

Order No. 6/18

**TRANSFER OF OWNERSHIP OF
VALE THOMPSON WATER TREATMENT PLANT TO
THE CITY OF THOMPSON
WATER AND WASTEWATER UTILITY**

January 10, 2018

BEFORE: Irene A. Hamilton, B.A., LLB, Panel Chair
Robert Vandewater, B.A., FCSI., CPA (Hon), CA (Hon), KStJ., CD, Member
Michael Watson, Member

Table of Contents

1.0 Executive Summary 3

2.0 Background 4

3.0 Application 5

4.0 Board Findings 8

5.0 IT IS THEREFORE ORDERED THAT: 11

SCHEDULE “A” 12

SCHEDULE “B” 13

1.0 Executive Summary

The Public Utilities Board (Board) approves the transfer of ownership and operation of the Thompson Water Treatment Plant (WTP) currently owned by Vale Canada Limited (Vale) to the City of Thompson (City) Water and Wastewater Utility (Utility). This transfer is effective January 1, 2018.

Note: Where this Order states “Pump House”, this means the water intake and pump house facility owned and operated by Vale, used to draw Process Water (raw water) from the Burntwood River and to supply Process Water to the Vale Thompson operations and to the Thompson WTP. See Item “S” on page 4 of the Water Supply and Services Agreement.

As Vale bears 100% of the operation costs of the WTP, the parties have agreed to a three-year transition period to allow the City to adjust for training purposes and to phase-in the impact of the costs associated with the WTP on the City’s ratepayers. Vale and the City are jointly requesting approval of the transfer and agreement of the cost sharing arrangement, which is outlined below.

The agreed transition period would provide that the costs of operation of the Thompson WTP would be shared as follows (as set out in the Water Supply and Services Agreement):

- i) 2017: 25% City, 75% Vale. Calculated based on 25% of the actual cost of operating the WTP and 25% of the actual cost of operating the Pump House.
- ii) 2018: 50% City, 50% Vale. The City will charge Vale for 50% of overall costs of operation of the WTP and Vale will charge the City for its pro rata portion of the costs of operation of the Pump House, based on volume of water supplied.
- iii) 2019 & thereafter: 74.09% City, 25.91% Vale. Calculated based on actual operational costs and volume of water consumed.

Owner / Operator Cost Items	VALE 2017	CITY 2018	CITY 2019
Operating Staff	189,231	166,770	170,105
Operator Training	-	20,000	20,000
Maintenance	158,216	161,380	164,608
Supplies	428,000	436,560	445,291
Services & Contracts	12,000	12,240	12,485
Power Purchased	100,583	156,807	163,079
Insurance Premiums	-	30,284	30,889
Process Water (Raw Water) Cost Allocated to WTP	49,483	50,843	78,981
Direct Costs Subtotal	937,512	1,034,884	1,085,439
Indirect Costs (10% of Direct Costs)	93,751	103,488	108,544
WTP Building and Repairs Improvements	29,280	29,280	29,280
WTP Machinery & Equipment Reserve Contribution	-	278,000	278,000
Total WTP Costs	1,060,544	1,445,652	1,501,262
Percentage Allocated to City (Agreement)	25.00%	50.00%	74.09%
Percentage Allocated to Vale (Agreement)	75.00%	50.00%	25.91%
Cost to City	\$265,136	\$722,826	\$1,112,311
Cost to Vale	\$795,408	\$722,826	\$388,951

The City currently has a rate application under review by the Board that has accounted for the transfer and is reflected in the proposed rates.

2.0 Background

In 2010, Board Order No.127/10 established the City as a public utility providing the City the ability to charge rates for water distribution and wastewater collection and treatment in the City of Thompson.

The City receives its treated water supply free of charge from Vale under an agreement originally entered into in 1956 and updated in 1970.

This agreement is the Townsite Agreement between International Nickel Company of Canada Limited (Inco, now Vale) and the Province of Manitoba. Under the terms of this agreement, Vale was obligated to construct the municipal infrastructure required for the Thompson townsite, including pumping stations, treatment facilities, and water and wastewater mains.

The 1956 Agreement provides that Vale *“will not be required to operate or maintain or in any way carry on any public utility, service or services, and it may at any time and from time to time transfer, sell, assign, lease or otherwise dispose of all or any part of”* the municipal infrastructure constructed.

A letter of intent between Vale, the City, and the Local Government District (LGD) of Mystery Lake, was signed April 27, 2015, expressing mutual intent to enter into an agreement to transfer the ownership and operation of the WTP to the City. The City’s Council passed Resolution No. 2015 088 executing the Letter of Intent and directing the City to proceed with negotiating in good faith the development of a Transaction Agreement and supplementary agreements.

3.0 Application

Vale owns and operates a private water distribution system servicing one customer, the City. Vale recently decided to reduce costs within its Thompson operations and determined that it is no longer able to bear all the costs associated with ownership and operation of the WTP. In the application, Vale also stated that there is no longer an operational rationale for retaining ownership and operation of the WTP and it would be prepared to transfer ownership and operation to the City as per the 1956 Townsite Agreement.

Over time, Vale will also cease operations of the Thompson Smelter and Refinery and expects its share of total water volume used to drop to about 25% of the total volume.

On October 6, 2016, Vale and the City applied to the Board, for approval to transfer ownership and operation of the WTP from Vale to the City. Vale has also applied for approval of the cost sharing arrangement which includes a continuing Process Water Charge (for raw water & Pump House Operations) to be charged to the City under the Transaction Agreement.

The agreement is for Vale to donate and transfer to the City all assets directly related to the WTP, including the relevant land, buildings, plant and equipment. Vale will retain certain process water supply lines, the Pump House, raw water rights and water service lines from the WTP to Vale.

As per the agreement, arrangements for transferring ownership and operations are as follows:

- 2017 – Vale will continue to own and operate the WTP and the Pump House, but will charge the City for water. Vale will charge the City's 25% of the total cost of producing water (WTP costs) and 25% of raw water system costs (Pump House costs). The cost sharing arrangement would be 25:75 between the City and Vale.
- 2018 – The City will assume ownership and operation of the WTP. Vale will remain the owner and operator of the Pump House (raw water system). The WTP will be operated under a 50:50 cost share arrangement between the City and Vale. The City will charge Vale for 50% of the overall costs of operation of the WTP. Vale will charge the City a Process Water Charge which is its pro rata portion of the costs of operation of the Pump House based on the volume of raw water supplied to the WTP. The Process Water Charge would become part of the City's overall WTP operating costs. See Article 2 – Supply of Process Water by Vale in the Water Supply and Services Agreement page 7.
- 2019 & Beyond – The City will charge Vale for its full pro rata portion of the overall costs of operation (estimated 25%). The Charge to Vale will be calculated based on the volume of water supplied to Vale relative to the overall volume of water produced in the year. This manner of calculating rates would not apply in respect to those portions of Vale's operations that are connected directly to the City's distribution system. Vale will charge the City for its pro rata portion of the costs of operation of the Pump House based on volume of raw water supplied to the WTP. The cost share arrangement would be 74.09:25.91 between the City and Vale.

- All charges between Vale and the City will be billed quarterly based on budgeted costs and estimated volumes and reconciled to actual costs and actual metered volumes in the first quarter of the following year.
- When Vale operations cease in Thompson, the parties would terminate the commercial agreement and the City will have the option to acquire the Pump House and related raw water distribution infrastructure for nil or nominal consideration, in order to ensure that the City may continue to provide municipal water services without interruption.

On December 12, 2016, the City's Council passed Resolution No. 2016 253 authorizing the City to enter into the final Transaction Agreement and supplementary agreements for the transfer of the WTP with Vale. In addition, on December 11, 2017, the City provided a copy of the Transaction Agreement and supplementary agreements with Vale for the Board's information.

A Notice of Application for the transfer was issued by the Board on December 6, 2017, affording customers the opportunity to comment to the Board, the City and/or Vale with respect to the transfer of the WTP. There were no responses received with regard to the transfer application.

The City's rate application was received on November 4, 2016, for the approval of revised 2017-2019 water and wastewater rates for the Utility. The application was accompanied by a rate study prepared by the City's consultant and By-law No. 1945 2016 having received first reading on October 3, 2016. The application for revised water and wastewater rates reflects the transfer of the WTP, and is currently before the Board.

The City has also filed an application for interim rates on December 4, 2017 to accommodate the WTP transfer date of January 1, 2018 as per the Vale application and Transaction Agreement.

4.0 Board Findings

When reviewing an application, the Board has at its disposal two approaches, either a paper or a public hearing review. After the publication of the Notice of Application or Transfer, the Board will consider the application and stakeholder responses, and determine which method of review is most appropriate.

The Board may review the application using a paper review process, which saves the cost of a public hearing process. Having received no expression of concern from consumers, the Board decided to process this transfer application with a paper-based review.

Typically, the Board approves rates based on actual volumes and estimated consumption. However, this is a unique situation where the Board is not approving commodity based rates but a) the cost sharing arrangement between Vale and the City; b) the provision of raw water being supplied to the City from Vale and c) water from the WTP being supplied to Vale from the City.

The Board will approve the transfer of the ownership and operation of Vale Thompson Water Treatment Plant to the City of Thompson Water and Wastewater Utility as detailed in the Transaction Agreement and Ancillary Agreements (Schedule “B”) entered into by Vale and the City (December 15, 2016) effective January 1, 2018.

The Board also approves the cost sharing arrangements, raw water charges to the City from Vale, and water charges to Vale from the City, as the Board finds them to be reasonable.

Effective the date of this Order, customers will be charged rates approved by the Public Utilities Board in Board Order No. 146/14. These rates will be revised pending the Board’s decision on the City’s interim rate application, as well as a review of the full rate application at a public hearing set for January 23, 2018.

Vale and the City have jointly requested that the rates the City charges Vale not include distribution costs, like other consumers pay, thus making it a preferential rate. As per *The Public Utilities Board Act*, a preferential rate is as follows:

Preferential rates from municipal utility

82(15) Notwithstanding subsection (1), a municipality that is the owner of a public utility may, if authorized by by-law, enter into an agreement to charge an individual consumer a preferential rate; and, where the rate specified in the agreement is, in the opinion of the Board, one to which clause (1)(a) would apply, the authorizing by-law shall provide that the municipality shall annually pay, from proceeds of a special levy imposed annually for that purpose to the account of the utility concerned the difference between the amount received pursuant to the agreement and the amount that would have been received had the rate been established in compliance with this Act but without reference to this subsection; and the rate used in establishing the difference shall be approved by the Board.

Vale owns and receives water through an independent pipeline that is not connected to the City's water distribution system. Vale is also retaining the ownership and operation of the Pump House, raw water rights, process water supply lines (raw water lines) and water service lines (lines from the WTP).

As the Transaction Agreement between Vale and the City allows for a preferential rate for Vale and the reasons stated above, the Board finds this arrangement to be acceptable. However, this rate is subject to Board review in the City's next rate application (not the current rate application before the Board).

The Board also notes that the definition of a public utility, as per *The Public Utilities Board Act*, means any system, works, plant, pipelines, equipment or service of water either directly or indirectly, to or for the public. Therefore, under the PUB Act, Vale is a privately owned public utility and subject to regulation by the Board.

In 2008 the Public Utilities Board issued *Minimum Annual Filing Requirements for Privately and Cooperatively Owned Public Utilities* (Schedule "A"). These utilities are regulated based on what is referred to as a Complaint Based Regulatory Model.

Privately owned and cooperatively owned public utilities are required to file information on an annual basis, including guidelines for providing notice of upcoming rate increases to the Board and ratepayers. They are not required to file full rate applications, except at the Board's express direction.

The Board retains the right and authority to require a full rate application. This could be prompted by a complaint, if the Board found it required further information to resolve the complaint, or simply at the discretion of the Board.

The Board also recommends that Vale and the City work together to provide a clear definition in the Water Supply and Services Agreement of "potable water" and "potable water charge".

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

5.0 IT IS THEREFORE ORDERED THAT:

1. Vale is to provide the minimum filing for private and cooperatively owned utilities (Schedule "A" to this Order) annually to the Public Utilities Board, no later than six (6) months following the end of the prior fiscal year.
2. The ownership and operation of the Vale Thompson Water Treatment Plant be transferred to the City of Thompson, Water and Wastewater Utility IS HEREBY APPROVED, effective January 1, 2018, as outlined in the Transaction Agreement, Schedule "B" to this Order.

Fees payable upon this Order - \$150.00

THE PUBLIC UTILITIES BOARD

"Irene A. Hamilton, B.A., LLB,"
Panel Chair

"Rachel McMillin, B.Sc."
Acting Secretary

Certified a true copy of Order No. 6/18
issued by The Public Utilities Board



Acting Secretary

SCHEDULE "A"
Complaint Based Regulatory Model Minimum Annual Filing Requirements
(Private and Cooperatively Owned Public Utilities)

1. **Number of customers served and the nature of service**
 - i.e. Water (potable or non-potable water), wastewater (gravity-based, pump-out).

2. **i) Current rates, date of last rate change.**

Also, if **rates are to change within the next year** provide justification to the Board 60 days before implementation.

 - ii) Customers are to be notified of the intended rate change at least 30 days ahead of the change, with the reasons outlined and notice of their right to file any complaint with the Board.
 - iii)) A **copy of the Notice** in 2 (ii) is to be filed with the Board, with information advising how the Notice was distributed and the date of distribution.

3. Latest **Financial Statements**, with notes and auditor's comments (if applicable).

4. Details of **Operator Qualifications/Certification**.

5.
 - i) Confirmation that the utility is duly licensed under the **Drinking Water Safety Act**. If not applicable, explain.
 - ii) If providing potable water, details of water testing and confirmation that water meets **Drinking Water Standards**.

6. If a wastewater utility, details of service with confirmation **Environmental Licenses** if applicable are being complied with.

7. The **due date** for the annual reports is six months following the end of the prior fiscal year. (*REVISED AS OF JUNE 11, 2010*) Please state reporting year.

8. **Certificate of Insurance** from your insurance provider. (*REVISED AS OF JULY 17, 2009*)
 - i.) If serving fewer than 1,000 connections, maintain commercial general liability **insurance of a minimum of \$2.0 million** for each occurrence; or
 - ii.) If serving 1,000 connections or more, maintain commercial general liability **insurance of a minimum of \$5.0 million** for each occurrence

9. Provide **Utility Name** and **contact information:** (Name, Address, Phone Number and Email)

Originally prepared: September 3, 2008
Revised: June 11, 2010
Revised: January 21, 2013

SCHEDULE "B"
TRANSACTION AGREEMENT

Execution Version

TRANSACTION AGREEMENT

THIS TRANSACTION AGREEMENT is made as of December 15, 2016.

BY AND AMONG:

THE CITY OF THOMPSON
(hereinafter, the "**City**")

- and -

VALE CANADA LIMITED,
(hereinafter, "**Vale**")

(each a "**Party**" and collectively, the "**Parties**")

RECITALS:

A. Pursuant to the Townsite Agreement dated as of December 3, 1956, between the International Nickel Company of Canada Limited (now Vale) and the Province of Manitoba (as amended, the "**1956 Agreement**"), Vale agreed to construct the municipal infrastructure required for a future townsite related to its Thompson operations, including water pumping stations, water treatment facilities and sewer and water mains;

B. The townsite that was created pursuant to the 1956 Agreement was ultimately incorporated as the City and the City became a party to the 1956 Agreement pursuant to an agreement dated as of December 16, 1966 (the "**1966 Agreement**");

C. Vale constructed, and continues to own and operate, an integrated system to supply potable water both to its own operations and to the City, which system includes:

- (i) a fresh water intake facility which draws water from the Burntwood River and supplies untreated process water to Vale-owned facilities, including the Thompson Water Treatment Plant (the "**Pump House**"); and
- (ii) the Thompson Water Treatment Plant, which supplies potable water to both Vale's Thompson operations and to the City for general municipal purposes (the "**Thompson WTP**"),

both of which are located on Vale-owned property within the Local Government District of Mystery Lake.

- 2 -

D. Vale has recently completed major capital improvements at the Thompson WTP and the facility had an estimated fair value of approximately \$23.4 million (as at December 31, 2014, pursuant to the Preliminary Valuation Report, as hereinafter defined).

