlands had two representatives on these six committees: one councillor on the adhoc building committee and one councillor on the theatre building committee. BR2 captured a key element of the success of the facility in the following words:

It is essential to the successful development of the facility that the new Whitecourt Municipal Cultural Centre meets overall “vision” and the current and future needs of each Administration Department, the Public Library, the cultural and performing arts needs of the community, integrates into the community, promotes growth, prosperity opportunity and receives overall support of the community.

[577] BR2’s report recommended three facilities (Library, Administration Building, Theatre Building) joined through a central public galleria. It provided cost estimates for servicing and construction based on 2017 values:

Administration Building	\$7.3 million
Library Building	\$4.51 million
Site development (servicing, parking and landscaping) for the Administration and Library Buildings	\$1.1 million
Theatre Building	\$22.24 million
Site development for the Theatre Building	\$0.45 million

[578] In late 2017 Whitecourt approved the library concept plan. In April 2018 the Joint Liaison Committee learned Whitecourt had approved the concept plan. They discussed the library needs assessment report and agreed the Library Board should present the library needs assessment to Woodlands’ Council. They also agreed to add the Municipal Centre to the agenda for the joint planning session for the councils. The committee also discussed potential facilities and areas and agreed to conduct a joint tour of facilities before the planning session.

[579] On June 27 and 28, 2018 both Councils met in a joint retreat or planning session. They discussed the Library Needs Assessment Report, the Municipal Centre, the draft IDP, the ICF process and the airport. At this meeting, Whitecourt presented two options for the library: 1. Link it to a “municipal centre” (aka administration building) or 2. Link it to a municipal centre and an arts and culture centre. The meeting was reminded of BR2’s recommended eight phases for construction and check-in points for Councils, noting the project could be postponed or terminated any time up to the end of phase 5. The phases were identified as:

Phase and Deliverable	Complete
1. Pre-design size, scope and analysis	✓
2. Concept Design Schematic (floor plans and preliminary cost estimates)	✓
3. Design Development Higher level mechanical, structural, electrical, building elevations, and site design detail	
4. Construction Documents Final design/drawings, specifications, tenders	
5. Bidding/ Tender Process Council tender award	
6. Construction and Contract Administration	
7. Construction On site functions	
8. Post Construction	

[580] BR2 reiterated the Arts and Culture Centre would have up to a \$350,000 per year operating deficit. It also projected the library’s facility operating costs would increase by 35%. There is no evidence that either Council approved any option moving forward.

[581] Whitecourt applied for a federal grant to support the project and received \$15 million which requires construction to begin by the summer of 2022. The project cost for the library and performing arts centre are not yet final but estimated to be \$39 million. Although Ms. Grande understood Woodlands had committed to capital funding for the library and performing arts centre, Woodlands’ Council had not approved a request for decision relating to the funding.

[582] In 2018 Whitecourt proposed to begin the public education campaign for the Municipal Centre. Whitecourt sought Woodlands’ participation in the public education campaign, but Woodlands did not agree to participate. In October 2018, Woodlands wrote to Whitecourt to advise of Woodlands’ concern that joint participation in a public education campaign for the Municipal Centre would convey a message that Woodlands supported all three

components of the Municipal Centre. Woodlands also indicated interest in seeing a report on the results of the campaign.

Analysis and findings on the services for construction of the Municipal Centre

[583] The first question is whether any or all of this project constitutes an intermunicipal service? In this regard, I would characterize the intermunicipal service as the “provision (construction) and maintenance of the building or facility required to provide the access to a performing arts venue or library”. Whitecourt does not seek contributions for the Administration Building component. I agree there is no evidence that anything about the construction of the Administration Building would qualify. Each municipality provides and pays for its own administration building and council chambers.

[584] Regarding the construction of a new performing arts centre or arts and cultural centre incorporated within the Municipal Centre, I find Whitecourt has overstated Woodlands’ involvement and commitment to the project. As a result, this part of the project falls short of the purposes identified in sections 3 and 708.26 of the *MGA*.

[585] Under section 3 a municipality has multiple purposes. One purpose is to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality. In moving forward with the Municipal Centre as it proposes, Whitecourt is certainly acting for that purpose.

[586] A second purpose of a municipality, which mirrors the purpose stated in section 708.27(a), is to work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services. In moving forward with the Municipal Centre as it proposes, the evidence does not support a conclusion that there has been integrated and strategic planning or funding of two components of the Municipal Centre, specifically the arts building and the library building.

[587] At different times, the parties discussed and planned for a potential performing arts centre. In 2009 Whitecourt established the Arts and Culture Committee to explore the concept of an arts and culture centre, appointing one Woodlands councillor to the committee. The Joint Liaison Committee discussed the potential for a performing arts centre. Any expressions of support or vision by one Woodlands representative on the Arts and Culture Committee or the Joint Liaison Committee could not reasonably be viewed as expressions of Woodlands’ support or commitment to funding.

[588] In 2009 Bannister Research surveyed residents to determine the level of interest and support for a performing arts centre, with no reference to any other facilities. In 2011 RC

Strategies recommended the arts centre, if not attached to a school, be a stand-alone facility run by a society.

[589] The 2012 report by Group 2 concluded the Whitecourt Library needed revitalization. The last of four preliminary options presented for the library revitalization was a partnership with a new performing arts centre, town hall, school facility or senior's centre. The report contained no other references to a new Whitecourt administration building or the arts centre. There was no specific reference to the potential Ecole St. Joseph School. At the time the parties were discussing a partnership with the school division for a new school with a performing arts centre attached. The 2013 newspaper article shows the parties continued this arts-centre-school partnership discussion into 2013. There is no evidence that the parties shifted their discussions to focus on a partnership with a municipal administration building or a library.

[590] By 2015 the parties were still discussing the vision of a performing arts centre. Whitecourt agreed to get a detailed business plan for review. Woodlands agreed to review the business plan.

[591] Webb's 2016 business plan report demonstrates the vision was still on partnering with the schools. For example, the report says: "Our recommendation as to what should be built is contingent on the participation of one or more school divisions and the potential co-location of schools at the proposed Cultural Centre site." Otherwise, Webb's recommendation was to build a smaller stand-alone arts centre. Webb makes no reference to partnering the arts centre with the library or another building other than the school. From Webb's focus on two options of partnership with a school or stand-alone, I infer that Webb was not aware that a library partnership or other partnership was possible. I further infer that if Whitecourt understood there was a potential partnership with the library or an administration building, it would have raised the partnership possibility with Webb because at the time Whitecourt believed the Webb report would be reviewed by both municipal councils.

