

THIS AGREEMENT made this 9th day of August, 2017,

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ALBERTON
(herein also referred to as "Alberton")

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF FORT FRANCES
(herein also referred to as the "Fort Frances")

OF THE SECOND PART

WHEREAS the *Municipal Act, 2001*, R.S.O. 2001, c.25, as amended (herein referred to as the "*Act*"), confers upon municipalities natural person powers which may be exercised within the spheres of jurisdiction identified therein, which the council of a municipality may exercise by by-law;

AND WHEREAS Section 19 of the *Act* authorizes a municipality to exercise its power to provide a municipal system to provide a service or thing in an area in another municipality if one of the purposes for so acting is for that municipality's own purposes and, in accordance with Section 19(2)(2), if the other municipality is a single-tier municipality and the service or thing is provided with its consent;

AND WHEREAS Oakwood Road (herein referred to as the "*Highway*") is a highway in the District of Rainy River, Province of Ontario, that forms part of a boundary road between Alberton and Fort Frances (herein collectively referred to as the "*Parties*");

AND WHEREAS George Plett Friesen, Katharina Friesen, Wade Adam Friesen, Phillip Plett Friesen, Henry Plett Friesen, Mary Friesen, and Travis Leigh Friesen (collectively referred to as the "*Owners*") are the registered owners, in fee simple, of certain lands and premises located in Alberton which:

- (a) has frontage on the west side of the Highway;
- (b) is municipally known as 45 Oakwood Road, Alberton; and
- (c) is legally described as Pcl 24839, Sec Rainy River; Pt Lt 1 River Range Crozier, Pt 1 & 2 on Plan 48R1422; Alberton (the "*Property*");

AND WHEREAS there are two multi-unit residential buildings located in and on the *Property* which contain a total of six single-family apartment-style dwelling units;

AND WHEREAS the *Property* is currently serviced by private non-municipal septic and well systems, which the Ministry of the Environment has deemed does not comply with servicing requirements for the current number of dwelling units thereon;

AND WHEREAS the *Owners* submitted to Alberton Council an Official Plan Amendment Application to permit the *Property* to be connected to and serviced by sanitary sewer and water service provided by Fort Frances ("*Sewer and Water Service*") for the sole benefit of the *Property*, and to allow construction and installation of certain infrastructure, works and things required for or directly pertaining to the provision of such *Sewer and Water Service* (collectively referred to as the "*Facilities*") for such purpose;

AND WHEREAS in order to allow the *Sewer and Water Service* to be provided to the *Property*, a portion of the *Facilities* is required to be located and constructed in, under and upon the portion of the *Highway* within Alberton (such portion of the *Facilities* located and constructed in, under, and upon the portion of the *Highway* within Alberton are herein collectively referred to as the "*Facilities Within Alberton*"), which will necessitate the granting of an easement (the "*Easement*") in the form attached hereto as Schedule 1 by Alberton to Fort Frances, and otherwise as Alberton requires as set out and provided for in this Agreement;

NOW THEREFORE in consideration of the mutual covenants and undertakings contained herein, the Parties hereby agree as follows:

1. Subject to the terms and conditions set out in this Agreement, Alberton:
 - (a) consents and agrees to Fort Frances providing *Sewer and Water Service* to and for the sole benefit of

the *Owners’ Property* and to the construction of the *Facilities Within Alberton*, and such further and other things as may be necessary therefor, and this shall be and be deemed to constitute consent for the purposes of Section 19(2)(2) of the *Act*); and

- (b) grants to Fort Frances the *Easement* in the form set out in Schedule 1 attached to and forming part of this Agreement.

2. The Parties acknowledge and agree that:

- (a) The *Facilities Within Alberton* shall be comprised of water and sewer utility infrastructure owned by Fort Frances;
- (b) Fort Frances agrees that it shall indemnify, defend and save harmless Alberton from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Fort Frances to carry out its work or to otherwise meet its obligations provided for in this Agreement including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or willful misconduct of Alberton. This indemnity shall survive the early termination or expiry of this Agreement;
- (c) Fort Frances shall be solely responsible and bear the costs for the *Facilities Within Alberton* located in and under the *Highway*, and their construction, installation, operation, inspection, and maintenance, except to the extent that same are caused by the negligence or willful misconduct of the Alberton and subject to any agreement between Fort Frances and the *Owners*;
- (d) as of the date of this Agreement, Alberton has no water, sewer, and/or utility infrastructure, and/or appurtenances thereto, located in, under or adjacent to the *Highway*; and
- (e) Each *Party* shall name the other *Party* as an Additional Insured under its liability insurance policy re the *Facilities Within Alberton* as evidenced by the provision by each to the other of a completed Certificate of Insurance (proof of Insurance).

3. Subject to paragraph 2 of this Agreement, but otherwise notwithstanding anything contained in this Agreement, the consents and agreements of Alberton herein are and shall be and remain on the basis that Fort Frances shall not be required or liable to pay to Alberton any taxes, fees, charges, costs or otherwise in respect of or relating to the provision of *Sewer and Water Service* to the *Owners’ Property*, the *Easement*, the *Facilities*, or the *Facilities Within Alberton*.

4. The consents and agreements of Alberton herein are and shall be and remain on basis that, subject to paragraph 2 of this Agreement, Alberton shall not be required or liable to pay to Fort Frances any taxes, fees, charges, costs or otherwise of any nature or kind in respect of or in any way relating to the provision of *Sewer and Water Service* to the *Owners’ Property*, the *Easement*, the *Facilities*, or the *Facilities Within Alberton*.

5. This Agreement shall be binding upon and enure to the benefit of the *Parties* and their respective heirs, estate trustees, administrators, successors and assigns.

6. This Agreement shall be construed with all changes in number and gender as may be required by the context.

IN WITNESS WHEREOF the *Parties* hereto have hereunto affixed their respective hands and seals on the day and year first above written.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE TOWNSHIP OF ALBERTON

Per: _____
Michael Hammond, Reeve

Per: _____
Dawn Hayes, CAO/Clerk-Treasurer

WE HAVE AUTHORITY TO BIND THE CORPORATION

(seal)

THE CORPORATION OF THE TOWN OF FORT FRANCES

Per: _____
Roy Avis, Mayor

Per: _____
Elizabeth Slomke, Clerk

(seal)

WE HAVE AUTHORITY TO BIND THE CORPORATION.