E. The 1956 Agreement provides that Vale is not required to operate or maintain or in any way carry on any public utility, service or services, and that it may at any time and from time to time transfer, sell, assign, lease or otherwise dispose of all or any part of the municipal infrastructure constructed by Vale to the City and, in the event of such transfer without consideration, the City will be obligated to accept such transfer;

F. The 1956 Agreement also provides that Vale may charge reasonable pumping charges for water delivered to the City and that the City is entitled to charge and collect from its residents for such services at such rates as may be approved by the Public Utilities Board;

G. While other infrastructure constructed by Vale has been transferred to the City over the years, Vale has retained ownership and operation of the Pump House and the Thompson WTP and has been providing potable water to the City at no charge;

H. Over time, Vale's requirements for potable water from the Thompson WTP have diminished and, when Vale's Thompson Smelter and Refinery ultimately cease operations (as planned for the end of 2018), Vale expects that its share of the total potable water volume will further decline from approximately 38% of total volume in 2015 to approximately 25% of total volume by 2019;

I. After extensive discussions and consultation between the Parties, and with a view to enhancing the sustainability of the community's infrastructure, the Parties have agreed that it is now appropriate to seek the applicable regulatory and other approvals to transfer the ownership of the Thompson WTP from Vale to the City, as a gift and donation, and on the terms and conditions set forth in this Agreement, with a target transfer date of December 31, 2017;

J. The Parties have further agreed to jointly seek the applicable regulatory and other approvals to share the costs of operation of the Thompson WTP as between Vale and the City, moving over a 3-year transition period towards sharing such costs on a *pro rata* basis, based on volume of water consumed; and

K. The transition period would provide for the costs of operation of the Thompson WTP to be shared as follows: (i) 2017: 25% City – 75% Vale (based on estimated costs); (ii) 2018: 50% City – 50% Vale (based on actual costs); and (iii) 2019 – *pro rata* (based on actual costs and volume of water consumed);

- 3 -

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Transaction Agreement, the following capitalized words and terms shall have the meanings set out below:

- (a) **"1956 Agreement"** has the meaning ascribed to it in the Recitals;
- (b) **"1966 Agreement"** has the meaning ascribed to it in the Recitals;
- (c) **"2016 PUB Application"** has the meaning ascribed to it in Section 7.1(b);
- (d) **"2017 Cost-Share"** has the meaning ascribed to it in Section 7.1(c)(i);
- (e) **"Ancillary Agreements"** means collectively the Water Supply and Services Agreement, the Technical Services Agreement, the Easement Agreement and the License Agreement;
- (f) **"Business Day"** means any day other than Saturday, Sunday or a public holiday in the Province of Manitoba;
- (g) **"By-law Amendments"** has the meaning ascribed to it in Section 7.3;
- (h) **"City Trainees"** has the meaning ascribed to it in Section 8.2(c);
- (i) **"Closing"** means the completion of the transfer of the Transferred Assets from Vale to the City under the terms of this Transaction Agreement;
- (j) **"Closing Date"** means December 31, 2017, or such other date as the Parties may agree in writing as the date upon which the Closing shall take place;
- (k) **"Closing Time"** has the meaning ascribed to it in Section 2.7;
- (l) **"Closing Valuation Report"** has the meaning ascribed to it in Section 7.4(b);
- (m) **"Confidential Information"** has the meaning ascribed to it in Section 10.1;
- (n) **"Deed of Gift"** has the meaning ascribed to it in Section 2.1(b);

- 4 -

- (o) **"Donation Receipt"** has the meaning ascribed to it in Section 2.1(c);
- (p) **"Easement Agreement"** has the meaning ascribed to it in Section 2.1(d)(iii);
- (q) **"Encumbrances"** means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, any matter capable of registration against title, option, right of pre-emption, privilege or any contract to create any of the foregoing;
- (r) **"Engineering Assessment Report"** means the engineering report and assessment completed by Stantec Consulting Ltd. in respect of the Thompson WTP dated October 29, 2015;
- (s) **"Environmental Reports"** has the meaning ascribed to it in Section 7.10;
- (t) **"Fair Value"** has the meaning ascribed to it in Section 2.1(c);
- (u) **"LGD"** means the Local Government District of Mystery Lake, being a local government district existing under *The Local Government Districts Act* (Manitoba);
- (v) **"License Agreement"** has the meaning ascribed to it in Section 2.1(d)(iv);
- (w) **"Material Adverse Change"** has the meaning ascribed to it in Section 6.1(b);
- (x) **"Notice"** has the meaning ascribed to it in Section 10.4;
- (y) **"Notice of Arbitration"** has the meaning ascribed to it in Section 9.3;
- (z) **"Operating License"** has the meaning ascribed to it in Section 3.1(g);
- (aa) **"Operational Transfer Date"** has the meaning ascribed to it in Section 8.1;
- (bb) **"Permitted Encumbrances"** means:
 - (i) the Easement Agreement and any caveat or registration giving notice of same which may be registered against title to the Thompson WTP;
 - (ii) any reservations on title to the Thompson WTP;

- 5 -

- (iii) any other caveat or registration registered by Vale in connection with the transactions contemplated by this Transaction Agreement; and
- (iv) any unregistered minor easements for: (i) the supply of domestic or public utilities or to the Thompson WTP or adjacent properties which shall not materially affect the present use and intended use of the Thompson WTP; (ii) drainage, storm or sanitary sewers which do not materially affect the present use and intended use of the Thompson WTP; and (iii) the supply of telephone lines, cable television lines, Internet or other services to the Thompson WTP;
- (cc) **"Plan of Easement"** means the Plan of Easement showing the location of the easements required pursuant to the Easement Agreement, which Plan of Easement has been deposited in the Portage la Prairie Land Titles Office as Deposit No.PLTO 0405/215;
- (dd) **"Preliminary Valuation Report"** has the meaning ascribed to it in Section 7.4(a);
- (ee) **"PUB Approvals"** has the meaning ascribed to it in Section 7.1;
- (ff) **"Public Utilities Board"** means the Manitoba Public Utilities Board created and continued under *The Public Utilities Board Act* (Manitoba);
- (gg) **"Pump House"** has the meaning ascribed to it in the Recitals and, for greater certainty, the Pump House is located on the land legally described as follows and shown on the plan attached in Schedule "A":

Title No. 2739673/3

PARCEL 1:

PARCEL 4 PLAN 4745 PLTO (N DIV)

**EXC FIRSTLY: PLANS 5943 PLTO (N DIV), 6452 PLTO (N DIV), 6856 PLTO (N DIV), 33680 PLTO, 34932 PLTO AND 56373 PLTO
AND SECONDLY: ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 77 & 78-2 WPM AND 77 & 78-3 WPM**

PARCEL 2:

PARCEL A PLAN 5943 PLTO (N DIV)

**EXC FIRSTLY: PLAN 6452 PLTO (N DIV)
AND SECONDLY: ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 78-3 WPM**

- 6 -

PARCEL 3:
BLOCK 10 PLAN 6452 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 4, 5 & 8-78-3 WPM

PARCEL 4:
PARCELS A, C & F PLAN 6856 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 78-3 WPM

PARCEL 5:
PARCEL B PLAN 6856 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT,
BUT WITHOUT RESERVING A STRIP OF LAND ONE AND ONE-HALF
CHAINS
IN WIDTH, MEASURED FROM THE ORDINARY HIGHWATER MARK
OR FROM THE BOUNDARY LINE, AS THE CASE IS
IN 78-3 WPM

Title No. 2486133/3

PARCEL E PLAN 6856 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT,
BUT WITHOUT RESERVING A STRIP OF LAND ONE AND ONE-HALF
CHAINS
IN WIDTH, MEASURED FROM THE ORDINARY HIGHWATER MARK
OR FROM THE BOUNDARY LINE, AS THE CASE IS
IN 78-3 WPM;

- (hh) **"Retained Assets"** means those assets to be retained by Vale, as more fully described in Schedule "B";
- (ii) **"Spare Parts"** has the meaning ascribed to it in Section 2.6;
- (jj) **"Technical Services Agreement"** has the meaning ascribed to it in Section 2.1(d)(ii);

- 7 -

- (kk) **"Thompson WTP"** has the meaning ascribed to it in the Recitals and, for greater certainty, is located on the lands legally described as follows and shown on the plan attached as Schedule "A":

AT THOMPSON AND BEING
BLOCK B PLAN 4620 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 79-3 WPM;

- (ll) **"Training and Transition Period"** has the meaning ascribed to it in Section 8.2;
- (mm) **"Transaction Agreement"** means this Transaction Agreement, including all schedules and all amendments or restatements as permitted, and references to **"Article"** or **"Section"** mean the specified Article or Section of this Transaction Agreement;
- (nn) **"Transferred Assets"** means all assets directly related to the Thompson WTP, including the relevant land, buildings, improvements, plant, machinery, equipment and spare parts, but excluding the Retained Assets;
- (oo) **"USW Local 6166"** has the meaning ascribed to it in Section 8.3(a);
- (pp) **"Vale Employees"** has the meaning ascribed to it in Section 8.3(b); and
- (qq) **"Water Supply and Services Agreement"** has the meaning ascribed to it in Section 2.1(d)(i).

1.2 **Certain Rules of Interpretation.** In this Transaction Agreement:

- (a) **Recitals** – The Recitals form an integral part of this Transaction Agreement.
- (b) **Headings** - Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Transaction Agreement.
- (c) **Including** - Where the word **"including"** or **"includes"** is used in this Transaction Agreement, it means "including (or includes) without limitation".

- 8 -

- (d) **No Strict Construction** – The language used in this Transaction Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (e) **Number and Gender** - Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (f) **Severability** – If, in any jurisdiction, any provision of this Transaction Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Transaction Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (g) **Statutory References** - A reference to a statute includes all regulations and rules made pursuant to that statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (h) **Governing Law** - This Transaction Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.
- (i) **Time** - Time shall be of the essence in the performance of the Parties' respective obligations under this Transaction Agreement.

1.3 **Entire Agreement.** This Transaction Agreement, the Ancillary Agreements and the agreements and other documents required to be delivered pursuant to this Transaction Agreement or the Ancillary Agreements, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Transaction Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise, including without limitation the Letter of Intent among Vale, the City and the LGD dated April 27, 2015. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, between the Parties in connection with the subject matter of this Transaction Agreement, except as specifically set forth in this Transaction Agreement, the Ancillary Agreements and any

- 9 -

other documents required to be delivered pursuant to this Transaction Agreement or the Ancillary Agreements.

1.4 **Schedules.** The following Schedules annexed to this Transaction Agreement are deemed to be an integral part of this Transaction Agreement:

- Schedule "A" - Location of Pump House and Thompson WTP
- Schedule "B" - Retained Assets
- Schedule "C" – Form of Deed of Gift
- Schedule "D" – Form of Donation Receipt
- Schedule "E" – Form of Water Supply and Services Agreement
- Schedule "F" – Form of Technical Services Agreement
- Schedule "G" – Form of Easement Agreement
- Schedule "H" – Form of License Agreement
- Schedule "I" – Existing & Proposed Power Supply to Thompson WTP

ARTICLE 2– TRANSFER OF ASSETS

2.1 **Action by Vale and the City.** Subject to the provisions of this Transaction Agreement, at the Closing Time:

- (a) **Transfer of the Transferred Assets** – Vale shall gift, transfer, convey and assign all of its right, title and interest in and to the Transferred Assets to the City, on an "as-is, where-is" basis, and subject to the Permitted Encumbrances, and the City shall receive and accept such Transferred Assets as a gift.
- (b) **Deed of Gift** – Vale and the City shall execute and deliver the Deed of Gift, substantially in the form attached as Schedule "C" (the "**Deed of Gift**"), and any other such instruments of transfer, deeds, assurances, consents and other documents as shall be necessary or desirable to effectively transfer the Transferred Assets to the City and to complete the transactions provided for in this Transaction Agreement;
- (c) **Donation Receipt.** The City shall provide Vale with an official donation receipt for income tax purposes (the "**Donation Receipt**") in the amount of

- 10 -

the fair market value of the Transferred Assets as at the Closing Date (the "**Fair Value**"), substantially in the form attached hereto as Schedule "D".

- (d) **Ancillary Agreements** – Vale and the City shall execute and deliver each of the Ancillary Agreements, as follows:
- (i) a Water Supply and Services Agreement, substantially in the form attached as Schedule "E" but subject to such changes as may be required in connection with the PUB Approvals (the "**Water Supply and Services Agreement**"), whereby: (i) Vale shall provide the City, through the Pump House and related infrastructure, with process water for intake into the Thompson WTP; and (ii) the City shall provide Vale, through the Thompson WTP, with potable water for use in its operations;
 - (ii) a Technical Services Agreement, substantially in the form attached as Schedule "F" (the "**Technical Services Agreement**"), whereby Vale shall provide the City with certain ongoing technical and/or transition services related to the operation of the Thompson WTP as may be mutually agreed upon by the Parties;
 - (iii) an Easement Agreement, substantially in the form attached as Schedule "G" (the "**Easement Agreement**"), whereby Vale shall retain an easement over the Thompson WTP property in accordance with the related Plan of Easement in order to access, operate and maintain certain of the Retained Assets as required; and
 - (iv) a License Agreement, substantially in the form attached as Schedule "H" (the "**License Agreement**"), whereby the City shall grant a license to Vale to use certain portions of the Thompson WTP for the purposes of locating, operating and maintaining the "Network Facilities" and the "Environmental Monitoring Facilities" located therein (as defined in Schedule "B").
- (e) **Other Documents.** The Parties shall deliver such other documents as may be necessary or desirable to complete the transactions provided for in this Transaction Agreement.

2.2 No Assumption of Liabilities. Vale and the City acknowledge and agree that the City shall not assume any liabilities of Vale to third parties whatsoever arising prior to the Closing Date and in relation to the Transferred Assets (including without limitation any operational or supply contracts) and Vale shall indemnify and save harmless the City in respect of those liabilities. For greater certainty, the City assumes

- 11 -

responsibility for and the indemnity of Vale does not extend to (i) the condition of the Transferred Assets, including, but not limited to, the environmental condition of the Transferred Assets, (ii) any defects or deficiencies whether known or unknown and whether in the specific contemplation of the parties or not; and (iii) any Encumbrances (other than the Permitted Encumbrances).

2.3 No Representations and Warranties. Vale shall transfer and convey the Transferred Assets to the City on an "as is, where is" basis, and subject to the Permitted Encumbrances, and the City agrees and acknowledges that Vale makes no representations, warranties or indemnities with respect to the Transferred Assets or the condition of the Transferred Assets.

2.4 Applicable Taxes. Vale and the City acknowledge and agree that the City shall be responsible for the payment and remittance of all applicable taxes in connection with the transfer of the Transferred Assets, including: (i) Manitoba Retail Sales Tax; (ii) federal Goods and Services Tax; and (iii) Manitoba Land Transfer Tax, and the City shall pay and remit any such applicable taxes within the term prescribed by law for doing so. The City shall file a casual purchaser's return in respect of any applicable Manitoba Retail Sales Tax and shall provide Vale with a GST declaration and indemnity with respect to the self-assessment and reporting of any applicable GST. The City intends to apply to the Province of Manitoba for an exemption from the payment of such taxes, or a grant to defray the cost of such taxes, and Vale shall provide the City with such information and other support as may be required by the City in order to support such application by the City. (The GST is a flow-through, so no such application would be required.) The Parties acknowledge that such taxes have specifically been excluded from the calculation of the Costs of Operation of the Thompson WTP for the purposes of the Water Supply and Services Agreement that such costs have not been included within the City's application to the Public Utilities Board covering water rates to be charged by the City.

2.5 Retained Assets. The Parties acknowledge and agree that the Transferred Assets expressly exclude the Retained Assets.

2.6 Spare Parts. Further, the Parties acknowledge and agree that certain spare parts relating exclusively to the Thompson WTP (the "**Spare Parts**") form part of the Transferred Assets, but are stored at Vale's Thompson warehouse and Thompson utilities building. Vale shall provide the City with a list of the Spare Parts, by location, promptly following the Closing Time and Vale shall make the Spare Parts available to the City upon request, including for inventory, audit or such other inspection as the City may reasonably require. Vale shall store the Spare Parts on Vale's premises at no charge to the City and shall have no liability whatsoever for the insurance, maintenance or condition of the Spare Parts. For greater certainty, Vale and the City acknowledge and agree that Vale shall not be considered a bailee for hire and Vale shall not be liable for any damage caused to the Spare Parts by any means whatsoever, including by

- 12 -

reason of negligence or wilful acts of Vale or its officers, employees, agents, contractors or invitees.

2.7 Closing Time and Place. The Closing shall occur effective at 12:00 midnight on the Closing Date (the “Closing Time”). The Closing shall take at the offices of Vale’s counsel or such other location as may be agreed to by the Parties.

2.8 Automatic Termination (i.e., “Long-Stop Date”). If the Closing has not occurred by December 31, 2017 (i.e., prior to the end of the term of the letter of understanding regarding Vale’s municipal tax and funding arrangements for the January 1, 2013 through December 31, 2017 period, dated as of December 21, 2012 and referred to as the “GILT LoU”), then this Transaction Agreement shall terminate automatically.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES OF VALE

3.1 Vale Representations and Warranties. Vale makes the following representations and warranties to the City and acknowledges that the City is relying upon such representations and warranties:

- (a) **Incorporation and Corporate Power.** Vale is a corporation validly existing under the federal laws of Canada and has all necessary corporate power, authority and capacity to enter into this Transaction Agreement and to carry out its obligations under this Transaction Agreement.
- (b) **Due Authorization and Enforceability of Obligations.** The execution and delivery of this Transaction Agreement and the consummation of the transactions contemplated by this Transaction Agreement have been duly authorized by all necessary corporate action on the part of Vale. This Transaction Agreement constitutes, and the Ancillary Agreements and each other agreement to be executed or delivered by Vale at the Closing will constitute, a valid and binding obligation of Vale enforceable against it in accordance with its terms.
- (c) **Absence of Conflicting Agreements.** Vale is not a party to, bound or affected by or subject to any contract, agreement, obligation, instrument, charter or by-law provision, order, judgement, decree, licence, laws or, subject to the PUB Approvals and the By-law Amendments, governmental authorizations that would be violated, breached by, or under which default would occur or an Encumbrance would be created as a result of the execution and delivery of, or the performance of obligations under, this Transaction Agreement, the Ancillary Agreements or any other agreement to be entered into under the terms of this Transaction Agreement.

- 13 -

- (d) **Right to Gift the Transferred Assets.** Vale is the sole registered and beneficial owner of the Transferred Assets, subject to the Permitted Encumbrances. Vale has the sole and exclusive right to gift, transfer, convey and assign the Transferred Assets as provided in this Transaction Agreement and, subject to the PUB Approvals, such gift, transfer, conveyance and assignment will not violate, contravene, breach or offend against or result in any default under any contract, agreement, obligation, instrument, charter or by-law provision, order, judgement, decree, license, laws or governmental authorizations to which Vale is bound or affected.
- (e) **Absence of Litigation.** There are no claims, investigations, complaints or proceedings in progress or, to the knowledge of Vale, pending or threatened against or relating to Vale which, if determined adversely to Vale, would prevent Vale from completing the gift, transfer, conveyance and assignment of the Transferred Assets to the City, or otherwise restrict Vale from fulfilling any of its obligations under this Transaction Agreement, the Ancillary Agreements or any other agreement to be entered into under the terms of this Transaction Agreement.
- (f) **Tax Matters.** Vale is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
- (g) **Compliance with Law.** Vale is in compliance with, and is conducting the operations of the Thompson WTP in compliance with, all applicable legal requirements in respect of the Thompson WTP in all material respects and has all permits and licenses as may be required for the use and operation of the Thompson WTP, including without limitation the "Operating License for a Public Water System", issued under *The Drinking Water Safety Act* (Manitoba), being License Number PWS-08-165-02, as such license may be amended or superseded from time to time (the "Operating License").
- (h) **Engineering Assessment Report.** The issues identified in Section 8.0 of the Engineering Assessment Report (Recommended Upgrades and Actions) were not required to be addressed by Vale in connection with the renewal of its Operating License.

- 14 -

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES OF THE CITY

4.1 **Representations and Warranties of the City.** The City makes the following representations and warranties to Vale and acknowledges that Vale is relying upon such representations and warranties:

- (a) **Existence and Power.** The City is a municipality continued under *The Municipal Act* (Manitoba) and the City has all necessary power, authority and capacity to enter into this Transaction Agreement and to carry out its obligations under this Transaction Agreement.
- (b) **Due Authorization and Enforceability of Obligations.** The execution and delivery of this Transaction Agreement and the consummation of the transactions contemplated by this Transaction Agreement have been duly authorized by all necessary corporate action of the City. This Transaction Agreement constitutes, and the Ancillary Agreements and each other agreement to be executed and delivered by it at the Closing will constitute, a valid and binding obligation, enforceable against the City, in accordance with its terms.
- (c) **Absence of Conflicting Agreements.** It is not a party to, bound or affected by or subject to any contract, agreement, obligation, instrument, charter or by-law provision, order, judgement, decree, licence, laws or, subject to the PUB Approvals and the By-law Amendments, governmental authorizations that would be violated, breached by, or under which default would occur as a result of the execution and delivery of, or the performance of obligations under, this Transaction Agreement, the Ancillary Agreement or any other agreement to be entered into under the terms of this Transaction Agreement.
- (d) **Absence of Litigation.** There are no Claims, investigations, complaints or proceedings in progress or, to its knowledge, pending or threatened against or relating to the City which, if determined adversely to it, would prevent the City from receiving and accepting the Transferred Assets from Vale, or otherwise restrict the City from fulfilling any of its respective obligations under this Transaction Agreement, the Ancillary Agreements or any other agreement to be entered into under the terms of this Transaction Agreement.
- (e) **Tax Matters.** The City is a "qualified donee" pursuant to section 149.1 of the *Income Tax Act* (Canada) and is registered with Canada Revenue Agency for such purposes.