[592] Webb's report create a seismic change in the governance and operation of a future arts centre. Webb changed RC Strategies' recommendation that the parties establish a society to fundraise, oversee construction of, and operate the proposed performing arts centre. Instead, Webb recommended Whitecourt lead the project. Webb's report contains no rationale for recommending Whitecourt, not a society, be the lead on the project. Webb's report also makes no mention of partnership with or funding by other municipalities. Clearly Webb's scope of work focussed on the development of new facilities for Whitecourt, rather than development of new facilities to benefit both municipalities that might be

located in Whitecourt. In my view, Webb's recommendation that Whitecourt be the lead on the project significantly shifted the proposal for the performing arts centre but its recommendation was consistent with the scope of work. Its recommendations on funding were also consistent with the scope of work. However, the funding recommendations further shifted the focus to a project for Whitecourt's municipal purpose rather than a project for an intermunicipal purpose.

[593] In 2016 Woodlands supported Whitecourt's application for an Alberta community partnership grant for the "Regional Recreation and Culture Integration Plan Project". There is no evidence that Woodlands knew the project involved starting on schematic and detailed designs for the performing arts centre and library. By this time the possibility of partnering with the school division was dead. This is the first time the real possibility of a two-purpose facility arose. Coincidentally, the inclusion of the library would have altered the possibility of a new performing arts centre being located on the outskirts of Whitecourt. Whitecourt's library was located downtown, so a replacement library would likely be in a similar location.

[594] The next step was receipt of the report of BR2 in May 2017. BR2's report changed the previous concepts of the performing arts centre from a stand-alone facility or an arts centre-school facility, to a facility joined to a library or an administration building or both, or to three stand-alone buildings in close proximity to each other. BR2 provides no rationale for the change in concept. There is no other evidence to explain or give context to this shift. There is no evidence that explains when or how the concept of a new Whitecourt administration building entered the considerations. From the fact that BR2 consulted with individuals or groups who primarily represented Whitecourt's interests (only two committee members being from Woodlands), I infer that Whitecourt's vision became more prominent. There is no evidence that, before this report arrived, Whitecourt and Woodlands or their Joint Liaison Committee had discussed the potential of an arts centre joined to a library or to an administration building.

[595] BR2's report was clear that the administration building and library would be built first with the Arts and Cultural Centre an option to add later or at a different time. The proposed construction costs confirm this finding because the infrastructure costs for the administration building and library are shown as one set of figures, whereas the arts centre infrastructure costs are shown separately. The parties' original vision of a performing arts centre had shifted once again.

[596] From the land options reviewed by BR2, it is clear that Whitecourt had considerable influence over the site selection, which moved the project from the outskirts of Whitecourt

to downtown. This report really terminated the vision of a regional performing arts centre. Instead, BR2 advanced a vision of a major attraction in downtown Whitecourt, namely the Whitecourt Municipal Cultural Centre, housing the Town of Whitecourt, the Whitecourt Library and the Whitecourt Theatre.

[597] In June 2017 the councils met in a joint session. The presentation on the arts centre was led by a Whitecourt employee. From the documents shared at the meeting, the presentation focussed on building the library based on two options – with the administration building or with the arts centre. There is no evidence of any decisions being made at the meeting. There is no evidence that Woodlands made any decisions following this meeting except the 2018 decision to not participate in the public education campaign lest their involvement be construed as support for all components of the Municipal Centre.

[598] The parties here must create an ICF. However, in doing so they are obliged to consider and apply both the spirit and the letter of the law. From the evidence before me, I find the parties have not collaborated to plan the construction of either the arts and cultural centre or the new library. There is no evidence of integrated and strategic planning by both municipalities, except in the early days of the discussions on the performing arts centre.

[599] Whitecourt asserts that appointing one member of Woodlands to several committees demonstrates Woodlands' commitment to the projects. I disagree. One member may be seen as a token appointment because one person's voice or vote can easily be drowned out in discussion or votes. The representation should be sufficient to permit actual influence over the decisions and recommendations, without interfering with Whitecourt's legal authority. The parties have demonstrated such representation on the Joint Liaison Committee and the current Regional Waste Management Authority Board.

[600] The purposes of the intermunicipal collaboration, set out in sections 3 and 708.27, legally changes how municipalities plan for and make decisions about facilities or services that are or could be intermunicipal services. The legislation speaks to collaborative planning and delivery and funding. Collaboration requires more than one party. As a result, one municipality can no longer arbitrarily move forward with plans expecting to be able to pass a bill to another municipality. Nor can a municipality whose residents benefit from services provided by another municipality arbitrarily refuse to engage in planning or refuse to contribute financially. The historical relationship evidence in this arbitration shows that Whitecourt and Woodlands have for many decades demonstrated the highest level of collaborative planning and delivery of services that benefit both their residents. Only recently has the collaboration decreased.

[601] In summation, I decline to recognize the services to construct the Municipal Centre or

any parts of it as intermunicipal services at this time. It follows I find Whitecourt's request to have Woodlands contribute to the costs of construction premature. However, I find the construction of the arts centre has potential to become an intermunicipal service by developing the facility supporting an intermunicipal performing arts service as originally envisioned by the parties.

[602] Under an ICF, the revitalization of the library would normally be included by the parties in their future planning. However, this arbitration was required, in part, to settle the parties' dispute about whether maintenance or construction costs could be included in calculations for contribution funding of the library. In my view, after the *Modernized Municipal Government Act*, SA 2016, c 24 introduced the new ICF provisions, any decision to revitalize the library would be premature until the parties had engaged in collaborative integrated and strategic planning for the revitalization. I therefore find Whitecourt's request to have Woodlands contribute to the costs of construction of a new library premature.

[603] Therefore, I direct the parties to include in the ICF two topics for future planning concerning the delivery and funding of the infrastructure and construction costs: the construction of the arts centre and the revitalization of the library.

14. Dispute Resolution Provisions

[604] The parties are unable to agree on the dispute resolution provisions. They both seek clarity in the process and timelines, while respecting their respective decision making authority. Woodlands seeks the removal of the Joint Liaison Committee as a step in the dispute resolution process.

[605] First, in my view, the parties should have one dispute resolution process that applies to the ICF and any of the subject matter agreements referenced in the ICF.