- 15 -

ARTICLE 5 - NON-WAIVER

5.1 **Non-Waiver.** No investigations made by or on behalf of the Parties at any time shall have the effect of waiving, diminishing the scope or otherwise affecting any representation or warranty made by the Parties in or pursuant to this Transaction Agreement. No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

ARTICLE 6 - CONDITIONS PRECEDENT

6.1 **Vale's Conditions.** The obligation of Vale to complete the transfer of the Transferred Assets under this Transaction Agreement shall be subject to the satisfaction of, or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to have been inserted solely for the benefit of Vale and may be waived by Vale in whole or in part), namely:

- (a) **Internal Approvals** - all necessary internal approvals of Vale shall have been obtained;
- (b) **Regulatory Approvals** - all necessary regulatory, governmental and third party approvals, authorizations and consents required in connection with the transfer of the Transferred Assets pursuant to this Transaction Agreement, including the PUB Approvals and the By-Law Amendments, shall have been given, received or obtained;
- (c) **Performance of Obligations** – the City shall have performed or complied with, in all respects, its obligations, covenants and agreements under this Transaction Agreement; and
- (d) **Truth and Accuracy of Representations and Warranties at Closing Time** – all of the representations and warranties of the City made in or pursuant to this Transaction Agreement shall be true and correct at the Closing Time with the same effect as if made at and as of the Closing Time and Vale shall have received a certificate from the City Administrator confirming the foregoing to his knowledge (after due inquiry) and without personal liability.

If any of the foregoing conditions has not been fulfilled by the Closing Time, then Vale may, at its sole discretion, terminate this Transaction Agreement by notice in writing to the City, in which event each of the Parties shall be released from all obligations under this Transaction Agreement.

6.2 **The City's Conditions.** The obligation of the City to accept the transfer of the Transferred Assets under this Transaction Agreement shall be subject to the

- 16 -

satisfaction of, or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to have been inserted herein solely for the benefit of the City and may be waived by the City in whole or in part), namely:

- (a) **Internal Approvals** - all necessary approvals of the municipal council of the City shall have been obtained;
- (b) **Regulatory Approvals** - all necessary regulatory, governmental and third party approvals, authorizations and consents required in connection with the transfer of the Transferred Assets pursuant to this Transaction Agreement, including the PUB Approvals and the By-Law Amendments, shall have been given, received or obtained;
- (c) **No Material Adverse Change** - there shall have been no material adverse change in the Transferred Assets (defined as a change or event that causes or results in the inability to operate the Thompson WTP in a manner consistent with the Operating License or which causes or results in damages or loss of property which requires material expenditures to remediate or results in a potential material increase in costs for ratepayers relative to those set out in the PUB Approvals);
- (d) **Performance of Obligations** - Vale shall have performed or complied with, in all respects, its obligations, covenants and agreements under this Transaction Agreement; and
- (e) **Truth and Accuracy of Representations and Warranties at Closing Time** – all of the representations and warranties of Vale made in or pursuant to this Transaction Agreement shall be true and correct at the Closing Time with the same effect as if made at and as of the Closing Time and the City shall have received a certificate from an officer of Vale confirming the foregoing to his knowledge (after due inquiry) and without personal liability.

If any of the foregoing conditions has not been fulfilled by the Closing Time, then the City may, at its sole discretion, terminate this Transaction Agreement by notice in writing to Vale, in which event each of the Parties shall be released from all obligations under this Transaction Agreement.

- 17 -

ARTICLE 7 - COVENANTS**7.1 2016 PUB Application and PUB Approvals.**

- (a) Vale and the City acknowledge that, pursuant to Order No. 146/14 dated December 24, 2014, the Public Utilities Board has approved, on an interim basis, the City's application for revised water and sewer rates for the years 2015, 2016 and 2017.
- (b) Vale and the City further acknowledge that the City submitted an application for revised water and wastewater rates, on October 31, 2016, covering the years 2017, 2018 and 2019 (the "**2016 PUB Application**").
- (c) Vale and the City shall cooperate and collaborate and diligently pursue as part of the 2016 PUB Application such approvals by the Public Utilities Board as may be required in connection with the transactions contemplated under this Transaction Agreement, including:
 - (i) approval for Vale to charge the City for the provision of potable water to the City in 2017 an amount representing 25% of the estimated costs of operation of the Thompson WTP in 2017) (the "**2017 Cost-Share**");
 - (ii) approval for adjustments to the potable water supply rates to be charged by the City to its water consumers in 2017 (to recover the amount of the 2017 Cost-Share);
 - (iii) approval for the transfer of the Transferred Assets from Vale to the City on or before to December 31, 2017; and
 - (iv) approval for the applicable process water pumping rates to be charged by Vale to the City under the Water Supply and Services Agreement;(collectively, the "**PUB Approvals**").
- (d) Vale and the City acknowledge that Vale has engaged a consultant, DFA Infrastructure International Inc., at Vale's sole cost and expense, to assist in the preparation of such applications to the Public Utilities Board.

7.2 Invoices for 2017 Cost-Share. Following receipt of the applicable PUB Approvals with respect to the 2017 Cost-Share, Vale may render and deliver to the City one or more invoices in the aggregate amount of the 2017 Cost-Share, with each such

- 18 -

invoice to be delivered within 30 days following the end of a calendar quarter. Such invoices shall be of an equal amount, and shall be exclusive of all goods and services, provincial sales or other taxes, all of which shall be the sole responsibility of the City. The City shall pay the invoiced amount within 45 days of receipt or deemed receipt of the invoice. The City shall pay interest on arrears to Vale at the rate of 1 ¼% per month (or such other rate as may be established from time to time by the City for late payments by customers under the City's Water and Wastewater Rates By-Law).

7.3 **By-Law Amendments.**

- (a) The City shall diligently pursue all such amendments to its by-laws as may be required to give effect to the Transactions contemplated under this Agreement (collectively, the "**By-Law Amendments**"), including such amendments to the City of Thompson Water and Wastewater Utility By-Law No 1842-2010 (in this Section, the "**Water By-Law**") and the City of Thompson Water and Wastewater Rates By-Law No. 1843-2010 (in this Section, the "**Rates By-Law**") as are required to give effect to the Water Supply and Services Agreement and the charges set out therein; and
- (b) The City shall keep Vale informed of the status of the By-Law Amendments and shall notify Vale of any public hearings or council meetings at which the By-Law Amendments are to be considered.

7.4 **Determination of Fair Value of the Transferred Assets.**

- (a) Vale and the City acknowledge that Vale has commissioned (at its sole cost and expense) an independent consultant, AEC Property Tax Solutions, to prepare a report on the aggregate fair value of the Transferred Assets as of September 30, 2014 (the "**Preliminary Valuation Report**"). A copy of the Preliminary Valuation Report (dated October 2014) has been provided to the City. The Preliminary Valuation Report concluded that the market value of the lands, building and yard improvements, and machinery and equipment comprising the Thompson WTP, as of September 30, 2014, was \$23,400,000.
- (b) Vale shall commission (at its sole cost and expense) an update of the Preliminary Valuation Report (the "**Closing Valuation Report**"), to be dated no more than one hundred and twenty (120) days before the Closing Date and to be delivered to the City no later than sixty (60) days before the Closing Date. The Closing Valuation Report shall also identify each of the Transferred Assets and allocate Fair Value among them. Such allocation shall be used for the purposes of the Deed of Gift and applicable tax filings provided that, if either Party believes there to be an

- 19 -

error in the Closing Valuation Report (including with respect to the calculation or allocation of Fair Value) then either Party may refer the issue to AEC, whereupon: (i) AEC shall be required to review the issue(s) identified in the Closing Valuation Report, and (ii) the allocation as may be adjusted based on such review by AEC shall be used for the purposes of the Deed of Gift and applicable tax filings.

7.5 Cooperation Regarding Real Property Matters.

- (a) Vale and the City acknowledge that the Thompson WTP is located on Vale-owned land, inside the boundaries of the LGD.
- (b) Vale and the City agree to cooperate and take such actions and provide such consents as may be required to effect: (i) the transfer of the land and buildings to the City pursuant to the Deed of Gift; (ii) the granting of the easement in favour of Vale pursuant to the Easement Agreement; (iii) the annexation by the City of the land included in the Transferred Assets; and (iv) the appropriate rezoning by the City of the relevant land included in the Transferred Assets.

7.6 Power Supply from Manitoba Hydro.

- (a) Vale and the City acknowledge that, as of the date of this Transaction Agreement, the Thompson WTP obtains electrical power from Vale, through Vale-owned transmission lines (as illustrated on the plan attached as Schedule "I").
- (b) Vale and the City hereby agree to work together and with Manitoba Hydro to install a direct electrical power feed from Manitoba Hydro to the Thompson WTP, on or before December 31, 2017 (as illustrated on the plan attached as Schedule "I").
- (c) For greater certainty, the City shall be responsible for contracting with Manitoba Hydro for the installation of a new transformer and new cable (as illustrated on Schedule "I") and Vale shall be responsible for the installation of the "customer service termination enclosure" on the exterior wall of the Thompson WTP and the new cables on the interior of the Thompson WTP. Each Party shall be solely responsible for funding its portion of such work.

7.7 Fire & Emergency Services.

- (a) Vale and the City acknowledge that, as of the date of this Transaction Agreement, the Thompson WTP receives fire and emergency services from Vale.

- 20 -

- (b) Vale and the City hereby agree to work together to connect applicable fire, chlorine and other alarm systems at the Thompson WTP from Vale's monitoring system to the City's monitoring system, on or before December 31, 2017, in order to facilitate the transition of transition fire and emergency services for the Thompson WTP from Vale to the City as at the Closing Date.
- (c) Each Party shall be solely responsible for funding its portion of such work.

7.8 Business in the Ordinary Course. From the date of this Transaction Agreement until the Closing Date, Vale shall conduct the business and operations of the Thompson WTP in the usual and ordinary manner and use all reasonable efforts to maintain good relations with its employees, customers and suppliers.

7.9 Continuing Due Diligence. From the date of this Transaction Agreement to the Closing Date, Vale shall provide the City and its representatives with reasonable access to all assets, books, records, personnel and premises of Vale in relation to the Transferred Assets, upon reasonable notice, such that the City may continue its legal, operational, physical, environmental and financial review of the Transferred Assets and develop its operational transition plans.

7.10 Environmental Assessments. Vale acknowledges that it has commissioned (at its sole cost and expense) an independent consultant, AMEC Environmental and Infrastructure (in this Section "AMEC"), to prepare (i) a Phase I Environmental Site Assessment of the land and buildings forming part of the Thompson WTP site, and (ii) a Phase II Environmental Site Assessment for the purpose of assessing the soil conditions at the Thompson WTP site with respect to petroleum hydrocarbon storage (i.e., the two underground storage tanks and one above-ground storage tanks that are known to be located on the property). Vale and the City acknowledge and agree that copies of the Phase I Environmental Site Assessment (dated December 10, 2014) and the Phase II Environmental Site Assessments (dated November 10, 2014) (collectively, the "Environmental Reports") have been provided to each of Vale and the City and that the Environment Reports do not identify any material environmental issues at the site or recommend any further investigation or remediation activities. Vale shall provide the City with updates of the Environmental Reports, prepared by AMEC, no later than sixty (60) days before the Closing Date and dated no more than one hundred twenty (120) days before the Closing Date, together with a letter of reliance from AMEC addressed to the City.

7.11 Books and Records. Vale shall use its commercially reasonable efforts (including through a search of its active and archived files) to identify Vale's material books and records relating to the Thompson WTP, including plans and drawings and

- 21 -

operating and maintenance reports, and shall deliver such material books and records (or copies thereof) to the City on or before the Closing Date.

7.12 Report of Change of Ownership; New Operating License. Vale shall provide written notice of the change of ownership of the Thompson WTP to the Office of Drinking Water within seven days of the Closing, as required by the terms of the Operating License, and shall provide such assistance as may be reasonable requested by the City with respect to the issuance of a new/replacement Operating License to the City.

7.13 Compliance with Law. Each Party covenants that, in all of its activities in connection with this Transaction Agreement, it shall at all times comply with all applicable laws, regulations and legislation, including, but not limited to, the *Corruption of Foreign Public Officials Act* (Canada) and the *Foreign Corrupt Practices Act* (United States), as well as any other anti-bribery, anti-corruption or conflict of interest law applicable to either Party.

ARTICLE 8 – TRAINING AND TRANSITION PERIOD & OPERATIONAL TRANSFER

8.1 Operational Transfer Date. The City shall assume full operational control and accountability for the Thompson WTP on January 1, 2018, or such later date as may be agreed by the Parties following the date on which (a) the Closing has occurred, and (b) the City has advised Vale that it has hired and trained the required operators for the Thompson WTP, and it is ready to assume full operational control of the Thompson WTP (the “Operational Transfer Date”).

8.2 Training and Transition Period. Vale and the City acknowledge and agree that, during the period from the date of this Transaction Agreement to the Operational Transfer Date (the “Training and Transition Period”), the following shall occur:

- (a) the City shall recruit an “operator-in-charge” for the Thompson WTP, who shall hold or obtain a “3rd Class Water Treatment Plant License”, as required by applicable law;
- (b) Vale shall provide such assistance to the City in its recruitment efforts in relation to such “operator-in-charge” for the Thompson WTP as may be reasonably requested by the City from time to time, including helping to identify qualified candidates, providing access for site visits and making the existing “operator-in-charge” of the Thompson WTP available for tours and interviews;

- 22 -

- (c) the City shall designate certain City employees (the "**City Trainees**") as future operators for the Thompson WTP, which individuals shall be required to hold or obtain a "1st Class Water Treatment Plant License", as required by applicable law, and shall be ready to start hands-on training at the Thompson WTP by January 1, 2017;
- (d) Vale shall provide required training to the City Trainees in the operation of the Thompson WTP, starting January 1, 2017; and
- (e) during the Training and Transition Period, Vale shall retain full operational control of the Thompson WTP, and all responsibilities related thereto, and shall be responsible for managing the City Trainees during any on-site training.

8.3 **Vale Employees.**

- (a) The Parties acknowledge that the Thompson WTP is currently operated, together with other facilities, by Vale's Utilities Department. There is currently only one employee engaged in the operation of the Thompson WTP on a full-time basis, although several employees assist in the operation and maintenance of the Thompson WTP as part of their broader duties. All such employees are members of the United Steelworkers Union, Local 6166 (the "**USW Local 6166**").
- (b) During the Training and Transition Period, the Vale employees engaged at the Thompson WTP (the "**Vale Employees**") shall at all times and for all purposes remain employees of the Vale. Vale shall be solely responsible for all salaries, wages, benefits and all other remuneration, costs, outlays or expenses for or in respect of the Vale Employees, including any and all amounts due to regulatory bodies such as the Worker's Compensation Board of Manitoba. Vale hereby releases, indemnifies and holds harmless the City from any and all claims, demands, liabilities, actions, damages or expenses whatsoever which Vale may incur or become liable to account for, arising out of, related to or attributed to, any acts or omissions caused by the negligence of or an unlawful act of Vale Employees during the Training and Transition Period.

8.4 **City Trainees.**

- (a) The Parties acknowledge that, under the terms of the Collective Bargaining Agreement between Vale and USW Local 6166, Vale has entered into a Letter Agreement with USW Local 6166 to permit the training of the City Trainees and to facilitate the transactions contemplated by this Transaction Agreement.

- 23 -

- (b) During the Training and Transition Period, the City Trainees will at all times and for all purposes remain employees of the City. The City shall be solely responsible for payment of all salaries, wages, benefits and all other remuneration, costs, outlays or expenses for or in respect of the City Trainees, including any and all amounts due to regulatory bodies such as the Worker's Compensation Board of Manitoba. The City hereby releases, indemnifies and holds harmless Vale from any and all claims, demands, liabilities, actions, damages or expenses whatsoever which Vale may incur or become liable to account for, arising out of, related to or attributed to, any acts or omissions caused by the negligence of or an unlawful act of the City Trainees during the Training and Transition Period.

8.5 **New City Workforce.** Following the Operational Transfer Date, the City shall operate the Thompson WTP with City employees and/or third party service providers. Such City employees may be salaried, non-union employees; members of the United Steelworks Union, Local 7911 (labour and maintenance); and/or members of the United Steelworkers Union, Local 8223 (office and technically). The City shall be solely responsible for workforce planning and ensuring that all applicable labour and employment requirements are satisfied in relation to the workforce planning decisions in relation to the Thompson WTP.

ARTICLE 9 – DIFFERENCES & ARBITRATION

9.1 **Escalation of Disputes for Mutual Resolution** - In the event of a dispute or difference between the Parties in respect of any matter under this Transaction Agreement, including the interpretation of this Transaction Agreement or the calculation of any costs or charges hereunder, the matter shall first be considered and, if able, resolved by the then Vice President, Manitoba Operations of Vale and the Mayor and/or Chief Administrative Officer of the City, who shall meet and seek to resolve such dispute or difference. If such individuals are unable to resolve the deadlock, the Parties shall enlist an independent, experienced and qualified third-party mediator to mediate the resolution of such dispute or difference.

9.2 **Arbitration** - In the event that any dispute between the Parties as to any matter under this Transaction Agreement cannot be resolved pursuant to Section 9.1, such matter may be settled by arbitration as hereinafter provided. Any such matter may be submitted by either Party to arbitration and, if so submitted, shall be arbitrated by a single arbitrator. Except as specifically provided in this Article 10, the arbitration shall be governed by *The Arbitration Act* (Manitoba) and for that purpose the provisions of this Article 9 shall be deemed to be a submission to arbitration within the meaning of such statute.