[606] Concerning the content of the dispute resolution process, I invited the parties to provide draft language. Both did. They agree on many of the provisions. They differ on or asked for direction on the following points:

- principles to guide the dispute resolution process,
- requirement to continue to carry out obligations during the dispute resolution process,
- whether negotiation would start with a Joint Liaison Committee or an Intermunicipal Negotiating Committee, and

- the conditions that will close mediation
- arbitrator seeks public input,
- costs of the arbitration process.

[607] During the hearing the parties sought guidance around principles for their dispute resolution process. I agree such principles are valuable however I believe they should guide the ICF generally as well as the dispute resolution process. Therefore, I have included the following clause in the dispute resolution process.

Negotiation, mediation or arbitration shall refer to, take into account, and apply the intentions and principles stated by the Municipalities within this Intermunicipal Collaboration Framework including, without restriction, the Collaboration Principles.

[608] I set out the Collaboration Principles under the matters relating to fiscal stewardship.

[609] It is important that the parties continue to observe and carry out their obligations during the dispute resolution process. I therefore include in the general provisions the clause proposed by Whitecourt.

The participating Municipalities shall continue to perform their respective obligations during the resolution of any dispute or disagreement, including during any period of mediation and arbitration.

[610] On the matter of the body that conducts the negotiations, I rely on Collette Millers' observations that the Joint Liaison Committee has worked well for these parties. It appears the title Joint Liaison Committee carries baggage for the parties. In the spirit of a fresh start under the ICF, I rename the committee The Intermunicipal Collaboration Framework Committee (the ICF Committee), which is constituted to oversee the ICF Agreement. The ICF Committee will have the background and general familiarity with the ICF to participate in negotiations. If the ICF Committee cannot resolve the dispute, the municipalities will select their own representatives to represent them at the mediation. This gives the parties the opportunity to have fresh eyes look at the dispute with the mediator's assistance.

[611] However, I agree with the proposals by Woodlands that the negotiating body establish ground rules at its first meeting and follow those rules throughout negotiations. I also agree the negotiating body should meet in camera to enhance the opportunities for discussions and potential resolution. I therefore include a modified negotiation clause including clauses from both parties.

[612] On the conditions that will close mediation, I have included the three conditions proposed by the parties as any of the possibilities may arise.

[613] I agree with Woodlands that if the arbitrator seeks submissions from the public, the employees and elected officials of the municipalities should not be included.

[614] Finally, I set different costs for mediation and arbitration. In mediation, the parties should be equally engaged and therefore should equally share the costs of mediation. However, arbitration is a more costly process so the parties' cost share should reflect their respect assessment base.

[615] Appendix "D" sets out the dispute resolution process which incorporates the parties' agreed clauses and the clauses I had to decide. I direct the parties to include this dispute resolution process in their ICF.

15. Matters Relating to Fiscal Stewardship

[616] In this segment, the parties have disputes about communication protocols, disclosure, accountability, principles to guide the ICF and the oversight body for the ICF.

[617] First, the ICF should capture the principles of intermunicipal cooperation between the parties and the purposes relevant to the ICF from the legislation. Preambles, purpose statements and principles of collaboration can assist the parties by providing a context for the interpretation of the ICF at later dates. The following Preamble captures the purpose statements in the statute:

WHEREAS Part 17.2 of the Municipal Government Act requires municipalities with common boundaries to create an Intermunicipal Collaboration Framework with each other;

AND WHEREAS Town of Whitecourt and Woodlands County (collectively, the "Municipalities") share a common boundary;

AND WHEREAS the Municipalities share common interests, have a long history of working collaboratively on projects, and are desirous of working together to provide services to their ratepayers;

AND WHEREAS the Municipalities wish to advance, promote, and encourage opportunities and programs for collaboration amongst the Municipalities for

their joint benefit, as well as the ultimate benefit of the residents of the respective Municipalities and the surrounding communities;

AND WHEREAS the Municipalities wish to, where possible, provide for integrated and strategic planning, delivery and funding of intermunicipal services;

AND WHEREAS the Municipalities wish to steward scarce resources efficiently in providing local services;

AND WHEREAS the Municipalities recognize that different municipalities have different resources and funding to contribute to services that benefit their residents, but wish to ensure municipalities contribute to services that benefit their residents;

AND WHEREAS the Municipal Government Act stipulates that municipalities that have a common boundary must create a framework with each other that identifies the services provided by one or more of the Municipalities that benefit residents in more than one of the Municipalities that are parties to this Intermunicipal Collaboration Framework ;

AND WHEREAS the Municipalities are committed to participating, co-operating and coordinating with each other on an on-going basis, as further contemplated within this framework, for the joint benefit of the Municipalities;

AND WHEREAS the Municipalities have mutually developed this Intermunicipal Collaboration Framework to be effective and applicable to the framework required for each common boundary amongst the Municipalities;

[618] Collaboration principles should be set out early in the ICF document to guide the parties in their respective roles. These collaboration principles are then incorporated into the dispute resolution provisions as well.

“Collaboration Principles” means the principles under which the Municipalities agree to collaborate pursuant to this Intermunicipal Collaboration Framework, consisting of:

(i) Appropriateness – the collaboration amongst the Municipalities must be suitable for and beneficial to the Municipalities participating in the aspect of the collaboration;

- (ii) Adaptability – the collaboration amongst the Municipalities must be multi-dimensional and flexible to change, participation and future growth;
- (iii) Accessibility – the benefits of the collaboration amongst the Municipalities must be accessible by all of the Municipalities, at their option;
- (iv) Affordability – the participation of aspects of the collaboration amongst the Municipalities must be efficient in planning; and economical to implement and/or operate, while maximizing the synergies for the Municipalities;
- (v) Accountability – the benefits and burdens of the collaboration amongst the Municipalities must be shared by the Municipalities proportionately to their benefit and may be provided by services in kind or monetary value;
- (vi) Respectful – the processes amongst the Municipalities will be respectful and the contributions amongst the Municipalities towards services will respect that the ability to contribute differs amongst the Municipalities;
- (vii) Reasonableness – the Municipalities will act reasonably in discussions, negotiations, granting of consents, and completion of any agreement, as contemplated within this Intermunicipal Collaboration Framework including, without restriction, renewals, extensions or replacements of subject matter implementation agreements.

[619] I encourage the parties to use subject matter implementation agreements to set out the details concerning any of the different intermunicipal services. With separate implementation agreements, changes can occur to the implementation agreement (amendment, discontinuance, renewal, etc.) without the need to amend the ICF. Such implementation agreements enable the parties to address specific matters relevant to specific topics. Like the three Water and Wastewater Agreements, separate implementation agreements also create less risk for the parties in the event of a dispute around one intermunicipal service. As I stated earlier, all subject matter implementation agreements should use the ICF dispute resolution process, rather than a separate process.

[620] The ICF should identify and contain a committee responsible for the general oversight of the ICF and responsible to trigger processes like reviews. The committee should be the Intermunicipal Collaboration Framework Committee (the ICF Committee) comprised of equal representatives appointed by each municipality including three elected officials from each municipality. This ICF Committee should perform all the functions of the former Joint Liaison Committee. The ICF Committee will make decisions and provide recommendations

to the Councils of the Municipalities by way of consensus, and evidence unanimous approval by all members of the ICF Committee as and when circumstance may require.

[621] To ensure the ICF Committee is activated, the parties will need to appoint their respective representatives within 120 days of the creation of the ICF. The ICF Committee will meet within 180 days of their appointment to select a chair and co-chair, identify their goals and priorities, determine the schedule of meetings for the next year, identify agenda items for their next meeting, appoint any sub-committees and set the terms of reference for those sub-committees to assist the ICF Committee. The respective CAOs will be the advisors to the ICF Committee and will provide the administrative support required by the ICF Committee. Thereafter, the ICF Committee should meet as they determine but at least once per year. When a review of the ICF is triggered, the ICF Committee shall meet within 60 days to identify topics for the agenda for the review to submit to both Municipal Councils. Minutes of the ICF Committee shall be provided to both Municipalities within 15 business days of an ICF Committee meeting except when the ICF Committee is acting under the Dispute Resolution Process.

[622] On the matter of disclosure, I again rely on the observations of Collette Miller that the respective Directors have worked well together to disclose information and documents relevant to the annual budget presentations and the reporting of actual expenditures. Ms. Miller observed that the records were accurate and following the provisions of the respective cost share agreements. There is no reason to doubt that careful and forthright process will not continue. I find the ICF should include the similar disclosure provisions as in the 2008 Cost Sharing Agreement. I do not agree that the budgets and actuals need to be audited or allocated according to the audited financial statements as it will create an additional administrative burden for the municipality providing the services. In addition, the contributing municipality is not entitled to demand production of individual invoices or receipts or tenders to verify the figures.

[623] Appendix "E" captures procedures for an ICF Committee.

16. Term and Review Period and Review Process

[624] The *MGA* contemplates in indefinite term ICF with regular review periods. Unless the parties become members of a growth management board, receive an exemption from the Minister or the Legislature alters the obligatory nature of the ICF, they must continue to maintain their ICF.

[625] Part 17.2 provides a time trigger to review of a framework but enables the municipalities to shorten that time in the ICF. Also, unless the ICF states otherwise, the

municipalities may review it at any time by mutual agreement.

[626] Woodlands seeks a shorter review period (three years) and a clause to ensure the parties can trigger a review without mutual agreement in the event of unforeseen circumstances (similar to a *force majeure* clause in a construction or commercial contract). Whitecourt seeks a longer review period (five years) and argues a review based on mutual agreement is sufficient and will prevent either party from attempting to terminate the ICF. Ms. Collette Miller opined that a review after three to five years would be appropriate.

[627] Section 708.32 of the *MGA* obliges municipalities to review their ICF at least every five years after the ICF is created. This ICF will be created in 2022 when the parties formally approve the ICF mandated by this award. According to the agreement of the parties, the ICF will be retroactive to January 1, 2020, which mirrors the date their former Cost Sharing Agreement and related Revenue Sharing agreements terminated. However, the parties only begin to operate under the new ICF from April 1, 2022.

[628] A review period of at least five years after the creation of the ICF would begin before April 1, 2027. A three-year review period would start sometime before April 2025, which is within the term of the current councils. The term of the current councils runs from October 2021 to October 2025.

[629] If a shorter review period is set to occur within the term of the current councils, ideally it should occur approximately mid-term to give the councils sufficient distance from the pre-election influences. Mid-term would be late 2023/early 2024. This would give the two councils less than two years to work under their new ICF. The parties would have only one certain and one possible opportunity to address the disclosure, accountability and budgeting cycle which has been a significant point of disagreement between the parties. It would give them approximately one year to complete the review and negotiate any desired changes to the ICF before the election. Each council would be reviewing and negotiating an ICF for which they may not be responsible after the election. Absent agreement they would back in a resource consuming arbitration process, again on the eve of an election.

[630] A review period that begins between January and April, 2025 would give the councils more time to operate under the ICF and experience in one more budget cycle. However, it would give them far less time to complete the review and negotiate any desired changes. Councils would be again negotiating in the pre-election period and, as occurred this time, the closer time moves toward the election date the more difficult it will likely become to collaborate to resolve differences.

[631] In my view, neither situation concerning a shorter review period promotes the

underlying purpose of the ICF which is to encourage collaboration between neighboring municipalities concerning intermunicipal services. Given the recent contentious relationship between these municipalities, a longer review period, separated from the election cycle, will give the parties a better opportunity to reset their relationship concerning the intermunicipal services. For these reasons, I prefer a longer review period to trigger after the next municipal election.

[632] The initial review period should be four years from the creation of the ICF. By statute, this ICF must be created by April 1, 2022. I therefore select April 1 as the review date which also aligns with the preparation for the next fiscal year. Given the admitted animosity between these municipalities in the recent past, I believe they need sufficient time to re-establish their relationships and operate under their ICF. An initial four-year review period will give both municipalities the benefit of sufficient time to work under their first ICF and more time to prepare for the review. It will give them sufficient time to negotiate and if necessary, arbitrate any amendments before the fifth anniversary of the creation of the ICF. It will remove the ICF review process from the election cycle. I therefore set the initial review to begin on April 1, 2026, which is within five years after the creation of the ICF.

[633] A subsequent four-year review cycle will continue to offset the ICF review process from the municipal election process. It will always place the decision making on the most recently elected councils. The councils responsible for the review will have approximately six months after their election to experience the ICF and prepare for the review. Those councils would be responsible for administering the ICF during the balance of their four-year terms, enabling them to use the dispute resolution processes to resolve smaller differences or misunderstandings arising from the review rather than compiling differences until the next review. A review that occurs early in the term of the councils will have less influences from a pending municipal election. There will likely be greater opportunity for collaboration around integrated and strategic planning and delivery of intermunicipal services. There will be more opportunity for the municipalities to explore how intermunicipal services benefit the residents in the other municipality and to discuss how to deliver and fund intermunicipal services. There should be sufficient time to complete an arbitration process, if required, before the next municipal election.