9.3 **Notification** - A Party desiring arbitration hereunder shall give written notice of arbitration to the other Party containing a concise description of the matter

- 24 -

submitted for arbitration ("**Notice of Arbitration**"). The Notice of Arbitration shall also set out the names of three (3) proposed arbitrators, who shall, in each case, have the requisite independence and expertise to act as arbiter in respect of the particular matter. The other Party shall within 14 days after receiving such notice select one of the proposed arbitrators to act as the arbitrator and shall within such 14-day period so notify the Party proposing the arbitration. If such notice is not given by the other Party by the end of such 14-day period, then the Party desiring arbitration may apply to a judge in chambers of the Court of Queen's Bench, Winnipeg Division for the appointment of a single arbitrator as contemplated by the Act for the resolution of the dispute and the single arbitrator so appointed shall be the single arbitrator for the purpose of resolution of such dispute.

9.4 Time, Place of Hearing - The arbitrator shall fix the time and place for hearing such evidence and representations as the Parties may present and may determine any matters of procedure for the arbitration not specified herein. The Parties shall present to the arbitrator and the arbitrator shall conclusively determine all outstanding issues between the Parties with respect to the matters submitted to arbitration.

9.5 Costs - The costs of the arbitration (including the remuneration of the arbitrator and the Parties' costs of legal representation in preparing for and attending at the arbitration) shall be borne by the Parties as may be specified in the decision.

9.6 Enforcement - For the purpose only of enforcing the agreement to arbitrate set forth in this Article 9, enforcing any arbitration award and obtaining interim relief necessary to protect a Party pending arbitration, each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Province of Manitoba.

9.7 Written Decision. No later than 30 days after hearing the representations and evidence of the Parties, the arbitrator shall make his or her determination in writing and deliver one copy to each of the Parties. The decision of the arbitrator shall be final and binding upon the Parties in respect of all matters relating to the arbitration, the conduct of the Parties during the proceedings, and the final determination of the issue in the arbitration. The Parties shall, within ten (10) days following delivery of the arbitrator's decision, give effect to that decision by implementing its terms in accordance with the provisions of this Transaction Agreement.

9.8 No Appeal. There shall be no appeal from the determination of the arbitrator to any court. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

- 25 -

ARTICLE 10 - GENERAL

10.1 **Confidentiality.** Each Party (in this Section, the “**Receiving Party**”) agrees to keep all information provided by the other Party (in this Section, the “**Disclosing Party**”) or its representatives in relation to the transactions contemplated by this Transaction Agreement and expressly identified to the Receiving Party by the Disclosing Party as confidential (the “**Confidential Information**”) in the strictest confidence and not to disclose such Confidential Information to a third party except: (a) with the prior written consent of the Disclosing Party; or (b) where required by law or by a governmental or administrative agency or body or a decision by a court of law, but then only after first notifying the Disclosing Party of the required disclosure and providing the Disclosing Party a reasonable opportunity to contest the disclosure. This restriction shall not apply to any information which: (i) the Receiving Party can demonstrate is already in the public domain or becomes available to the public through no breach by the Receiving Party of this Section of the Transaction Agreement (provided that information that is disclosed or discussed as part of an “in camera” session of the City’s municipal council or any committee thereof shall not be considered to be in the public domain or to have ceased to be Confidential Information); (ii) was in the Receiving Party’s possession prior to its receipt from the Disclosing Party; or (iii) has been received from a third party who was under no obligation of confidentiality with respect to such information, as demonstrated by its written records; or (iv) was independently developed by the Receiving Party, as demonstrated by its written records

10.2 **Publicity.** Any public notice or other publicity concerning the transactions contemplated by this Transaction Agreement shall be jointly planned and coordinated by the Parties and no Party shall act unilaterally in this regard without prior approval of the other Party (such approval not to be unreasonably withheld), except where required to do so by law or by the applicable regulations or policies of any governmental or other regulatory agency or any stock exchange having jurisdiction in respect of the Party in circumstances where prior consultation with the other Party is not practicable, in which case reasonable notice shall be provided to the other Party.

10.3 **Expenses.** Unless otherwise provided in this Transaction Agreement or any of the Ancillary Agreements, each Party shall pay all of the costs and expenses (including the fees and disbursements of legal counsel and other advisors) that it may incur in connection with the negotiation, preparation and execution of this Transaction Agreement and the transactions contemplated by this Transaction Agreement.

10.4 **Notice.** Any notice, approval or other communications required or permitted to be given in connection with this Transaction Agreement (each, a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery) or if transmitted by facsimile or e-mail to the addresses designated below or such other addresses as may be designated

- 26 -

by Notice given hereunder, and shall be effective upon such personal delivery or facsimile or email transmission:

(a) If to the City:

City of Thompson
City Hall
226 Mystery Lake Road
Thompson, MB
R8N 1S6

Tel: (204) 677-7920
Fax: (204) 677-7936

Attention: Chief Administrative Officer
Email: gceppetelli@thompson.ca

(b) If to Vale:

Vale Canada Limited
Thompson Operations
Thompson, MB

Tel: (204) 778-2336
Fax: (204) 778-2278

Attention: Vice-President, Manitoba Operations
Email: Mark.Scott@vale.com

10.5 Amendment. No amendment, supplement, modification or waiver or termination of this Transaction Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound.

10.6 Assignment. No Party may assign this Transaction Agreement or any of the benefits, rights or obligations under this Transaction Agreement without the prior written consent of the other Party, provided that: (i) Vale may assign its benefits, rights and obligations under this Transaction Agreement to the purchaser of all or substantially all of the assets of Vale's Manitoba operations, effective from and after the date of such transfer, upon giving Notice to the City, and (ii) upon the agreement of such Vale affiliate or third party purchaser to be bound by and irrevocably attorn to the terms of this Transaction Agreement and to honour all of Vale's obligations under this Transaction Agreement, Vale shall be released from all further obligations under this Transaction Agreement. For greater certainty, no assignment of this Transaction Agreement by Vale shall operate to release Vale from liability from and after the effective date of such assignment in respect of all of the covenants, terms and

- 27 -

conditions of this Transaction Agreement as they may relate to the period prior to the effective date of such assignment.

10.7 **Enurement.** This Transaction Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

10.8 **Further Assurances.** Each Party shall, with reasonable diligence, do all things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Transaction Agreement and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Transaction Agreement and carry out its provisions, whether before or after the Closing Date.

10.9 **Relationship Between Parties.** Nothing in this Transaction Agreement shall be deemed to create a relationship of partnership, principal and agent or trustee and beneficiary between Vale and the City.

10.10 **Execution and Delivery.** This Transaction Agreement may be executed by the Parties in counterparts, all of which counterparts together shall constitute one and the same instrument. Delivery of an executed counterpart signature page of this Transaction Agreement by facsimile transmission or via email in PDF or similar format shall be deemed to be an original and shall be as effective as delivery of a manually executed counterpart of this Transaction Agreement.


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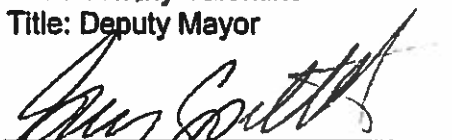
EXECUTION PAGE TO FOLLOW.]

- 28 -


IN WITNESS WHEREOF the Parties have executed this Transaction Agreement by the hands of their respective duly authorized proper officers in that behalf effective as of the date first set out above.

THE CITY OF THOMPSON

Per: 
Name: Kathy Valentino
Title: Deputy Mayor

Per: 
Name: Gary Ceppetelli
Title: Chief Administrative Officer

VALE CANADA LIMITED

Per: 
Name: Mark Scott
Title: Vice-President, Manitoba
Operations

- 29 -

ACKNOWLEDGEMENT & AGREEMENT BY LGD:

The LGD hereby represents, warrants, acknowledges and agrees as follows:

- (a) The LGD is a local government district existing under *The Local Government Districts Act* (Manitoba) and a party to the 1956 Agreement;
- (b) Pursuant to the 1966 Agreement, the City became a party to the 1956 Agreement and any references to the LGD were deemed to include the City, so that the rights and obligations of the LGD under the terms of Section 23(2) of the 1956 Agreement in relation to the receipt of any works, services or buildings from Vale (including the Thompson WTP) were deemed to include the City, and
- (c) The LGD has reviewed this Transaction Agreement and hereby acknowledges, accepts and agrees to the transactions set forth herein and confirms that, in accordance with Section 23(2) of the 1956 Agreement, upon the transfer of the Thompson WTP to the City, the LGD releases Vale from any and all obligations to the LGD to operate or maintain the Thompson WTP and provide potable water.

IN WITNESS WHEREOF the LGD has executed this Transaction Agreement effective as of the date first set out above.

**LOCAL GOVERNMENT DISTRICT OF
MYSTERY LAKE**

Per: _____


Name: Louise Hodder

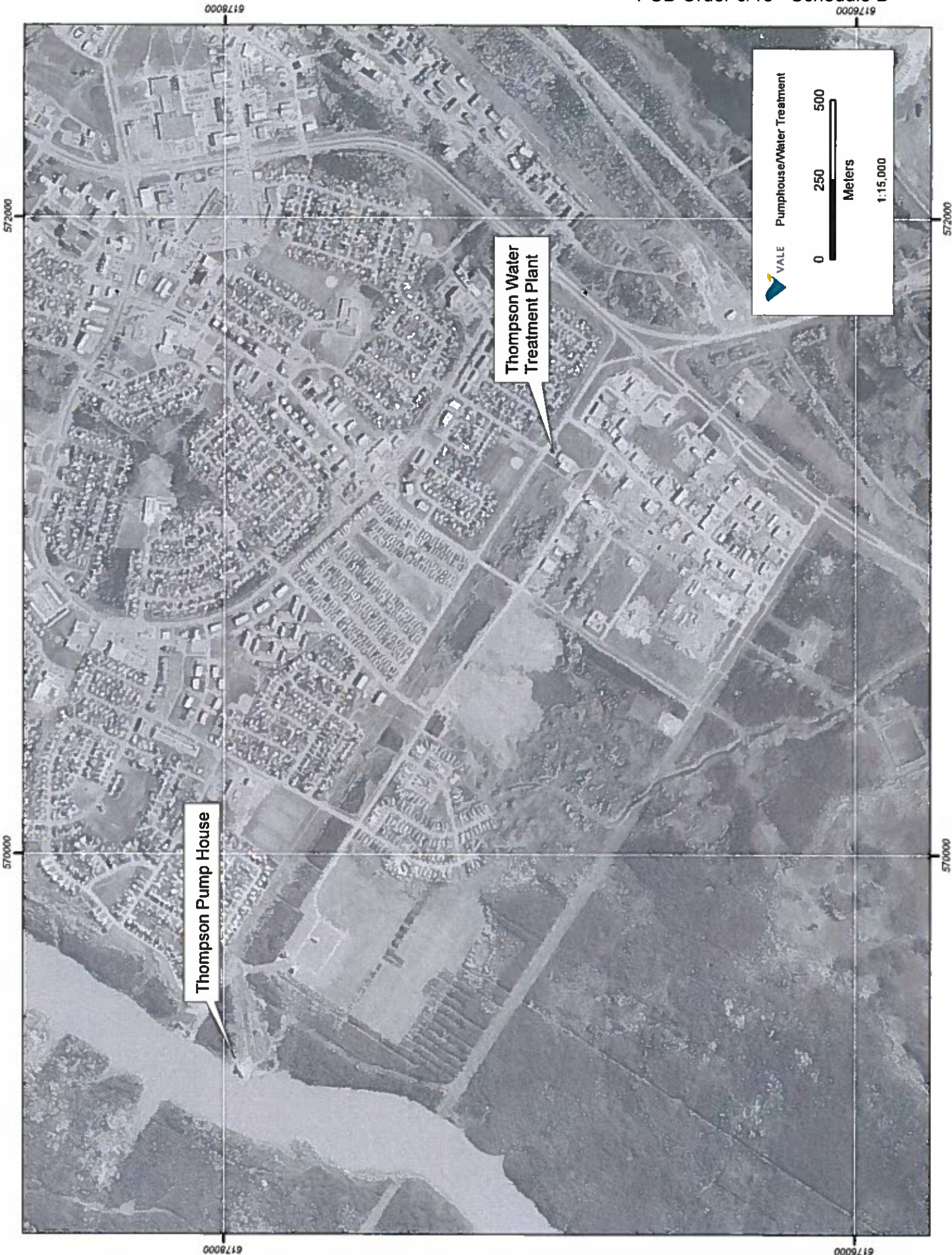
Title: Resident Administrator

Execution Version

**TRANSACTION AGREEMENT
SCHEDULE "A"**

LOCATION OF PUMP HOUSE AND THOMPSON WTP

(See attached)



Execution Version**TRANSACTION AGREEMENT
SCHEDULE "B"****RETAINED ASSETS**

The assets to be retained by Vale include the following:

1. **Process Water Supply Lines** - the following process water supply lines (the "**Process Water Supply Lines**"), as illustrated (in yellow) on the site plan attached as an Appendix to this Schedule "B":
 - (a) the 36" process water supply main and the 24" process water supply main, which provide process water from the Pump House to Vale and to the Thompson WTP, including the valve chamber in relation to such supply mains (hereinafter, each a "**Supply Main**"); and
 - (b) the 10" process water supply line running from the 24" Supply Main into the Thompson WTP, up to and including the applicable valves.

2. **Potable Water Service Lines** – the following potable water service lines (the "**Potable Water Service Lines**"), as illustrated (in yellow) on the site plan attached as an Appendix to this Schedule "B":
 - (a) the 10" and 8" potable water service lines running from the Thompson WTP to Vale's operations, from and after the applicable valves(which valves are located inside of the Thompson WTP and will be owned by the City).

3. **Network Facilities** - the equipment set forth in the table below (the "**Network Facilities**"):

Network Facilities		
Equipment	Requirements	Location in Thompson WTP
24 Port Cisco Switch	Network access and monitoring	Electrical Room
8 port Cisco Switch	Process control access and monitoring	Electrical Room

Network Facilities		
Equipment	Requirements	Location in Thompson WTP
24 power Injector	Provides power to cameras	Electrical Room
Copper Lines	Modem DSL access	Electrical Room
UPS	Battery backup	Electrical Room
MTS DSL Modem	Network access backup	Electrical Room
Computer\Printer	Computer and printer access to Vale network	Front Office

4. **Environmental Monitoring Facilities** - the equipment set forth in the table below (the "Environmental Monitoring Facilities"):

Environmental Monitoring Facilities		
Equipment	Serial # / Identifier	Location in Thompson WTP
Lab bench and nearby cabinets and panels located in the Lab (hereinafter, the " Lab Bench ")	N/A	Lab
Thermo Model 43i SO2 Analyzer & Zero Air Scrubber	080292740	Lab (in the Lab Bench)_
VICI Model 120-4 Dynacalibrator	M-1886	Lab (in the Lab Bench)
AQDL3 Remote Terminal Unit & 12V Back-up battery	WTP AQDL3-1-2015	Lab (in the Lab Bench)

- 3 -

Environmental Monitoring Facilities		
Equipment	Serial # / Identifier	Location in Thompson WTP
Lantronix 1100-IAP Universal Device Server	MAC 00-20-4A-9C-F8- C7	Lab (in the Lab Bench)
Smart UPS APC 750 (Power Supply)	A507441-40791	Lab (in the Lab Bench)
R.M Young Model 05103L Anemometer (i.e., Wind Monitoring Instrument)	WTP ANE-1-2009	Rooftop Area (Accessed from the hatch in the Air Scour Room)
Sample and Exhaust Lines	N/A	Lab (Conduit anchored to (exterior) East wall, leading to the Lab Bench)
Power Supply	Lighting Panel LB – B1-1 Breaker #17	Basement Pump Room
Distribution Board	Panel 103-MP.1-1.1	Lab (North Wall, above the Lab Bench)

Execution Version

**APPENDIX TO SCHEDULE "B" OF TRANSACTION AGREEMENT
(RETAINED ASSETS)**

**PROCESS WATER SUPPLY LINES & POTABLE WATER SERVICES LINES
TO BE RETAINED BY VALE**

(See attached)

Execution Version

**TRANSACTION AGREEMENT
SCHEDULE "C"**

FORM OF DEED OF GIFT

THIS DEED OF GIFT made effective as of **[December 31, 2017]**.

BY:

VALE CANADA LIMITED, a corporation incorporated under
the federal laws of Canada,

(the "Donor"),

IN FAVOUR OF:

THE CITY OF THOMPSON, a municipality continued under
The Municipal Act (Manitoba),

(the "Donee").

WHEREAS the Donor and the Donee are parties to a Transaction Agreement dated **[December 15, 2016]** (the "**Transaction Agreement**"), pursuant to which the Donor has agreed to transfer the Transferred Assets (as defined therein) (the "**Transferred Assets**") to the Donee, on the terms and conditions set forth therein;

AND WHEREAS the Donor now wishes to gift the Transferred Assets to the Donee and the Donee wishes to accept such gift;

NOW THIS DEED WITNESSETH as follows:

1. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Transaction Agreement.
2. The Donor hereby gifts, transfers, conveys and assigns all of the Donor's rights, title and interest in and to the Transferred Assets, expressly excluding the Retained Assets, to the Donee absolutely and the Donor hereby delivers possession of the Transferred Assets to the Donee (except for the Spare Parts, which shall be stored on the Donor's premises and delivered to the Donee on request in accordance with the terms of the Transaction Agreement).
3. The Donee acknowledges and agrees that the Transferred Assets are taken on an "as-is, where-is" basis, and subject to the Permitted Encumbrances, and

- 2 -

that the Donor makes no representations or warranties in respect of the Transferred Assets or the condition of the Transferred Assets. The Donee acknowledges that it relies on its own inspections and investigations concerning: (i) the condition of the Transferred Assets, including, but not limited to, the environmental condition of the Transferred Assets, (ii) any defects or deficiencies whether known or unknown and whether in the specific contemplation of the parties or not; and (iii) any Encumbrances (other than the Permitted Encumbrances).

4. This Deed of Gift shall operate to assign to the Donee all warranties, guarantees and indemnities in respect of any part of the Transferred Assets or the construction of any portion of the Transferred Assets (including in respect of any and all chattels, personal property, mechanical elements, electrical machinery, tools, equipment, appliances, elevators, furniture, trade fixtures, HVAC/security/alarm/fire systems, furnaces, boilers, supplies, inventory and other items forming part of the Transferred Assets) (collectively, the "Warranties"), to have and to hold the same for the Donee's sole use and benefit, and with full power and authority to exercise and enforce any right of the Donor in respect thereof, including the right to demand, collect, sue for, recover, receive and give receipts for all money payable thereunder and to enforce payment and performance thereof, in the name of the Donee or the Donor, as determined from time to time by the Donee, in the Donee's sole discretion, on the same terms and conditions on which the Warranties were provided to the Donor. The Donor shall cooperate with the Donee in the enforcement of the Warranties against their providers. Notwithstanding the foregoing, this assignment will not include any Warranty to the extent that the assignment of such Warranty would constitute a breach of the terms thereof or permit any person to terminate the contractual rights contained therein but, to the extent that they may do so by law or under the terms of the Warranty without giving rise to any default, penalty or right of termination, the Donor will: (a) hold its interest therein in trust for the Donee and will, by the terms of this Deed of Gift, without further action, be deemed to have assigned such Warranty to the Donee forthwith upon obtaining the consent of the other party thereto; (b) upon request of the Donee, use commercially reasonable efforts to obtain any consent required to permit such Warranty to be assigned hereby; and (c) assist the Donee in arranging for the performance and satisfactory completion of work covered by such Warranty.