[634] I therefore set April 1, 2026 as the date for the first review to begin and set subsequent reviews to begin on the four-year anniversary of April 1, 2026 (e.g. 2030, 2034, 2038, etc.).

Extreme circumstance provisions

[635] Woodlands seeks clarity on the provisions that will trigger a review of the ICF by the parties before the mandated review period. Although the *MGA* allows parties to an ICF to

mutually agree to review it any time, Woodlands seeks triggers that will not require mutual agreement.

[636] Whitecourt relies on the mandated review period and any mutually agreed review. Based on its recent experience with Woodlands, it does not agree to any other quasi-*force majeure* provisions that can be triggered by one party alone.

[637] I do not agree the ICF should include clauses that would create an expectation that extreme action is required. Such clauses would be contrary to the collaborative purposes of the ICF. Instead, the parties should be utilizing the ICF Committee as a first step to attempt to discuss and address any matters raised by either party including matters triggered by extreme circumstance. Under the ICF Committee Procedures, either party can ask the ICF Committee to address a matter. If the ICF Committee cannot address it, the ICF Committee Procedures contain a clause that can trigger the Dispute Resolution Provisions:

If at any meeting of the ICF Committee, any matter is considered and the matter is neither approved nor adjourned for further consideration, in either case by all of the members of the ICF Committee, then notwithstanding any intermediate acts or negotiations, any Municipality shall be entitled to refer the dispute, and to the extent that it is necessary or reasonable in all of the circumstances any related question or dispute, to be resolved pursuant to the Dispute Resolution Procedure.

17. Costs of the Arbitration

[638] Under section 708.36(3) of the MGA, an arbitrator's award may include provisions respecting the responsibility for parties to pay or to share in paying costs, fees and disbursements incurred in the arbitration process.

[639] With respect to the arbitrator's fees and disbursements, the parties agreed:

Subject to any final direction of the Arbitrator on costs or interest or otherwise, the Arbitrator will invoice the Arbitrator's fees, taxes, expenses and disbursements to the parties on the basis of the allocation formula set out in section 708.41 of the *Municipal Government Act*.

[640] The Arbitrator's fees and disbursements and GST in this arbitration total \$130,762.12.

[641] Based on the agreement of the parties, and subject to the reserved jurisdiction, I direct the parties to pay their portion of the fees, disbursements and GST on the basis of the allocation formula set out in section 708.41 of the *MGA*.

Directions and Reserved Jurisdiction

[642] Under section 708.4(1) I direct the parties to within 60 days after the date of the award, adopt a framework in accordance with this award.

[643] Based on the agreement of the parties, I reserve my jurisdiction for 120 days to deal with:

- a) Costs of the arbitration,
- b) Interest on late payments under the ICF,
- c) Matters relating to the implementation of this award.

[644] I also reserve my jurisdiction for 120 days to finalize the contribution funding for library services, in the event that Woodlands does not complete its commitment to the Library Board for operating funding.

[645] Either party may, within the 120 days from the award, provide written notice to the Arbitrator and the other party to deal with any matter within the reserved jurisdiction.

I declare I have no conflict of interest with any interested party or witness.

Dated at Sherwood Park, Alberta on February 3, 2022



Deborah M. Howes, C. Arb. Arbitrator

APPENDIX A

WITNESS LIST

Witness #	Name	Position Title
1	Steve Hollett	Manager of Environmental Services, Woodlands County
2	Joan Sloomweg	Manager of Community & Planning Services, Woodlands County
3	Andre Bachand	Director of Infrastructure Services, Woodlands County
4	Shannon Wharton	Executive Assistant and FOIP Coordinator, Woodlands County
5	Scott Webb	Manager of Protective Services, Woodlands County
	<i>Alice Bourbeau</i>	<i>Corporate Services Director, Woodlands County</i>
6	Heather Anderson	Community Services Coordinator, Woodlands County
7	Gordon Frank	Chief Administrative Officer, Woodlands County
8	Jennine Scheck Loberg	Director of Planning and Development, Town of Whitecourt
9	Judy Barney	Director of Corporate Services, Town of Whitecourt
10	Doug Tymchyshyn	Director Community Safety, Town of Whitecourt
11	Kara Kennedy	Project Manager, Woodlands County
12	Trent West	Public Safety / Regional Collaboration Consultant (Town of Whitecourt Expert)
13	Adam Martin	President, Senior Project Director, HM AERO Aviation Consulting (Woodlands County Expert)
14	Juan Grande	Engineering Services Coordinator, Town of Whitecourt
15	Chelsea Grande	Director of Community Services, Town of Whitecourt
16	Peter Smyl	Chief Administrative Officer, Town of Whitecourt
17	James Richardson	Expert Witness, MNP LLP
18	Colette Miller	Expert Witness, Wilde and Company

APPENDIX B

EXHIBIT LIST

Exhibit #	Exhibit Description (from Document file name)
1	Witness Statement of Steve Hollett-Water and Wastewater_County dated June 30, 2021
2	Witness Statement of Joan Slootweg_ Water and Wastewater_County_ dated June 30, 202
3	Reply Witness Statement of Joan Slootweg, County - Water-Wastewater dated June 30, 202
4	Reply Witness Statement of Andre Bachand, County_ Water-Wastewater dated July 30, 202
5	Reply Witness Statement of Andre Bachand, County_ Roads dated July 31, 202
6	Reply Witness Statement of Shannon Wharton, County_FIC dated July 31, 202
7	Reply Witness Statement of Shannon Wharton, County_ School + Municipal Centre dated July 31, 202
8	Reply Witness Statement of Scott Webb, County_ Fire Services dated July 31, 2021
9	Reply Witness Statement of Alicia Bourbeau, County_ Financial dated July 31, 2021
10	Reply Witness Statement of Heather Anderson, County _ FCSS dated July 31, 2021
11	Witness Statement of Gordon Frank, County_General dated June 30, 2021
12	Reply Witness Statement of Frank Gordon, County _ Library dated July 31, 2021
13	Witness Statement of Gordon Frank, County_Fire Services dated June 30, 2021
14	Reply Witness Statement of Frank Gordon, County _ Cemeteries dated July 31, 2021
15	Witness Statement of Jennine Scheck Loberg, Town_ Water Wastewater dated June 30, 2021
16	Witness Statement of Jennine Scheck Loberg, Town_Ecole St. Joseph School dated June 30, 2021
17	Witness Statement of Jennine Scheck Loberg, Town_Cemeteries dated June 28, 2021
18	Witness Statement of Judy Barney, Town_ Financial dated June 30, 2021
19	Reply Witness Statement of Judy Barney, Town_Re G. Frank_General dated July 30, 2021
20	Witness Statement of Doug Tymchyshyn, Town_ Police Services dated June 28, 2021

21	Witness Statement of Doug Tymchyshyn, Town_ Fire Services dated June 29, 2021
22	Reply Witness Statement of Kara Kennedy_ County_Re Recreation Services dated July 31, 2021
23	Summary Table of results from County Attendance Survey June 26 & 27 and July 12, 2021
24	Expert Report of Trent West_Town_ Fire Services_ dated August 5, 2021
25	Expert Report of Adam Martin, HM Aero - Expert Review of Whitecourt Airport - Final _dated August 5, 2021
26	Witness Statement of Juan Grande, Town_Landfill _dated June 29, 2021
27	Witness Statement of Chelsea Grande, Town_ Forest Interpretive Centre_dated June 28, 2021
28	Witness Statement of Chelsea Grande, Town_ Library_dated June 28, 2021
29	Witness Statement of Chelsea Grande, Town_ Transit_dated June 28, 2021
30	Witness Statement of Chelsea Grande, Town_ Municipal Centre_dated June 28, 2021
31	Witness Statement of Chelsea Grande, Town_ Recreation _dated June 29, 2021
32	Witness Statement of Chelsea Grande, Town_ Family & Community Support Services_dated June 29, 2021
33	Appendix 10 to Exhibit 32 Witness Statement of Chelsea Grande, Town_ Family & Community Support Services_dated June 29, 2021
34	Witness Statement of Peter Smyl, Town_ General_dated June 30, 2021
35	Witness Statement of Peter Smyl, Town_ Arterial and Collector Roads_dated June 28, 2021
36	Witness Statement of Peter Smyl, Town_ Rail re_dated June 28, 2021
37	Appendix 7 to Exhibit 36 (full newspaper article)
38	Reply Witness Statement of Peter Smyl, Town_Various- dated July 30, 2021
39	Expert Report of James Richardson, MNP_Town financial expert_ dated August 5, 2021
40	Expert Report of Colette Miller, Wilde and Company_County financial expert_ dated August 13, 2021
41	Reply Expert Report of Colette Miller, Wilde and Company_County financial expert_ dated September 3, 2021

APPENDIX C

WOODLANDS' CASES AND AUTHORITIES

1. *Municipal Government Act*, RSA 2000 c M-26, ss 2, Part 17, Part 17.2
2. *Arbitration Act*, RSA 2000 c A-43
3. *Cemeteries Act*, RSA 2000, c C-3, ss 33, 34
4. *Libraries Act*, RSA 2000, c L-11, s 12.2
5. *Police Funding Regulation*, Alta Reg 7/2020
6. *York University v. Canadian Copyright Licensing Agency (Access Copyright)*, 2021 SCC 32 at para 28
7. *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at para 43
8. Online Cambridge dictionary, "service" available at: <https://dictionary.cambridge.org/dictionary/english/service>
9. Online Dictionary, "Capital" available at: <https://www.dictionary.com/browse/capital>
10. Zachary Spicer, "Cooperation and Capacity: Inter-municipal Agreements in Canada", in *Institute on Municipal Finance and Governance Papers on Municipal Finance and Governance*, No. 19, 2015 Munk School Toronto, available at: https://munkschool.utoronto.ca/imfg/uploads/318/1623_imfg_no.19_spicer_online.pdf
11. *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, at paras. 45-48
12. *2516513 Ontario Inc. v. York Region Condominium Corporation No. 886*, 2019 ONSC 5215, at paras. 27-29
13. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para 38
14. *University of British Columbia v. Berg*, 1993 CanLII 89 (SCC), [1993] 2 S.C.R. 353, p 371
15. *Macdonald Communities Limited v Alberta Utilities Commission*, 2019 ABCA 353, at para 26, leave to appeal dismissed: *MacDonald Communities Limited v. Alberta Utilities Commission*, 2020 CanLII 19542 (SCC)
16. *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40 at para. 47

17. ICF Workbook: Resource Guide for Municipalities, Version 3, February 2020:
https://www.auma.ca/sites/default/files/Advocacy/Programs_Initiatives/MGA_Change_Mgt_Resources/icf_workbook_update_sept_3-20.pdf)
18. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para. 43
19. Ruth Sullivan, *Statutory Interpretation*, Irwin Law Toronto, 2016 3rd ed. at 272
20. *Red Tape Reduction Implementation Act, 2019*, SA 2019, c 22
21. Prior version of MGA (to December 17, 2019): *Municipal Government Act*, RSA 2000, c M-26 at para. 17
22. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at paras. 43-46
23. *Pacific National Investments Ltd v Victoria (City)*, 2000 SCC 64 at paras 55-58
24. *Andrews v. Canada (Attorney General)*, 2009 NLCA 70
25. *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60
26. *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68, at para 22
27. *Renfrew Insurance v Donald*, 2012 ABQB 228 at para 14
28. *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299 (CanLII)

APPENDIX D

DISPUTE RESOLUTION PROCESS

1. Dispute Resolution Process

1.1. The County and Town (the “Municipalities”) recognize the need to resolve any disputes in a non-adversarial, informal and cost-efficient manner. In the event of a dispute, the Municipalities agree that they shall make reasonable efforts to resolve all disputes by negotiation and agree to provide, without prejudice, open and timely disclosure of relevant facts, information and documents to facilitate negotiations.

1.2. In the event of a dispute, the Municipalities agree that they shall undertake a process to promote the resolution of the dispute in the following order:

- Negotiation;
- Mediation; and
- Binding arbitration.

Negotiation, mediation or arbitration shall refer to, take into account, and apply the intentions and principles stated by the Municipalities within this Intermunicipal Collaboration Framework including, without restriction, the Collaboration Principles.

1.3. If a dispute arises with respect to any aspect of the interpretation and implementation of the ICF between the Parties such disputes must be resolved using the process set out in this section.

1.4. If at any point in the dispute resolution process a resolution is achieved to the satisfaction of the participating Municipalities, no further steps in the process are required.

1.5. The participating Municipalities must adhere to the time limits set out in this section, unless both Municipalities agree to extend such time limits.

1.6. The participating Municipalities shall continue to perform their respective obligations during the resolution of any dispute or disagreement, including during any period of mediation and arbitration.