5. Concurrently with the delivery of this Deed of Gift, the Donor shall deliver to the Donee a registrable transfer of land sufficient, upon completion and registration by the Donee, to vest title to the Thompson WTP land in the Donee, free and clear of all registrations except the Permitted Encumbrances.

6. Concurrently with the delivery of this Deed of Gift, the Donee shall provide the Donor with the Donation Receipt. The Donor and the Donee acknowledge that the value set out in such Donation Receipt is the fair market value of the Transferred Assets.

- 3 -

7. The Donor shall and will from time to time and at all times hereafter upon request of the Donee make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually giving, transferring, assigning and conveying the Transferred Assets to the Donee as may be reasonably required.

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EXECUTION PAGE TO FOLLOW.]**

- 4 -

IN WITNESS WHEREOF the Donor has executed and delivered this Deed of Gift as of the date first written above.

VALE CANADA LIMITED

By: _____
Name: Mark Scott
Title: Vice-President, Manitoba
Operations

I/We have the authority to bind the Corporation.

The Donee hereby accepts the gift of the Donor's rights, title and interest in and to the Transferred Assets as of the date first written above.

THE CITY OF THOMPSON

By: _____
Name: Kathy Valentino
Title: Deputy Mayor

By: _____
Name: Gary Ceppetelli
Title: Chief Administrative Officer

I/We have the authority to bind The City of Thompson

Execution Version

**TRANSACTION AGREEMENT
SCHEDULE "D"**

FORM OF DONATION RECEIPT

Official Donation Receipt For Income Tax Purposes

Municipality's Name and Address:

Receipt # _____

City of Thompson
City Hall
226 Mystery Lake Road
Thompson, MB
R8N 1S6

Donor's Name and Address:

Vale Canada Limited
c/o Corporate Office Base Metals
200 Bay Street, Royal Bank Plaza
Suite 1600, South Tower
P.O. Box 70, Toronto, ON
M5J 2K2

Date gift received by Municipality: [December 31, 2017]

Eligible amount of gift for tax purposes: [\$23,400,000.00] (i.e., fair market value of property based on the Closing Valuation Report, as more fully described in the Appendix hereto.)

Description of property received by Municipality: Thompson Water Treatment Plant, a brief description of which is as follows:

<u>Description of Land</u>
Thompson Water Treatment Plant AT THOMPSON AND BEING BLOCK B PLAN 4620 PLTO (N DIV) EXC ALL MINES, MINERALS AND OTHER MATTERS AS SET FORTH IN THE CROWN LANDS ACT IN 79-3 WPM

- 2 -

Official Donation Receipt For Income Tax Purposes

Appraiser's Name and Address:

AEC International Ltd.
100 Sheppard Avenue East
Suite 760
Toronto, ON
M2N 6N5

Receipt #

Attention: Don Davies, B. Comm. MES [NTD: Confirm appraiser's name and address, per Closing Valuation Report.]

This Official Receipt is issued by the City of Thompson at Thompson, Manitoba, as of [December 31, 2017].

CITY OF THOMPSON

By: _____
Gary Ceppetelli
Chief Administrative Officer
(Authorized Signatory)

Canada Revenue Agency www.cra.gc.ca/charities

- 3 -

**APPENDIX TO DONATION RECEIPT
FAIR MARKET VALUE OF THE TRANSFERRED ASSETS**

[Draft Note: To be completed by Vale and the City. Transferred Assets to be identified and Fair Value to be allocated among the assets (i.e., Land, Buildings and Equipment), following the delivery of the Closing Valuation Report and in accordance with Section 7.4 of the Agreement. Note that, under the Preliminary Valuation Report, the values were as follows:

Land	\$ 385,000
Buildings & Yard Improvements	\$ 6,470,000
Machinery & Equipment	<u>\$16,541,000</u>
TOTAL	<u>\$23,396,000]</u>

Execution Version

**TRANSACTION AGREEMENT
SCHEDULE "E"**

FORM OF WATER SUPPLY AND SERVICES AGREEMENT

(See attached)

TDS DRAFT: December 1, 2016

WATER SUPPLY AND SERVICES AGREEMENT

THIS WATER SUPPLY AND SERVICES AGREEMENT is made effective as of [January 1, 2018].

BETWEEN:

THE CITY OF THOMPSON,
(hereinafter referred to as the "City")

- and -

VALE CANADA LIMITED,
(hereinafter referred to as "Vale")

(each a "Party" and collectively, the "Parties")

RECITALS:

A. The City and Vale have entered into a Transaction Agreement dated as of [December 15, 2016] (the "Transaction Agreement"), whereby Vale has agreed to transfer to the City certain assets directly related to the Thompson Water Treatment Plant (the "Thompson WTP");

B. The Parties have agreed that, upon the closing of the transfer of the Thompson WTP to the City and subject to the terms and conditions set forth in this Water Supply and Services Agreement:

- (i) Vale will supply the City with untreated process water for intake into the Thompson WTP; and
- (ii) the City will supply Vale with treated potable water for use in its operations;

C. The Parties have also agreed that: (i) charges for the process water shall be determined based on the principle that the costs of operation of the Pump House shall be allocated to Vale and the City on a *pro rata* basis, based on the metered volume of process water supplied to each of the Parties; (ii) charges for the potable

- 2 -

water shall be determined based on the principle that the costs of operation of the Thompson WTP shall be allocated to the City and to Vale on a *pro rata* basis, based on the metered volume of potable water supplied to each of the Parties (subject to a transition year in 2018, in which such costs shall be shared on a 50/50 basis); and (iii) each Party shall bear its own costs in relation to potable water distribution;

D. The Parties have now obtained all necessary regulatory approvals for the transfer of the Thompson WTP, and for the transactions set forth in this Water Supply and Services Agreement;

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

ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Water Supply and Services Agreement, the following capitalized terms have the meanings set out below in this Section 1.1:

- (a) **"Ancillary Agreements"** means collectively (i) this Water Supply and Services Agreement, (ii) the Technical Services Agreement, (iii) the Easement Agreement and (iv) the License Agreement, each of which have been entered into between the Parties under the terms of the Transaction Agreement;
- (b) **"Business Day"** means a day other than Saturday, Sunday or a public holiday in the Province of Manitoba;
- (c) **"Closing Date"** has the meaning ascribed to it in the Transaction Agreement;
- (d) **"Commencement Date"** means the effective date of this Water Supply and Services Agreement;
- (e) **"Cost of Operation"** has the meaning ascribed to it in Section 2.4(b) or 3.4(b), as the context requires;
- (f) **"Easement Agreement"** has the meaning ascribed to it in the Transaction Agreement;
- (g) **"Emergency"** has the meaning ascribed to in Section 7.1;
- (h) **"Emergency Response Plan"** has the meaning ascribed to in Section 7.5;
- (i) **"License Agreement"** has the meaning ascribed to it in the Transaction Agreement;

- 3 -

- (j) **"M&E Replacement Charge"** has the meaning ascribed to it in Section 3.12;
- (k) **"M&E Replacement Fund"** has the meaning ascribed to it in Section 3.12;
- (l) **"Overriding Event"** means any event or circumstance or combination of them which is beyond the reasonable control of the Party affected and could not have been prevented or remedied by the Party affected taking reasonable and commercially prudent steps, including, but not limited to, the expenditure of reasonable sums of money, and an Overriding Event shall include the following events:
 - (i) an act of God;
 - (ii) war, declared or undeclared, blockade revolution, riot, insurrection, civil commotion, sabotage, explosion;
 - (iii) a strike, lock out, or other labour dispute;
 - (iv) lightning, fire, earthquake or epidemic;
 - (v) a drought, storm, flood or other natural disaster;
 - (vi) an expropriation, intervention, direction or embargo imposed by any government or government agency;
 - (vii) an inability to obtain, or delay in obtaining any necessary approval, license or other authority from any government or government agency; and
 - (viii) a change of law, by-law or regulation;
- (m) **"Potable Water"** has the meaning ascribed to it in Section 3.1;
- (n) **"Potable Water Charge"** has the meaning ascribed to it in Section 3.4;
- (o) **"Process Water"** has the meaning ascribed to it in Section 2.1;
- (p) **"Process Water Charge"** has the meaning ascribed to it in Section 2.4;
- (q) **"Process Water Supply Lines"** means the following process water supply lines, which are owned and operated by Vale, as illustrated (in yellow) on the site plan attached as Schedule "D":

- 4 -

- (i) the 36" process water supply main and the 24" process water supply main, which provide process water from the Pump House to Vale and to the Thompson WTP, including the valve chamber in relation to such supply mains (hereinafter, each a "**Supply Main**"); and
- (ii) the 10" process water supply line running from the 24" Supply Main into the Thompson WTP, up to and including the applicable valves;
- (r) "**Public Utilities Board**" means the Manitoba Public Utilities Board created and continued under *The Public Utilities Board Act* (Manitoba);
- (s) "**Pump House**" means the water intake and pump house facility owned and operated by Vale, used to draw Process Water from the Burntwood River and to supply Process Water to the Vale Thompson operations and to the Thompson WTP;
- (t) "**Pump House Capital Repairs and Improvements**" has the meaning ascribed to it in Section 2.12;
- (u) "**Pump House Infrastructure**" means collectively (i) the Pump House and (ii) Process Water Supply Lines running from the Pump House to the Thompson WTP, together with their applicable valve chambers;
- (v) "**Pump House Licence**" has the meaning ascribed to it in Section 2.11;
- (w) "**Technical Services Agreement**" has the meaning ascribed to it in the Transaction Agreement;
- (x) "**Thompson Water Supply System**" means the entire system for the supply of Potable Water to the City, its residents and others to whom the City supplies Potable Water, including, the pumping of Process Water from the Burntwood River through the Pump House to the Thompson WTP, and all pumps, intakes, equipment, filters, valves, pipes, meters and manholes;
- (y) "**Thompson WTP**" means the water treatment facility plant to be owned and operated by the City upon completion of the transfers contemplated by the Transaction Agreement.
- (z) "**Thompson WTP Building Repairs and Improvements**" means any repairs or improvements to the Thompson WTP buildings;

- 5 -

- (aa) **"Thompson WTP Licence"** has the meaning ascribed to it in Section 3.11;
- (bb) **"Transaction Agreement"** has the meaning ascribed to it in the Recitals;
- (cc) **"Water Services Advisory Board"** means the advisory board established pursuant to Section 4.2; and
- (dd) **"Water Supply and Services Agreement"** means this Water Supply and Services Agreement, including all schedules and all amendments or restatements as permitted, and references to **"Article"** or **"Section"** mean the specified Article or Section of this Water Supply and Services Agreement.

1.2 Certain Rules of Interpretation. In this Water Supply and Services Agreement:

- (a) **Recitals** – The Recitals form an integral part of this Water Supply and Services Agreement.
- (b) **Headings** - Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Water Supply and Services Agreement.
- (c) **Including** - Where the word **"including"** or **"includes"** is used in this Water Supply and Services Agreement, it means "including (or includes) without limitation".
- (d) **No Strict Construction** - The language used in this Water Supply and Services Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (e) **Number and Gender** - Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (f) **Severability** – If, in any jurisdiction, any provision of this Water Supply and Services Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Water Supply and Services Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.

- 6 -

- (g) **Statutory References** - A reference to a statute includes all regulations and rules made pursuant to that statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (h) **Governing Law** - This Water Supply and Services Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.
- (i) **Time** - Time shall be of the essence in the performance of the Parties' respective obligations under this Water Supply and Services Agreement.

1.3 **Entire Agreement.** This Water Supply and Services Agreement is entered into pursuant to the terms of the Transaction Agreement. The Transaction Agreement and the Ancillary Agreements (including this Water Supply and Services Agreement) constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter thereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise, including the Letter of Intent among Vale, the City and the Local Government District of Mystery Lake dated April 27, 2015. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, between the Parties in connection with the subject matter of this Water Supply and Services Agreement, except as specifically set forth in the Transaction Agreement and the Ancillary Agreements (including this Water Supply and Services Agreement).

1.4 **Conflict.** If there is a conflict between any provision of this Water Supply and Services Agreement and any provision of the Transaction Agreement, the relevant provisions of this Water Supply and Services Agreement shall prevail.

1.5 **Schedules.** The following Schedules annexed to this Water Supply and Services Agreement are deemed to be an integral part of this Water Supply and Services Agreement:

- Schedule "A"** - Process Water Charge – Sample Calculation
- Schedule "B"** - Potable Water Charge – Sample Calculation
- Schedule "C"** - Measurement & Monitoring – Location of Flow Meters
- Schedule "D"** – Process Water Supply Lines

- 7 -

ARTICLE 2 - SUPPLY OF PROCESS WATER BY VALE

2.1 **Supply of Process Water.** Subject to the terms and conditions of this Water Supply and Services Agreement, Vale hereby agrees to supply untreated water pumped from the Burntwood River and through the Pump House Infrastructure ("**Process Water**") to the City for intake into the Thompson WTP.

2.2 **Supply Standards.** Vale agrees to deliver the Process Water at such quality, pressure and quantity as may be reasonably required by the City, provided that nothing in this Water Supply and Services Agreement obligates Vale to deliver the Process Water at a quality, pressure or quantity that is beyond the capacity of the Pump House Infrastructure as it exists as of the Commencement Date, unless further agreed in writing. The Parties acknowledge that the Water Services Advisory Board may make recommendations from time to time regarding improvements to the Pump House Infrastructure, having regard to the water requirements of the City.

2.3 **Measurement & Monitoring.** Vale shall measure: (i) the total volume of the Process Water generated by the Pump House using the Vale-owned magnetic flow meters labelled "M1" and "M2" and marked in green on Schedule "C", and (ii) the volume of the Process Water supplied to the Thompson WTP using the City-owned magnetic flow meters located inside of the Thompson WTP, labelled "M3" and "M4" and marked in green on Schedule "C". Vale shall report such data to the City on a monthly basis or at such shorter intervals as the City may reasonably require. Each Party shall be responsible for the maintenance, upkeep and repair of its respective Process Water flow meters. Vale shall have the right to inspect the City's Process Water flow meters (i.e., "M3" and "M4") located inside of the Thompson WTP at all reasonable times and the City shall have the right to inspect Vale's Process Water flow meters (i.e., "M1" and "M2") located outside of the River Pump House at all reasonable times. Each Party shall promptly report to the other Party any apparent defect in a flow meter or damage to a flow meter or failure of a flow meter to operate in accordance with acceptable industry standards. Each Party agrees to promptly correct and/or repair its Process Water flow meters promptly upon identification of any such apparent defect, damage or failure to operate.

2.4 **Process Water Charge.** Vale shall determine the rate for the supply of Process Water to the City under the terms of this Water Supply and Services Agreement (the "**Process Water Charge**"), based on a *pro rata* allocation of all of the costs of operation of the Pump House Infrastructure: i.e., the Water Volume Factor x the Cost of Operation, whereby:

- (a) the "**Water Volume Factor**" shall be determined based on (A) the metered volume of Process Water supplied to the Thompson WTP, relative to (B) the metered volume of Process Water generated by the Pump House (in each case as determined under Section 2.3), and

- 8 -

- (b) the **"Cost of Operation"** shall be determined based on: direct operating costs (including labour costs, supplies, services and electricity costs directly associated with the operation and maintenance of the Pump House Infrastructure); indirect operating costs (which shall be set at 10% of the direct operating costs); and depreciation and amortization costs with respect to the Pump House Infrastructure (as determined by Vale in accordance with Section 2.13).

For reference, a sample calculation of the Process Water Charge is set forth in Schedule "A".

2.5 Invoicing City for Process Water. Vale shall deliver invoices to the City on a quarterly basis, subject to final calculation and adjustment after the end of each calendar year (in this Article, the **"Quarterly Invoices"**). The Quarterly Invoices shall be rendered and delivered to the City within 30 days after the end of each quarter. Final adjustment invoices shall be rendered and delivered to the City within 120 days after the end of each calendar year (in this Article, **"Final Invoices"**). Such invoices shall include the Process Water Charge and any other charges under this Water Supply and Services Agreement, along with such other information as may be reasonably necessary for the City to verify the calculation of Process Water Charge, including the volume of Process Water delivered to the City (based on metering or upon such other method as may be applied by Vale, acting reasonably, to calculate the volume of Process Water delivered to the City). The Process Water Charge is exclusive of all goods and services, provincial sales or other taxes, all of which will be the sole responsibility of the City.

2.6 Payment of Invoices. The City agrees to pay: (i) the invoiced Process Water Charge as set out in a Quarterly Invoice within 30 days of receipt or deemed receipt of the invoice; and (ii) the adjusted Process Water Charge as set out in a Final Invoice within 45 days of receipt or deemed receipt of the invoice.

2.7 Interest on Late Payments. The City agrees to pay interest on arrears to Vale at the rate of 1¼% per month (or such other rate as may be established from time to time by the City for late payments by customers under the City's Water and Wastewater Rates By-Law).

2.8 Audit Rights. The City shall have the right to review and audit Vale's calculation of the Process Water Charge for each financial year, upon request in writing within thirty (30) days following receipt of the Final Invoices. In connection with such review and audit, Vale shall promptly provide such reports and other documentation supporting the calculation of the Process Water Charge for the relevant financial year as may be reasonably required by the City. If the City does not raise any claim for adjustment within ninety (90) days following the start of such audit, then the invoices for such calendar year shall be deemed to be final and binding. Any dispute between the

- 9 -

City and Vale with respect to Vale's calculation of the Process Water Charge shall be determined in accordance with the terms of Article 9.

2.9 Maintain Insurance. Throughout the term of this Water Supply and Services Agreement, Vale shall maintain insurance in such amount and for such coverage as specified in Section 8.1.

2.10 Maintain Pump House Infrastructure. Throughout the term of this Water Supply and Services Agreement, Vale will maintain, repair and keep the Pump House Infrastructure in good repair and operating condition.

2.11 Maintain Operating Licence. Throughout the term of this Water Supply and Services Agreement, Vale will use reasonable commercial efforts to maintain the license issued to Vale pursuant to *The Water Rights Act* (Manitoba) which authorizes Vale to draw water from the Burntwood River (the "Pump House Licence").

2.12 Notice of Pump House Capital Repairs and Improvements. Vale shall inform the City of its intention to make any repairs or improvements to the Pump House Infrastructure which are of a capital nature ("**Pump House Capital Repairs and Improvements**"), prior to undertaking such Pump House Capital Repairs and Improvements. Vale shall provide the City, in reasonable detail, the plans for such capital repairs and improvements, their estimated cost, their planned execution schedule and any potential for flow-disruption. Vale shall provide the City with prior notice of the commencement of any Pump House Capital Repairs and Improvements and shall take commercially reasonable steps to minimize any potential flow-disruption to the Thompson WTP.

2.13 Depreciation and Amortization of Pump House Infrastructure. Vale shall depreciate and amortize the costs of the Pump House Infrastructure (including any Pump House Capital Repairs and Improvements) over a period not exceeding the anticipated remaining useful life of the Pump House Infrastructure or remaining life of Vale's Thompson mines, whichever is lower, in accordance with International Financial Reporting Standards (IFRS), as in effect from time to time.

ARTICLE 3- SUPPLY OF POTABLE WATER BY THE CITY

3.1 Supply of Potable Water. Subject to the terms and conditions of this Water Supply and Services Agreement, the City agrees to supply potable water from the Thompson WTP ("**Potable Water**") to Vale for use in its operations.

3.2 Supply Standards. The City agrees to deliver the Potable Water at a quality and at pressure consistent with the standards set forth in the applicable statutes and regulations of the Province of Manitoba and in such quantity as may be reasonably required by Vale, provided that nothing in this Water Supply and Services Agreement obligates the City to deliver the Potable Water at a quality, pressure or quantity that is

- 10 -

beyond the capacity of the Thompson WTP as it exists as of the Commencement Date, unless further agreed in writing. The Parties acknowledge that the Water Services Advisory Board may make recommendations from time to time regarding improvements to the Thompson WTP, having regard to the water requirements of Vale for its operations.

3.3 Measurement & Monitoring. The City shall measure the total volume of the Potable Water generated by the Thompson WTP, as follows: (i) supply to Vale using the Vale-owned magnetic flow meter located inside Vale's Compressor Building, labelled "M8" and marked in green on Schedule "C"; (ii) supply to the City's 12" diameter distribution pipes using the City-owned flow meter located inside the Thompson WTP, labelled "M7" and marked in green on Schedule "C", and (iii) supply to the City's 14" diameter distribution pipes using the City-owned flow meter located inside the Thompson WTP, labelled "M6" and marked in green on Schedule "C". The City shall report such data to Vale on a monthly basis or at such shorter intervals as Vale may reasonably require. Each Party shall be responsible for the maintenance, upkeep and repair of its respective Potable Water flow meters. The City shall have the right to inspect Vale's Potable Water flow meter (i.e., "M8") located inside Vale's Compressor Building at all reasonable times and Vale shall have the right to inspect the City's Potable Water flow meters (i.e., "M6" and "M7") located in the Thompson WTP at all reasonable times. Each Party shall promptly report to the other Party any apparent defect in a flow meter, or damage to a flow meter or failure of a flow meter to operate in accordance with acceptable industry standards. Each Party agrees to promptly correct and/or repair its Potable Water flow meters promptly upon identification of any such apparent defect, damage or failure to operate.

3.4 Potable Water Charge. The City shall determine the rate for the supply of Potable Water to Vale under the terms of this Water Supply and Services Agreement (the "**Potable Water Charge**"), based on a *pro rata* allocation of all of the costs of operation of the Thompson WTP: i.e., the Water Volume Factor x the Cost of Operation, whereby

- (a) the "**Water Volume Factor**" shall be determined based on (A) the metered volume of the Potable Water supplied by the Thompson WTP to Vale, relative to (B) the metered volume of water supplied by the Thompson WTP to all of its consumers (including Vale) (in each case as determined under Section 3.3), and
- (b) the "**Cost of Operation**" shall be determined based on: direct operating costs (including the Process Water Charge, licensing fees, labour, supplies and reagents, services and electricity costs directly associated with the operation and maintenance of the Thompson WTP); indirect operating costs (which shall be set at 10% of the amount of the direct operating costs); the cost of the Thompson WTP Building Repairs and

- 11 -

Improvements (if any); and the M&E Replacement Charge; provided that the Costs of Operation shall not include any costs relating to the City's potable water distribution system, waste water treatment plant, sewer infrastructure, storm drainage or other municipal utilities costs not related to the operation of the Thompson WTP..

For reference, a sample calculation of the Potable Water Charge is set forth in Schedule "B".

3.5 Invoicing Vale for Potable Water. The City will deliver invoices to Vale on a quarterly basis, subject to final calculation and adjustment after the end of each calendar year (in this Article, "**Quarterly Invoices**"). The Quarterly Invoices shall be rendered and delivered to Vale within 30 days after the end of each quarter. Final adjustment invoices shall be rendered and delivered to Vale within 120 days after the end of each calendar year (in this Article, "**Final Invoices**"). Such invoices shall include the Potable Water Charge and any other charges under this Water Supply and Services Agreement, along with such information as may be reasonably necessary for Vale to verify the calculation of the Potable Water Charge, including the volume of Potable Water delivered to Vale (based on metering or upon such other method as may be applied by the City, acting reasonably, to calculate the volume of Potable Water delivered to Vale). The Potable Water Charge is exclusive of all goods and services, provincial sales or other taxes, all of which shall be the sole responsibility of Vale.

3.6 Payment of Invoices. Vale agrees to pay: (i) the invoiced Potable Water Charge as set out in a Quarterly Invoice within 30 days of receipt or deemed receipt of the invoice; and (ii) the adjusted Potable Water Charge as set out in a Final Invoice within 45 days of receipt or deemed receipt of the invoice.

3.7 Interest on Late Payments. Vale agrees to pay interest on arrears to the City at the rate of 1¼% per month (or such other rate as may be established from time to time by the City for late payments by customers under the City's Water and Wastewater Rates By-Law).

3.8 Audit Rights. Vale shall have the right to review and audit the City's calculation of the Potable Water Charge for each financial year, upon request in writing within thirty (30) days following receipt of the Final Invoices. In connection with such review and audit, the City shall promptly provide such reports and other documentation supporting the calculation of the Potable Water Charge for the relevant financial year as may be reasonably required by Vale. If Vale does not raise any claim for adjustment within ninety (90) days following the start of such audit, then the invoices for such calendar year shall be deemed to be final and binding. Any dispute between Vale and the City with respect to the City's calculation of the Potable Water Charge shall be determined in accordance with the terms of Article 9.

- 12 -

3.9 Maintain Insurance. Throughout the term of this Water Supply and Services Agreement, the City will maintain insurance in such amount and for such coverages as specified in Section 8.2.

3.10 Maintain Thompson WTP. Throughout the term of this Water Supply and Services Agreement, the City will maintain, repair and keep the Thompson WTP in good repair and operating condition.

3.11 Maintain Operating Licence. Throughout the term of this Water Supply and Services Agreement, the City will use reasonable commercial efforts to maintain the operating license issued to the City pursuant to *The Environmental Act* (Manitoba) which authorizes the City to operate a water treatment plant (the "**Thompson WTP Licence**").

3.12 M&E Replacement Fund & M&E Replacement Charge. With a view to ensuring the long-term sustainability of the City's infrastructure, the City has undertaken to establish a fund to cover the City's portion of the costs of the eventual replacement of the machinery and equipment related to the Thompson WTP (the "**M&E Replacement Fund**"). Accordingly, Vale and the City have agreed to include within the Costs of Operation of the Thompson WTP for the purpose of calculating the Potable Water Charge to Vale under Section 3.4 an annual charge relating to the replacement costs of the Thompson WTP's machinery and equipment (the "**M&E Replacement Charge**"). The M&E Replacement Charge shall be determined by the City, by multiplying: (A) the estimated "cost new" of the Thompson WTP's machinery and equipment, by (B) 3% (i.e., the replacement rate, based on a the assumption of 33-year life), and by (C) a factor representing the City's expected to contribution to the relevant replacement costs, having regard to the expected contribution from other levels of government. The Parties agree that, for the period from 2017 to 2022, M&E Replacement Charge shall be based on (A) the estimated "cost new" of the Thompson WTP's machinery and equipment, as set forth in the Final Valuation Report, multiplied by (B) 3% (i.e., the replacement rate, based on a the assumption of 33-year life), multiplied by (C) 33.33% (being the City's expected contribution to the relevant replacement costs, with the remaining portion covered by other levels of government). Notwithstanding any of the other terms and conditions of this Water Supply and Services Agreement, the Parties agree that the M&E Replacement Charge shall be included in the "Costs of Operation" of the Thompson WTP for the purpose of calculating the Potable Water Charge to Vale only and to the extent that the M&E Replacement Charge is also included in the costs of operation of the Thompson WTP that are charged to the City's other water consumers.

3.13 Transitional Provisions (2018 only).

- (a) Under the terms of the Transaction Agreement, Vale and the City agreed to move, over a 3-year transition period, towards sharing the costs of

- 13 -

operation of the Thompson WTP on a *pro rata* basis, based on volume of water consumed.

- (b) The agreed transition period provided that the costs of operation of the Thompson WTP would be shared as follows: (i) 2017: 25% City – 75% Vale (based on estimated costs, as set forth in the Transaction Agreement); (ii) 2018: 50% City – 50% Vale (based on actual costs, as provided in Section 3.12); and (iii) 2019 and thereafter – *pro rata* (on the terms set forth in this Water Supply & Services Agreement, with the expected allocation in 2019 being approximately 75% City – 25% Vale).
- (c) The Parties acknowledge that the City has made an application to the Public Utilities Board seeking approval for the rates to be charged by the City to consumers of potable water over the period 2017 through 2019 (including the rates to be charged by the City to Vale under the terms of this Water Supply and Services Agreement) **[which application has been accepted, per Order No. XXX/17 of the Public Utilities Board dated [date]].**
- (d) Accordingly, the Parties hereby agree and confirm that, for 2018 only, and notwithstanding any other terms of this Water Supply & Services Agreement, the “Water Volume Factor” to be used when calculating the Potable Water Charge shall be deemed to be 50%.

ARTICLE 4– COOPERATION AND PLANNING

4.1 General Undertaking to Cooperate. The City and Vale each agree to co-operate reasonably and liaise with the other to ensure that this Water Supply and Services Agreement is implemented effectively. Without limitation, the Parties agree to co-operate and liaise:

- (a) to act in good faith to resolve any difficulties which may arise in implementing this Water Supply and Services Agreement because of any legal or regulatory right or obligation of a Party which may conflict with a provision of this Water Supply and Services Agreement;
- (b) to allow each Party to comply with its statutory and contractual rights and obligations to other persons;
- (c) to minimise any risks to persons, equipment or the environment which may arise in supplying Process Water and Potable Water under this Water Supply and Services Agreement; and

- 14 -

- (d) to support any application, variation or renewal of the Parties' respective licences which may be necessary or desirable for the purposes of this Water Supply and Services Agreement, including the Pump House License and the Thompson WTP License; and
- (e) to undertake such co-operative planning as may be necessary or desirable.

4.2 **Water Services Advisory Board.** Each of Vale and the City may appoint up to three (3) representatives to be members of a Water Services Advisory Board (the "**Water Services Advisory Board**"). The Water Services Advisory Board will review budget matters and expected costs for the supply of Process Water and Potable Water, respectively, and operational matters relating to the Thompson Water Supply System; carry out planning, including operational and infrastructure planning, in connection with the supply of Process Water to the City and Potable Water to Vale; and make recommendations to the Parties regarding such matters. The recommendations made by the Water Services Advisory Board will not be binding on either of the City or Vale, but they shall be considered by each of the Parties in good faith. The Water Services Advisory Board shall meet at least quarterly and shall prepare a report as at the end of each calendar year during the term, including information on the operating performance in the past year and expectations for the upcoming year. Such report shall be presented to both Vale and the City.

4.3 **Compliance With Laws.** Each Party will comply with all laws, by-laws and regulations relevant to the subject matter of this Water Supply and Services Agreement, including the supply of the Potable Water and the Process Water, as applicable.

ARTICLE 5 – TERM AND TERMINATION

5.1 **Term and Termination** –The term of this Water Supply and Services Agreement shall begin upon the Commencement Date and shall terminate at such time as may be mutually agreed by the Parties in writing, provided that Vale may terminate this Water Supply and Services Agreement upon not less than twelve (12) months' prior written notice to the City.

5.2 **City's Option to Purchase the Pump House Infrastructure.** Upon receipt of notice of termination of this Water Supply and Services Agreement by Vale pursuant to Section 5.1, the City shall have the option to acquire the Pump House Infrastructure on an "as is, where is" basis, for nil or nominal consideration, such that the City may continue to provide municipal water services without interruption. If the City's option is not exercised within six (6) months following the delivery of the notice of termination of this Water Supply and Services Agreement by Vale, then the option shall be deemed to have expired. Upon the exercise of such option by the City, Vale and the City shall take such further actions and execute such other documents and agreements

- 15 -

as may be necessary to effect such transfer of the Pump House Infrastructure on or prior to the date of termination of this Water Supply and Services Agreement. The Parties acknowledge that such transfer of the Pump House Infrastructure would take place on a substantially similar basis to the transfer of the Thompson WTP; notably, (i) Vale would commission (at its sole cost and expense) a third party valuation report setting forth the fair value of the transferred assets, (ii) the City would provide Vale with an official receipt for income tax purposes in the amount of the fair value of the transferred assets, and (iii) the City would be responsible for the payment and remittance of all applicable taxes in connection with the transfer of the transferred assets. In connection with the transfer of the Pump House Infrastructure, Vale and the City shall determine the extent to which the Easement Agreement should be amended, terminated or assigned and implement same in order to give effect to the transfer of the Pump House Infrastructure from Vale to the City. Vale acknowledges and agrees that, prior to such transfer of the Pump House Infrastructure, Vale shall install (at its own cost and expense) a termination point on the 24" Process Water supply line forming part of the Pump House Infrastructure at the junction of such 24" Process Water supply line and the 10" Process Water supply line leading into the Thompson WTP (as set forth on Schedule "C").

5.3 Transition to City Ownership. The Parties agree that, prior to the termination of this Water Supply and Services Agreement, the City shall diligently pursue any application to the Public Utilities Board which may be necessary or desirable to reflect the termination of this Water Supply and Services Agreement (including for adjustments to the rates to be charged by the City to consumers of potable water) and Vale shall provide such support to the City as it may reasonably request in relation to such application (including information as to the cost of operation of the Pump House Infrastructure). The Parties further agree that, upon the termination of this Water Supply and Services Agreement, Vale shall have the option to establish an account with the City as a consumer of potable water, at the applicable rates charged by the City to its industrial or commercial users of potable water.

5.4 Payment After Termination. The termination of this Water Supply and Services Agreement shall be without prejudice to the obligations of the Parties incurred prior to the date of termination.

ARTICLE 6 - OVERRIDING EVENTS

6.1 Suspension of Obligations. If either Party is unable, because of an Overriding Event, to perform any of its obligations under this Water Supply and Services Agreement, either in whole or in part (other than an obligation to pay money), then such obligation shall be suspended, as far as it is affected by the Overriding Event and while that event continues.

- 16 -

6.2 Procedure for Overriding Event. The Party affected by an Overriding Event will:

- (a) give the other Party prompt written notice of the Overriding Event (and, in any case, within seven (7) Business Days of learning of it) with reasonably full particulars and, as far as it knows, the probable ways in which it will be unable to perform or be delayed in performing any of its obligations under this Water Supply and Services Agreement;
- (b) acting in good faith, use all possible diligence to remove and mitigate either or both the Overriding Event and its effect, as quickly as possible (including expending reasonable funds, deploying other resources and re-scheduling other commitments); and
- (c) keep the other Party informed at regular intervals, or promptly upon the request of the other Party, of:
 - (i) any change in the Party's estimate of the duration or effect of the Overriding Event;
 - (ii) any action taken or proposed to be taken by the Party under paragraph (b);
 - (iii) whether the Overriding Event has ceased and whether its effects have been successfully mitigated or minimised; and
 - (iv) any other matter in connection with the Overriding Event or its effects as the other Party reasonably requires,

provided, however, that nothing in this Water Supply and Services Agreement shall obligate or require a Party to: (a) settle any dispute on terms; or (b) meet any claims or demands of any person or public authority, contrary to the reasonable wishes of the Party affected, or its reasonably perceived best interests.

ARTICLE 7 – EMERGENCIES & SUPPLY DISRUPTIONS

7.1 Emergency. An “**Emergency**” means any incident in relation to the Thompson Water Supply System that may:

- (i) cause a risk to the health or safety of any person;
- (ii) cause harm to the environment; or
- (iii) interrupt or diminish the provision of Potable Water to any customer of the City (other than as a result of a planned disruption of service)

- 17 -

in accordance with Section 7.6 or a Drought in accordance with Section 7.7).

7.2 Emergency Procedures. Whenever a Party believes that an Emergency has occurred or may reasonably be expected to occur, the Party shall:

- (a) notify the other Party promptly;
- (b) explain to the other Party the nature of the event and the effect it has had or is likely to have; and
- (c) upon request, provide the other Party with one or more interim verbal reports on:
 - (i) the reason for the incident occurring;
 - (ii) what action the Parties are taking or need to take to deal with the incident;
 - (iii) the Party's estimate of how long it will take to deal with the incident; and
 - (iv) options proposed by the Party for any additional works or measures which the Party may need to undertake to prevent any similar incident from occurring.

7.3 Emergency Work. If an Emergency occurs, then Vale or the City, as applicable, shall be permitted, but not obligated, to undertake emergency work or measures in relation to the Thompson Water Supply System, including with respect to equipment that is owned by the other Party, provided that it shall advise the other Party that it has done so as soon as possible after commencing the emergency work or measure. A Party which undertakes such emergency work with reasonable care and diligence may recover its reasonable costs of so doing from the other Party.

7.4 Emergency Suspension of Service. In the case of an Emergency:

- (a) Vale may shut off the supply of Process Water to the City for as long as the Emergency exists. For this purpose, Vale will be the sole judge of when an Emergency exists, the duration of the Emergency and what action must be taken to meet the Emergency. Vale shall notify the City of the Emergency as soon as reasonably possible; and
- (b) the City may shut off the supply of Potable Water to its consumers (including Vale) for as long as the Emergency exists. For this purpose, the City will be the sole judge of when an Emergency exists, the duration of

- 18 -

the Emergency and what action must be taken to meet the Emergency. The City will notify Vale of the Emergency as soon as reasonably possible.