2 Negotiation through the Intermunicipal Collaboration Framework Committee

2.1. When a participating Municipality (the initiating Municipality) believes that there is a dispute under the ICF and wishes to engage in dispute resolution, the initiating Municipality must provide

written notice (“Dispute Notice”) to the other participating Municipality (the responding Municipality) identifying areas of dispute and request negotiation.

2.2 Within 15 days after the notice is received by the responding Municipality, the CAOs will conduct an Administrative Review to provide clarity on the matters in dispute, and to refer the dispute to the Intermunicipal Collaboration Framework Committee (ICF Committee).

2.3 The ICF Committee will convene one or more special meeting to consider and attempt to resolve the dispute within 30 days of the conclusion of the Administrative Review.

2.3.1 At the initial negotiation meeting the ICF Committee will agree on ground rules for negotiations, including requirements for respectful communications, transparency and timely disclosure and will follow those guidelines for all subsequent negotiation meetings.

2.3.2 ICF Committee negotiation meetings shall be held in-camera.

3 Mediation

3.1 If the Municipalities cannot resolve the dispute through negotiations in the Joint Liaison Committee within 15 days of when the ICF Committee first meets, either Municipality may provide the other Municipality with a written notice (“Mediation Notice”) to request mediation. The Mediation Notice shall specify:

3.1.1 The subject matters remaining in dispute, and the details of the matters in dispute that are to be mediated; and

3.1.2 A list of nominees to act as the mediator.

3.2 The Municipalities shall, within 30 days of the Mediation Notice, jointly nominate or agree upon a mediator.

3.2.1 The Municipalities shall jointly apply for any grant programming that may be available, such as the Alberta Community Partnership program, to defray the costs of any mediations conducted under this dispute resolution process.

3.3 Where a mediator is appointed, the Municipalities shall submit in writing their dispute to the mediator and give the mediator access to all records, documents and information the mediator may reasonably request.

3.4 The Municipalities shall meet with the mediator at such reasonable times as may be required and shall participate in good faith with the assistance of the mediator to resolve their dispute.

3.5 All proceedings involving a mediator are without prejudice.

3.6 The fees and expenses of the mediator and the cost of facilities required for mediation, if any, shall be shared equally between the Municipalities, after any applicable grant funding for the mediation is applied.

3.7 If all matters or issues in dispute are not resolved through mediation, the mediator shall prepare a report, which must include:

3.7.1 A list of matters on which the Municipalities agreed;

3.7.2 A list of matters on which the Municipalities did not agree; and

3.7.3 A list of nominees to act as arbitrator.

3.10 In the event that:

3.10.1 The Municipalities do not agree on the appointment of a mediator within thirty (30) days of the Mediation Notice being received;

3.10.2 The mediation is not completed within 120 days after the mediator was appointed, or the Mediation Notice was received;

3.10.3 The dispute has not been resolved with 120 days from the receipt of the Mediation Notice,

then either Municipality may withdraw from mediation by delivering written notice to the other Municipality.

4 Binding Arbitration

4.1 If a mediation fails to resolve a dispute, the dispute shall be submitted to binding arbitration. Either Municipality may provide to the other Municipality written notice of an intention to submit the matter(s) in dispute between them to arbitration ("Arbitration Notice"). The Arbitration Notice shall specify:

4.1.1 The subject matters remaining in dispute and the details of the matters in dispute that are to be arbitrated; and

4.1.2 A list of nominees to act as single arbitrator.

4.2 If more than one issue remaining in dispute between the Municipalities is referred to arbitration, the Municipalities shall streamline the arbitration proceedings by having the same arbitrator decide all issues in dispute in the same arbitration proceeding.

4.6 Within 30 days after receipt of an Arbitration Notice, the other Municipality shall provide in writing a statement identifying:

4.6.1 which matters set out in the Arbitration Notice it accepts as properly before the arbitrator;

4.6.2 which matters set out in the Arbitration Notice it disputes being properly before the arbitrator;

4.6.3 whether it agrees with the arbitrator selected by the initiating Municipality, and, if not, provide the name of one other arbitrator nominated by the other Municipality.

4.7 The Municipalities shall, within 30 days of receiving the Arbitration Notice, jointly nominate or agree upon an arbitrator.

4.8 If the Municipalities fail to agree on a single arbitrator within 30 days of receiving the Arbitration Notice, either Municipality may apply to a Justice of the Court of Queen's Bench to have an arbitrator appointed.

4.9 The terms of reference for arbitration shall be those areas of dispute referred to in the Arbitration Notice and the responding Municipality's response thereto. Any dispute over those terms shall be the subject of a determination by the arbitrator.

4.10 The *Arbitration Act* (Alberta) in force at the time the Arbitration Notice is received shall apply to the arbitration proceedings commenced under this framework.

4.11 The arbitrator shall make best efforts to hear the dispute within 60 days of being appointed and deliver a written decision concerning the dispute as soon as reasonably practical after the arbitration hearing.

4.12 The arbitrator's decision is final and binding upon the Municipalities subject only to a Municipality's right to seek a review by the Court of Queen's Bench or the Court of Appeal provided by the *Arbitration Act*.

4.13 If the Municipalities do not mutually agree on the procedure to be followed, the arbitrator may proceed to conduct the arbitration:

4.13.1 on the basis of documents and written submissions;

4.13.2 by holding a hearing for the presentation of sworn/affirmed oral evidence and/or oral argument; and

in all cases, the arbitrator shall have jurisdiction to determine all procedural issues on which the Municipalities do not agree.

4.14 Subject to the arbitrator's discretion, hearings held for the presentation of oral evidence and/or oral argument shall be open to the public.

4.15 If the arbitrator confirms that hearings are open to the public, the arbitrator has sole discretion to solicit written submissions from residents of either municipality, unless such residents are members of Council for either Municipality or are employees of either Municipality. If the arbitrator requests written submissions, they must be considered in the decision.

4.16 The fees and expenses of the arbitrator and costs of the facilities required to hold the arbitration hearing, if any, shall be shared proportionately on the basis of the Municipalities' respective equalized assessment.

4.17 The Municipalities shall be responsible for their own legal fees and expert fees in any arbitration, unless otherwise ordered by the arbitrator.

4.18 On conclusion of the arbitration and issuance of an arbitration award, the arbitrator must compile a record of the arbitration and give a copy of the record to each of the Municipalities.

4.19 The Municipalities agree that the award (decision) of the arbitrator is final and binding on the parties. Upon receiving the award, the Municipalities shall complete any necessary steps to give effect to the award.