7.5 Emergency Response Plan. The Parties (directly or through the Water Services Advisory Board) shall, as soon as reasonably possible following the Commencement Date, develop and implement a plan for responding to an Emergency (an "Emergency Response Plan"), which shall include the following:

- (i) a statement of policy and intent;
- (ii) incident management plans;
- (iii) generic contingency plans;
- (iv) contingency plans for particular sites;
- (v) standard operating and notification procedures; and
- (vi) provision for the Parties to jointly review each emergency after it has occurred and to identify and agree upon works or measures to prevent, or minimise the likelihood of, such an emergency recurring.

The Parties shall revise and update the Emergency Response Plan from time to time, as may be necessary or desirable.

7.6 Planned Disruptions to Supply. From time to time, Vale or the City may require a temporary alteration or interruption to the supply of Process Water or Potable Water, as applicable, where the alteration or interruption is required:

- (a) to construct, repair, maintain or commission any part of that Party's water supply system or equipment; or
- (b) to carry out flow tests.

Unless the Parties agree otherwise, a Party must give the other party at least seven (7) days written notice of its intention to require a temporary alteration or interruption under this Section 7.6.

ARTICLE 8 - INSURANCE

8.1 Vale Insurance. Vale will purchase and keep in force throughout the term of this Water Supply and Services Agreement:

- 19 -

- (a) Worker's compensation coverage in accordance with the laws of the Province of Manitoba for all of its employees, subcontractors, representatives or agents traversing the site of the Thompson WTP or the Pump House;
- (b) Commercial general liability insurance, insuring against liabilities arising from bodily injury, death and property damage to policy limits of at least \$5,000,000.00 per occurrence, arising out of or in consequence of Vale's ownership and operation of the Pump House, which insurance shall include all available standard extensions; and
- (c) such other insurance as Vale shall deem appropriate to obtain and to which Vale and the City shall mutually agree.

The insurance described above must (i) name the City as an additional insured, but only with respect to the activities of the City under this Water Supply & Services Agreement; and (ii) state, by endorsement or otherwise, that all insurers waive their rights of subrogation against the City. Vale agrees to furnish to the City copies of the insurance policies described above, or insurance certificates in lieu thereof, on demand.

8.2 City Insurance. The City will purchase and keep in force throughout the term of this Water Supply and Services Agreement:

- (a) Worker's compensation coverage in accordance with the laws of the Province of Manitoba for all of its employees, subcontractors, representatives or agents traversing the site of the Thompson WTP or the Pump House;
- (b) Commercial general liability insurance, insuring against liabilities arising from bodily injury, death and property damage to policy limits of at least \$5,000,000.00 per occurrence, arising out of or in consequence of the City's ownership and operation of the Thompson WTP, which insurance shall include all available standard extensions; and
- (c) such other insurance as the City shall deem appropriate to obtain and to which the City and Vale shall mutually agree.

The insurance described above must (i) name Vale and its affiliates as an additional insured, but only with respect to the activities of Vale and its affiliates under this Water Supply & Services Agreement; and (ii) state, by endorsement or otherwise, that all insurers waive their rights of subrogation against Vale and its affiliates. The City agrees to furnish to Vale copies of the insurance policies described above, or insurance certificates in lieu thereof, on demand.

ARTICLE 9 – LIMITATION OF LIABILITY**9.1 City's Limitation of Liability.**

- (a) The City's liability in connection with this Water Supply and Services Agreement shall be limited to a sum equal to the aggregate amount of the Potable Water Charge in the 12 months prior to the claim being made.
- (b) The City shall not be liable to pay Vale for any indirect, consequential, aggravated, special, incidental or punitive damages.
- (c) In no event shall the City be liable to Vale for any loss, damages, liabilities, claims or demands of any kind relating to:
 - (i) a suspension or interruption of the supply of Potable Water from the Thompson WTP to Vale's water distribution infrastructure for any reason;
 - (ii) any damage to Vale's water distribution infrastructure from the supply of Potable Water at increased pressure or rate of flow or otherwise;
 - (iii) water quality or composition;

provided that the foregoing limitation of liability shall be in addition to and shall not be construed in a way to limit or restrict the provisions of Section 389 of *The Municipal Act* (Manitoba).

- (d) The City's councillors, officers, employees and agents (in this Section, the "**City Related Parties**") shall have no personal liability under this Water Supply and Services Agreement and Vale hereby irrevocably waives any claims against the City Related Parties in connection with this Water Supply and Services Agreement.
- (e) Vale acknowledges that the City is acting as trustee and agent for the City Related Parties in relation to the foregoing limitations of liability in this Water Supply and Services Agreement and that the City Related Parties shall have the full right and entitlement to take the benefit of and enforce such limitations of liability, notwithstanding that the City Related Parties are not individually be parties to this Water Supply and Services Agreement. Vale agrees that the City may enforce such limitations of liability for and on behalf of the City Related Parties and, in such event,

- 21 -

Vale will not in any proceeding to enforce such limitations of liability assert any defense thereto based on the absence of authority or consideration or privity of contract and Vale hereby irrevocably waives the benefit of any such defense.

9.2 Vale's Limitation of Liability.

- (a) Vale's liability in connection with this Water Supply and Services Agreement shall be limited to a sum equal to the aggregate amount of the Process Water Charge in the 12 months prior to the claim being made.
- (b) Vale shall not be liable to pay the City for any indirect, consequential, aggravated, special, incidental or punitive damages.
- (c) In no event shall Vale be liable to the City for any loss, damages, liabilities, claims or demands of any kind relating to:
 - (i) a suspension or interruption of the supply of Process Water from the Pump House to the Thompson WTP for any reason (including due to equipment malfunction or other breakdown in the Pump House Infrastructure, repair or maintenance of the Pump House Infrastructure, Pump House Capital Repairs and Improvements, or lack of supply of water);
 - (ii) any damage to the Thompson WTP from the supply of Process Water at increased pressure or rate of flow or otherwise,except to the extent caused by gross negligence or wilful misconduct.
- (d) Vale shall not be liability in relation to the quality or composition of the Process Water.
- (e) Vale's directors, officer, employees, agents and affiliates (in this Section, the "**Vale Related Parties**") shall have no personal liability under this Water Supply and Services Agreement and the City hereby irrevocably indemnifies and saves harmless and waives any claims against the Vale Related Parties in connection with this Water Supply and Services Agreement.
- (f) The City hereby indemnifies and saves harmless Vale and the Vale Related Parties from any and all third party claims, demands, liabilities, actions, damages or expenses whatsoever which they may incur or become liable to account for, arising out of, related to or attributed to, any

- 22 -

acts or omissions of or by Vale or any of the Vale Related Parties in connection with the provision of the Services.

- (g) The City acknowledges that Vale is acting as trustee and agent for the Vale Related Parties in relation to the foregoing limitations of liability and indemnities under this Water Supply and Services Agreement and that the Vale Related Parties shall have the full right and entitlement to take the benefit of and enforce such limitations of liability and indemnities, notwithstanding that the Vale Related Parties are not individually be parties to this Water Supply and Services Agreement. The City agrees that Vale may enforce such limitations of liability and indemnities for and on behalf of the Vale Related Parties and, in such event, the City will not in any proceeding to enforce such limitations of liability and indemnities assert any defense thereto based on the absence of authority or consideration or privity of contract and the City hereby irrevocably waives the benefit of any such defense.

ARTICLE 10- GENERAL

10.1 Differences and Arbitration - All matters in dispute and any differences between the Parties in relation to this Water Supply and Services Agreement shall be resolved in accordance with the provisions of Article 9 of the Transaction Agreement (Differences & Arbitration).

10.2 Notice. Any notice, approval or other communications required or permitted to be given in connection with this Water Supply and Services Agreement (each, a "Notice") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery) or if transmitted by facsimile or e-mail to the addresses designated below or such other addresses as may be designated by Notice given hereunder, and shall be effective upon such personal delivery or facsimile or e-mail transmission:

- (i) If to the City:

City of Thompson
City Hall
226 Mystery Lake Road
Thompson, MB
R8N 1S6

Tel: (204) 677-7920

Fax: (204) 677-7936

Attention: Chief Administrative Officer

- 23 -

Email: gceppetelli@thompson.ca

(ii) If to Vale:

Vale Canada Limited
Thompson Operations
Thompson, MB

Tel: (204) 778-2336
Fax: (204) 778-2278

Attention: Vice-President, Manitoba Operations
Email: Mark.Scott@vale.com

10.3 **Waiver.** No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10.4 **Amendment.** No amendment, supplement, modification or waiver or termination of this Water Supply and Services Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound.

10.5 **Assignment.** No Party may assign this Water Supply and Services Agreement or any of the benefits, rights or obligations under this Water Supply and Services Agreement without the prior written consent of the other Party, provided that: (i) Vale may assign its benefits, rights and obligations under this Water Supply and Services Agreement to the purchaser of all or substantially all of the assets of Vale's Manitoba operations, effective from and after the date of such transfer, upon giving Notice to the City, and (ii) upon the agreement of such Vale affiliate or third party purchaser to be bound by and irrevocably attorn to the terms of this Water Supply and Services Agreement and to honour all of Vale's obligations under this Water Supply and Services Agreement, Vale shall be released from all further obligations under this Water Supply and Services Agreement. For greater certainty, no assignment of this Water Supply and Services Agreement by Vale shall operate to release Vale from liability from and after the effective date of such assignment in respect of all of the covenants, terms and conditions of this Water Supply and Services Agreement as they may relate to the period prior to the effective date of such assignment.

10.6 **Enurement.** This Water Supply and Services Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

- 24 -

10.7 **Compliance with Law.** Each Party covenants that, in all of its activities in connection with this Water Supply and Services Agreement, it shall at all times comply with all applicable laws, regulations and legislation, including, but not limited to, the Corruption of Foreign Public Officials Act (Canada) and the Foreign Corrupt Practices Act (United States), as well as any other anti-bribery, anti-corruption or conflict of interest law applicable to either Party.

10.8 **Further Assurances.** Each Party shall, with reasonable diligence, do all things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Water Supply and Services Agreement and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Water Supply and Services Agreement and carry out its provisions, whether before or after the Closing Date.

10.9 **Relationship Between Parties.** Nothing in this Water Supply and Services Agreement shall be deemed to create a relationship of partnership, principal and agent or trustee and beneficiary between Vale and the City.

10.10 **Survival.** The termination of this Water Supply and Services Agreement does not release a Party from any obligation relating to this Water Supply and Services Agreement that, by its nature, survives completion of the Agreement, including any obligation of indemnity or confidentiality.

10.11 **Execution and Delivery.** This Water Supply and Services Agreement may be executed by the Parties in counterparts, all of which counterparts together shall constitute one and the same instrument. Delivery of an executed counterpart signature page of this Water Supply and Services Agreement by facsimile transmission or via email in PDF or similar format shall be deemed to be an original and shall be as effective as delivery of a manually executed counterpart of this Water Supply and Services Agreement.

**[THIS SPACE LEFT INTENTIONALLY BLANK.
EXECUTION PAGE TO FOLLOW.]**

IN WITNESS WHEREOF the Parties have executed this Water Supply and Services Agreement effective as of the date first set out above.

THE CITY OF THOMPSON

Per: _____
Name: Kathy Valentino
Title: Deputy Mayor

Per: _____
Name: Gary Ceppetelli
Title: Chief Administrative Officer

VALE CANADA LIMITED

Per: _____
Name: Mark Scott
Title: Vice-President, Manitoba
Operations

SCHEDULE "A"
PROCESS WATER CHARGE – SAMPLE CALCULATION

The Process Water Charge is calculated by multiplying the "Water Volume Factor" by the "Costs of Operation". The sample calculations provided in this Schedule "A" are based on the assumptions noted below (and not actual figures) and are provided for indicative purposes only.

A. WATER VOLUME FACTOR

Sample Calculation:

Based on estimated 2018 volumes.

Metered volume of Process Water supplied to the Thompson WTP (as measured by the flow meters marked "M3" and "M4" on Schedule "C")	
Metered volume of Process Water generated by the Pump House (as measured by the flow meters marked "M1" and "M2" on Schedule "C")	
= <u>774 million Imperial gallons</u>	= 6.52%
11,880 million Imperial gallons	

B. COSTS OF OPERATION

Sample Calculation:

Direct Operating Costs

Based on Vale's 2017 budget amounts, inflated by 2% for 2018.

Labour	0
Supplies	\$6,120
Services & Contracts	\$25,500
Electricity	\$470,236
Planned Maintenance (Labour)	<u>\$13,579</u>
Total	\$ 515,435

Note that planned and unplanned maintenance costs are expensed in the year incurred. Unplanned maintenance may be required from time to time and sometimes, these costs may be significant. For example, the cost of a pump rebuild may exceed \$100,000.

- 2 -

Electricity costs are based on 2018 projected costs, which assume a 4% annual increase in the rate, based on projections supplied by Manitoba Hydro.

Under Section 19 of the 1956 Agreement (as defined in the Transaction Agreement), Vale and the City are entitled to take and use such water as they may require, without further charge from the Province. Provincial licensing fees are nominal.

Indirect Operating Costs

In accordance with Section 2.4 of the Water Supply and Services Agreement, for the purposes of calculating the "Costs of Operation" of the Pump House, indirect operating costs have been set at 10% of the amount of the direct operating costs.

Accordingly, for the purposes of this sample calculation, the indirect operating costs would be **\$51,543**.

Indirect costs would include the services of Vale's Utilities Department staff in Thompson who are responsible for the operation of a number of facilities (including the Pump House, hydro, gas, etc.).

Pump House Infrastructure – Depreciation & Amortization Charges

In accordance with Section 2.4 and 2.13 of the Water Supply and Services Agreement, Vale and the City have agreed to include within the "Costs of Operation" of the Pump House the depreciation and amortization costs with respect to the Pump House Infrastructure, as determined by Vale in accordance with International Financial Reporting Standards (IFRS) as in effect from time to time.

Vale amortizes the cost of the Pump House Infrastructure (including any Pump House Capital Repairs and Improvements) over a period not exceeding the anticipated remaining useful life of the Pump House Infrastructure or remaining life of its Thompson mines, whichever is lower, in accordance with International Financial Reporting Standards (IFRS), as in effect from time to time.

The Pump House had a book value at the start of 2015 of \$2,898,377. Depreciation expense was \$126,941 in 2015 and is expected to be ~\$213,399 in 2016.

Accordingly, for the purposes of this sample calculation, we have included a depreciation and amortization charge of **\$213,399**.

Total

\$515,435 + \$51,543 + \$213,399 = \$780,378

C. CALCULATION

Sample Calculation (based on the assumptions noted above):

$$6.52\% \times \$780,378 = \$50,843$$

SCHEDULE "B"
POTABLE WATER CHARGE – SAMPLE CALCULATION

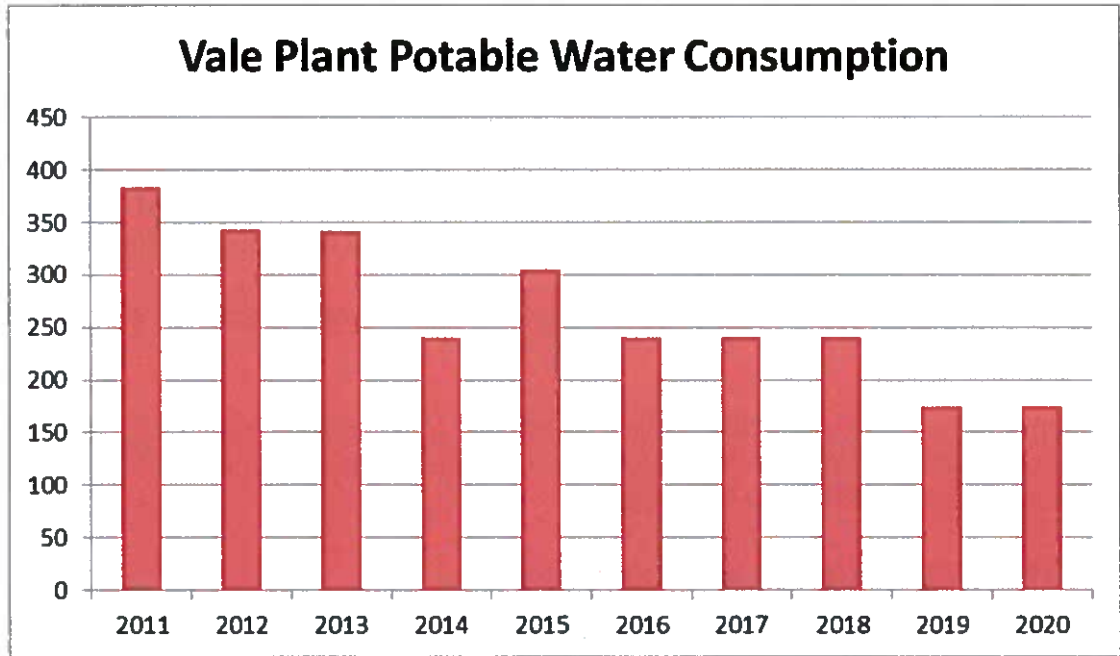
The Potable Water Charge is calculated by multiplying the "Water Volume Factor" by the "Costs of Operation". The sample calculations provided in this Schedule "B" are based on the assumptions noted below (and not actual figures) and are provided for indicative purposes only.

A. WATER VOLUME FACTOR

Sample Calculation:

$$\frac{\text{Metered volume of Potable Water supplied by the Thompson WTP to Vale (as measured by the flow meter marked "M8" on Schedule "C")}}{\text{Metered volume of Potable Water generated by the Thompson WTP (as measured by the flow meters marked "M6", "M7" and "M8" on Schedule "C")}} = \frac{240 \text{ million Imperial Gallons}}{740.46 \text{ million Imperial Gallons}} = 32.41\%$$

Sample calculation above is based on 2018 volumes. Note that Vale's forecast potable water consumption is expected to decline over the 2018-2020 period, as illustrated in the chart below.



- 2 -

B. COSTS OF OPERATION**Sample Calculation:*****Direct Operating Costs****Based on Vale's 2017 Budget & City's 2017 Budget, both inflated by 2% for 2018.*

WTP Operators Salaries & Benefits	\$166,770
Operator Training	\$20,000
Supplies	\$436,560
Services & Contracts	\$12,240
Electricity	\$156,807
Insurance Premiums	\$30,284
Licence Fees	\$0
Utilities Services - Maintenance Labour	\$161,380
Process Water (Raw Water) Cost Allocated to WTP(per Schedule "A")	<u>\$50,843</u>
Total	\$1,034,884

The electricity rate currently enjoyed by Vale will not apply to the City from 2018 onward. Electricity costs are anticipated to increase for the City in 2018 and beyond due to the higher rate that would apply to the City, plus anticipated annual increases of 4% projected by Manitoba Hydro

Indirect Operating Costs

In accordance with Section 3.4 of the Water Supply and Services Agreement, for the purposes of calculating the "Costs of Operation" of the Thompson WTP, indirect operating costs have been set at 10% of the amount of the direct operating costs.