4.20 If clarification of any interim or final award of the arbitrator is required, the Municipalities shall seek the same in accordance with the provisions of the *Arbitration Act* (Alberta) in force at the time that the Arbitration Notice was received.

4.21 The Municipalities agree to work diligently towards resolving any dispute within one (1) year from the time the dispute resolution process in this section is initiated by receipt of a Dispute Notice. If an arbitration process is not completed within that time, the Municipalities agree to continue the arbitration process described above and seek any necessary extension from the applicable Minister as set out in the Municipal Government Act then in effect as may be required to allow the process to be completed.

APPENDIX E

ICF COMMITTEE PROCEDURES

1. ICF Committee

The ICF Committee shall be made up of **Three (3)** elected representatives of each of the Municipalities, together with the Chief Administrative Officers of each the Municipalities in an advisory role, for the purposes of carrying out the responsibilities contemplated within this Intermunicipal Collaborative Framework and this Schedule.

2. Chair of the ICF Committee

Unless otherwise unanimously agreed to by the Municipalities:

- (a) the Chair of the ICF Committee shall rotate on an annual basis between each of the Municipalities;
- (b) the Chair for the first year will be a representative elected by the members of the ICF Committee at the first meeting of the ICF Committee following the effective date of this Intermunicipal Collaborative Framework;
- (c) thereafter the Chair shall rotate through the representatives of the Municipalities in an order agreed upon by the ICF Committee; and
- (a) the Chair for the first meeting of the ICF Committee following the effective date of this Intermunicipal Collaborative Framework will be Chief Administrative Officer of the Woodlands County.

3. Representatives

The Municipalities may each appoint alternate representatives to act on the ICF Committee in substitution for their appointed representative. Each of the Municipalities may at any time and from time to time by written notice replace its representative appointed by it, and any representative so replaced shall cease to be an ICF Committee member upon the giving of such notice. Copies of written notices shall be given to the other Municipalities, the individual so appointed as a new ICF Committee member, and the ICF Committee member who has been replaced.

4. **Vacancies**

A vacancy in the ICF Committee shall be filled by the Municipality who appointed the former representative whose loss created the vacancy. If there is a vacancy in the ICF Committee, the remaining representatives may continue to exercise the powers of the ICF Committee in accordance with the terms of this Agreement.

5. **Quorum of ICF Committee**

Quorum of the ICF Committee shall be satisfied where Four (4) members of the ICF Committee are present, and each of the Municipalities is represented.

6. **Decision Making**

The ICF Committee will make decisions and provide recommendations to the Councils of the Municipalities by way of consensus, and evidence unanimous approval by all members of the ICF Committee as and when circumstance may require.

7. **Referral to Dispute Resolution**

If at any meeting of the ICF Committee, any matter is considered and the matter is neither approved nor adjourned for further consideration, in either case by all of the members of the ICF Committee, then notwithstanding any intermediate acts or negotiations, any Municipality shall be entitled to refer the dispute, and to the extent that it is necessary or reasonable in all of the circumstances any related question or dispute, to be resolved pursuant to the Dispute Resolution Procedure.

8. **ICF Committee Meetings**

The ICF Committee shall meet at least **One (1) time a year**, or more as the ICF Committee determines.

9. **Notice of Meetings**

Notice of the time, place, and agenda of every meeting shall be given by the Chair with **not less than Thirty (30) days notice**.

10. **Calling Meetings**

Subject always to the requirements of the delivery of notice as contemplated above, the Chair shall call meetings of the ICF Committee:

- (a) as and when directed by the ICF Committee, in the form of meeting schedule approved by the ICF Committee or otherwise as directed from time to time; and
- (b) upon receipt of a request in writing received from a Municipality (together with detail respecting the reasons for the requested meeting as the Chair may reasonably require), and following consultation with:
 - (i) the requesting Municipality as to urgency of the requested meeting and the potential sufficiency of the next scheduled meeting of the ICF Committee; and
 - (ii) the next host Municipality's Chief Administrative Officer regarding the availability of facilities for the requested meeting.

It is understood and agreed that, save and except for ICF Committee meetings which are scheduled in advance by the ICF Committee, the Chair and the next host Municipality's Chief Administrative Officer will only be responsible for using their reasonable best efforts to arrange for and call a meeting upon the request of the ICF Committee or upon the request of a Municipality. Notwithstanding the foregoing, nothing shall prevent the Municipalities and/or members of the ICF Committee from having informal meetings and/or discussion at any time on an as needed basis in between formal meetings of the ICF Committee, in order to address any matter contemplated within this Intermunicipal Collaborative Framework including, without restriction, the subject matter(s) of any notice from a Municipality requesting a meeting of the ICF Committee.

11. Attendance at Meetings

The ICF Committee members, but not an individual ICF Committee member, may decide to invite the general public, special interest group(s), or other private or public bodies and agencies to attend any meeting of the ICF Committee and/or make submissions to the ICF Committee with respect to any matter or question being considered by it.

12. Location, Host Municipality and Costs of Meetings

Unless otherwise unanimously agreed to by the Municipalities:

- (c) the location of meetings of the ICF Committee shall rotate on a meeting by meeting basis between each of the Municipalities;

- (d) the municipality within which the meeting of the ICF Committee occurs will be the host Municipality, responsible for arranging the venue and other facilities required in order to carry out the meeting;
- (e) the Chief Administrative Officer of the host Municipality will coordinate the meeting dates, creation and circulation of agendas, and facility requirements with the Chair of the ICF Committee;
- (f) the costs of hosting a meeting of the ICF committee will be the responsibility of each host Municipality; and
- (g) the location and host Municipality for the first meeting of the ICF Committee will be the Woodlands County.

13. **Records**

The ICF Committee shall arrange for proper written records, and minute taking of all meetings and decisions of the ICF Committee to be kept and maintained and copies of same shall be sent to each member and the Municipalities within **Fifteen (15) business days** following each meeting of the ICF Committee. Each ICF Committee member shall be entitled to reasonable access to all files and records of the ICF Committee at all reasonable times and shall be given the opportunity to make copies thereof from time to time.

All records of the ICF Committee will be retained at the offices of the Chair of the ICF Committee.

14. **Limitation of Liability**

No ICF Committee member shall be liable for the acts, neglect or default of such ICF Committee member, any other ICF Committee member, and/or the ICF Committee as a whole, provided that such ICF Committee member has acted, in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power or authority granted to such ICF Committee member and the ICF Committee as a whole hereunder.

15. **Remuneration of Committee Representatives**

Each Party shall reimburse its appointed members in accordance with its own practices and policies.