Accordingly, for the purposes of this sample calculation, the indirect operating costs would be **\$103,884**.

The indirect operating costs applicable to the Thompson WTP would include the costs of salaried staff who are responsible for several City facilities (e.g., Thompson WTP, Thompson Waste Water Treatment Plant, etc.).

Thompson WTP Building Repairs and Improvements

In accordance with Section 3.4 of the Water Supply and Services Agreement, the "Costs of Operation" of the Thompson WTP include the cost of the Thompson WTP Building Repairs and Improvements (if any).

- 3 -

While the current 5-year capital plan for the Thompson WTP has no provision for building repair or improvements, funds may be required from time to time cover items such as roof repair, painting, etc.

For the purposes of this sample calculation, we have estimated the annual cost of the Thompson WTP Building Repairs and Improvements at **\$29,280/annum**.

The figure above is derived from the AEC valuation report dated October 2014 (the "**Preliminary Valuation Report**"). That report concluded that the "replacement cost new" of the Thompson WTP building was \$9,760,000. Based on (i) estimated aggregate building repair and improvement costs over the next 33 years, being 10% of the "replacement cost new" value of the Thompson WTP buildings (i.e., \$976,000), and (ii) using a 3% replacement rate (i.e., 33 year life), the estimated annual cost of building repairs and improvements was determined to be \$29,280/annum.

M&E Replacement Charge

In accordance with Section 3.4 and 3.12 of the Water Supply and Services Agreement, Vale and the City have agreed to include within the "Costs of Operation" of the Thompson WTP an annual charge relating to the replacement costs of the Thompson WTP's machinery and equipment (referred to as the M&E Replacement Charge), to be held by the City as part of a fund to cover its portion of the costs of the eventual replacement of the machinery and equipment related to the Thompson WTP (referred to as the M&E Replacement Fund).

The M&E Replacement Charge shall be determined by the Parties based on (A) the estimated "cost new" of the Thompson WTP's machinery and equipment, as set forth in the Final Valuation Report, multiplied by (B) 3% (i.e., the replacement rate, based on a the assumption of 33-year life), multiplied by (C) 33.33%.

Under the Preliminary Valuation Report, the estimated "cost new" of the Thompson WTP's machinery and equipment was \$27,800,000. Accordingly, for the purposes of this sample calculation, we have estimated the M&E Replacement Charge at **\$278,000**.

Total

\$1,034,884 + \$103,488 + \$29,280 + \$ 278,000= \$1,445,652

- 4 -

C. CALCULATION**Sample Calculation (based on above figures):**

$$32.41\% \times \$1,445,652 = \$468,536$$

Note that in accordance with the phasing in of the costs as noted in Section 3.13(b) the percentage to be used for 2018 is 50%. Therefore the 2018 charge to Vale is estimated to be:

$$50\% \times \$1,445,652 = \$722,826$$

SCHEDULE "C"
MEASUREMENT & MONITORING – LOCATION OF FLOW METERS

(See attached)

1

SCHEDULE "D"
PROCESS WATER SUPPLY LINES

(See attached)

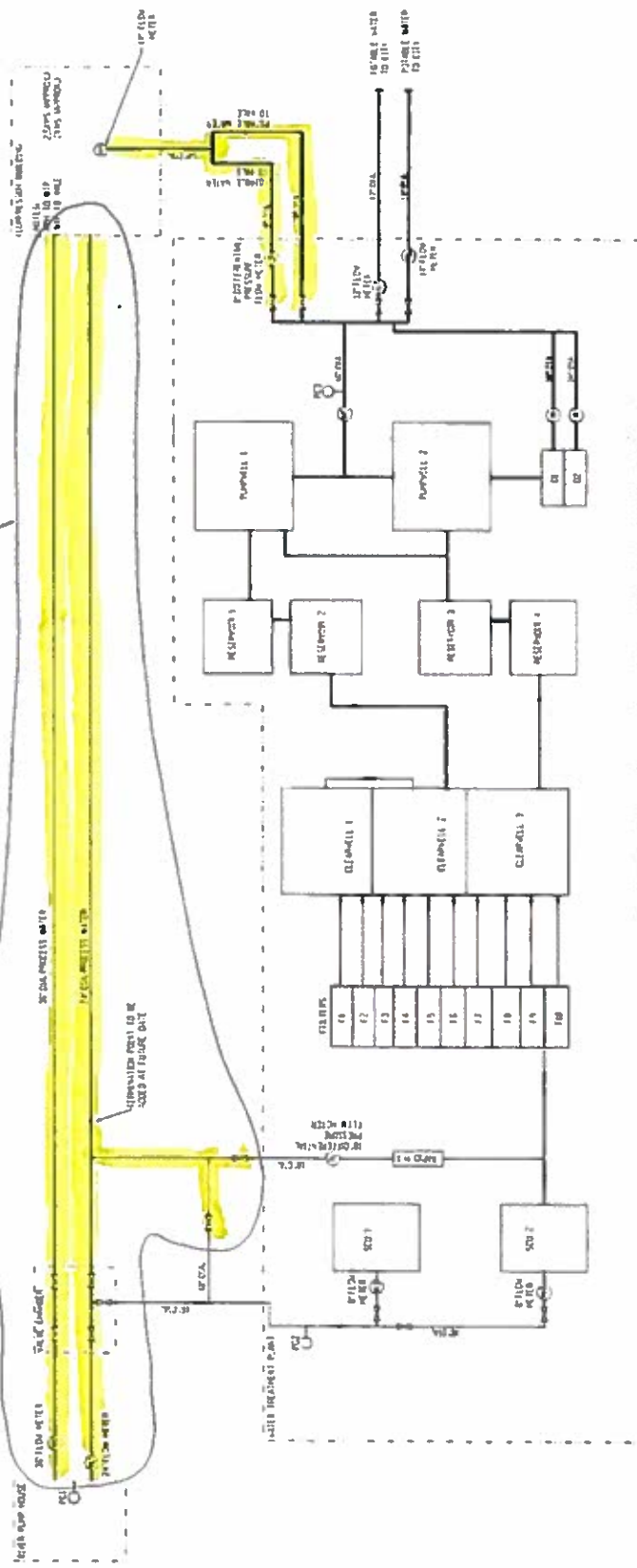
Note: For greater certainty, the attached site plan also serves as the Appendix to Schedule "B" of the Transaction Agreement.

Process Water Supply Lines

TRANSACTION AGREEMENT
SCHEDULE 'B'
RETAINED ASSETS APPENDIX

LEGEND

- DATE MARK: MARKED ON UNIT/VALVE
- FLOW METER
- FIRST TIME FLOW METER
- OFFICIAL FLOW METER
- PROCESS WATER
- WATER
- PROCESS WATER
- PRESSURE GAUGE



1	PROCESS WATER
2	PROCESS WATER
3	PROCESS WATER
4	PROCESS WATER
5	PROCESS WATER
6	PROCESS WATER
7	PROCESS WATER
8	PROCESS WATER
9	PROCESS WATER
10	PROCESS WATER

DATE	BY	DESCRIPTION	REVISION	APPROVED BY	DATE
VALE MANITOBA OPERATIONS			PROJECT NO. 85-024-A-11210 PROCESS WATER SYSTEM BLOCK DIAGRAM		
SHEET NO. 1					

Execution Version

**TRANSACTION AGREEMENT
SCHEDULE "F"**

FORM OF TECHNICAL SERVICES AGREEMENT

(See attached)

TECHNICAL SERVICES AGREEMENT

THIS TECHNICAL SERVICES AGREEMENT is made as of [January 1, 2018]

BETWEEN:

THE CITY OF THOMPSON,
(hereinafter referred to as the "City")

- and -

VALE CANADA LIMITED,
(hereinafter referred to as "Vale")

(each a "Party" and collectively, the "Parties")

RECITALS:

- A. Pursuant to a Transaction Agreement dated as of [December 15, 2016] (the "Transaction Agreement"), and a Deed of Gift of even date herewith, Vale has transferred to the City certain assets directly related to the Thompson Water Treatment Plant (the "Thompson WTP");
- B. The Parties have agreed that, upon the closing of the transfer of the Thompson WTP to the City and subject to the terms and conditions set forth in this Technical Services Agreement, Vale shall provide the City with certain on-going technical services in relation to the Thompson WTP which the City may not find readily available through its own staff or through commercial service providers in the Thompson area;

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

ARTICLE 1 - INTERPRETATION

- 1.1 **Definitions.** In this Technical Services Agreement, the following capitalized terms have the meanings set out below in this Section 1.1.
- (a) "**Agent**" means any employee, agent, contractor or subcontractor or consultant (and includes the employees of such agents, contractors or subcontractors or consultants) of a Party;
 - (b) "**Ancillary Agreements**" means collectively (i) this Technical Services Agreement, (ii) the Water Supply and Services Agreement, (iii) the Easement Agreement and (iv) the License Agreement, each of which have been entered into between the Parties under the terms of the Transaction Agreement;

- (c) **"Commencement Date"** means the date of this Technical Services Agreement;
- (d) **"Emergency"** has the meaning set forth in the Water Supply and Services Agreement;
- (e) **"Overriding Event"** means any event or circumstance or combination of them which is beyond the reasonable control of the Party affected and could not have been prevented or remedied by the Party affected taking reasonable and commercially prudent steps, including, but not limited to, the expenditure of reasonable sums of money, and an Overriding Event shall include the following events:
 - (i) an act of God;
 - (ii) war, declared or undeclared, blockade revolution, riot, insurrection, civil commotion, sabotage, explosion;
 - (iii) a strike, lock out, or other labour dispute;
 - (iv) lightning, fire, earthquake or epidemic;
 - (v) a drought, storm, flood or other natural disaster;
 - (vi) an expropriation, intervention, direction or embargo imposed by any government or government agency;
 - (vii) an inability to obtain, or delay in obtaining any necessary approval, license or other authority from any government or government agency; and
 - (viii) a change of law, by-law or regulation;
- (f) **"Quarterly Invoices"** has the meaning ascribed to it in Section 3.2;
- (g) **"Services"** has the meaning ascribed to it in Section 2.1;
- (h) **"Service Charge"** has the meaning ascribed to it in Section 3.1;
- (i) **"Term"** has the meaning ascribed to it in Section 4.1;
- (j) **"Thompson WTP"** has the meaning ascribed to it in the Recitals;
- (k) **"Transaction Agreement"** has the meaning ascribed to it in the Recitals.

1.2 Certain Rules of Interpretation. In this Technical Services Agreement:

- (a) **Recitals** – The Recitals form an integral part of this Technical Services Agreement.

- (b) **Headings** - Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Technical Services Agreement.
- (c) **Including** - Where the word "including" or "includes" is used in this Technical Services Agreement, it means "including (or includes) without limitation".
- (d) **No Strict Construction** – The language used in this Technical Services Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (e) **Number and Gender** - Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (f) **Severability** – If, in any jurisdiction, any provision of this Technical Services Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Technical Services Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (g) **Statutory References** - A reference to a statute includes all regulations and rules made pursuant to that statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (h) **Governing Law** - This Technical Services Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.
- (i) **Time** - Time shall be of the essence in the performance of the Parties' respective obligations under this Technical Services Agreement.

1.3 **Entire Agreement.** This Technical Services Agreement is entered into pursuant to the terms of the Transaction Agreement. The Transaction Agreement and the Ancillary Agreements (including this Technical Services Agreement) constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter thereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise, including the Letter of Intent among Vale, the City and the Local Government District of Mystery Lake dated April 27, 2015. There are no covenants, promises, warranties, representations, conditions or

other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, between the Parties in connection with the subject matter of this Technical Services Agreement, except as specifically set forth in the Transaction Agreement and the Ancillary Agreements (including this Technical Services Agreement).

- 1.4 **Conflict.** If there is a conflict between any provision of this Technical Services Agreement and any provision of the Transaction Agreement, the relevant provisions of this Technical Services Agreement shall prevail.
- 1.5 **Schedules.** The following Schedules annexed to this Technical Services Agreement are deemed to be an integral part of this Technical Services Agreement:

Schedule "A" - Services.

ARTICLE 2 - SERVICES

- 2.1 **Agreement to Provide Services.** Subject to the terms and conditions of this Technical Services Agreement, Vale shall provide the City with the specified technical services in relation to the Thompson WTP set forth on Schedule "A" (collectively, the "**Services**"). For each of the Services, the Parties have set forth on Schedule "A" a description of the Service, the duration of the Service, the fees to be charged for the Service and any other relevant terms applicable to the Service.
- 2.2 **Modification of Services.** The Parties acknowledge that Schedule "A" may be amended from time to time, as mutually agreed upon by the Parties, to add additional Services reasonably requested by the City or to modify or delete any of the Services.
- 2.3 **Service Standards.** Vale shall perform the Services with the same degree of skill, attention and care as it exercises in performing the same or similar services for itself and its affiliates. In the event that the City is dissatisfied with the Services for any reason, its sole remedy shall be to terminate such Services in accordance with the provisions of this Technical Services Agreement.
- 2.4 **Independence.** All employees and representatives of Vale involved in the provision of the Services shall be deemed for all purposes (including compensation and employee benefits matters) to be employees or representatives of Vale and not employees or representatives of the City. In performing the Services, such employees and representatives shall be under the direction, control and supervision of Vale (and not the City) and Vale shall have the sole right to exercise all authority with respect to the employment (including termination of employment), assignment and compensation of such employees and representatives. Nothing in this Technical Services Agreement is intended

to create nor will it be deemed or construed to create any relationship between the Parties other than that of independent entities contracting with each other.

- 2.5 **Right to Determine Priority.** If there is an unavoidable conflict between the immediate needs of Vale and those of the City as to the use of or access to a particular Service to be provided by Vale, Vale shall have the right, in its sole discretion, to establish reasonable priorities, at particular times and under particular circumstances, as between Vale and the City. In any such situation, Vale shall provide written notice to the City of the establishment of such priorities at the earliest practicable time and in any event prior to implementing action on such priorities. Notwithstanding the foregoing, in the event of an Emergency, Vale shall establish such priorities having regard to the requirements of human health and safety, reduction of harm to the environment, and the continued provision of potable water to the community.
- 2.6 **Confidentiality.** Vale agrees to maintain the confidentiality of all non-public information relating to the City or the Thompson WTP that may be disclosed by the City to Vale in connection with the performance of the Services and to use such information solely for the purposes of providing the Services.

ARTICLE 3 – FEES AND PAYMENT

- 3.1 **Service Charge.** As consideration for the provision of the Services, the City shall, for each Service performed, pay Vale the applicable fee for such Service set forth in Schedule "A" (the "**Service Charge**"). In addition to the Service Charge, the City shall also reimburse Vale for all reasonable and necessary out-of-pocket expenses incurred in connection with the provision of the Services (including parts, materials and delivery charges), upon presentation of reasonable supporting documentation. Where the Service Charge is stated as a monthly fee, it shall be charged for all or any part of a month in which the relevant Service has been provided.
- 3.2 **Quarterly Invoices.** Vale shall deliver invoices to the City on a quarterly basis in relation to the Service Charges (the "**Quarterly Invoices**"). The Quarterly Invoices shall be rendered and delivered to the City within 30 days after the end of each quarter. The Service Charge shall be exclusive of all goods and services, provincial sales or other taxes, all of which will be the sole responsibility of the City.
- 3.3 **Payment of Quarterly Invoices.** The City shall pay the invoiced Service Charges as set out in a Quarterly Invoice within 30 days of receipt or deemed receipt of the invoice.
- 3.4 **Interest on Late Payments.** The City agrees to pay interest on arrears to Vale at the rate of 1 ¼% per month (or such other rate as may be established from time to time by the City for late payments by customers under the City's Water and Wastewater Rates By-Law).

ARTICLE 4 – TERM & TERMINATION

- 4.1 **Term.** This Technical Services Agreement shall become effective on the Commencement Date and shall remain in force until the expiration of the last time period for the performance of the Services (the “Term”), unless terminated earlier (with respect to a particular Service or with respect to the entire Agreement) pursuant to Section 4.2.
- 4.2 **Termination.**
- (a) The City may terminate any of the Services by providing Vale with thirty (30) days’ prior written notice. In the event that any Service is terminated by the City, Schedule “A” shall be amended to reflect the elimination and deletion of such Service.
 - (b) Vale may terminate any of the Services by providing the City with one hundred twenty (120) days’ prior written notice, where Vale determines that it will be discontinuing permanently the provision of such Service to its own organization, provided that during such 120 day period, Vale shall reasonably cooperate with the City in transitioning such service to another supplier.
 - (c) Either Party may terminate this Technical Services Agreement where an Overriding Event continues for more than one hundred twenty (120) days.
 - (d) The Agreement shall terminate at such time as no Services are being provided hereunder.
- 4.3 **Effect of Termination.** The Parties agree that all of Vale’s obligations to provide the Services shall immediately cease upon the termination of this Technical Services Agreement. For greater certainty, Vale’s right to receive the Fees for the Services provided by Vale prior to the effective date of termination shall survive the termination of this Technical Services Agreement.

ARTICLE 5 – OVERRIDING EVENTS

- 5.1 **Suspension of Obligations.** If Vale is unable to perform any of the Services, either in whole or in part, because of an Overriding Event (including, without limitation, where Vale has lost the services of a qualified employee due to resignation, retirement, death, dismissal or otherwise), then such obligation shall be suspended, as far as it is affected by the Overriding Event and while that event continues. Upon learning of the Overriding Event, Vale shall promptly notify the City, either orally or in writing. Vale shall not be liable to the City for any interruption of any Service or for any delay or failure to perform any Service where such interruption, delay or failure results from an Overriding Event.

- 5.2 **Reasonable Efforts to Restore Services.** In the event of any failure, interruption or delay in the performance of the Services, whether excused or unexcused, Vale shall use its reasonable efforts to restore the Services as soon as may be reasonably possible in accordance with its own existing contingency plans for such Services.

ARTICLE 6 – INSURANCE

- 6.1 **Vale Insurance.** Vale will purchase and keep in force throughout the term of this Technical Services Agreement:

- (a) Worker's compensation coverage in accordance with the laws of the Province of Manitoba for all of its employees, subcontractors, representatives or agents providing the Services;
- (b) Commercial general liability insurance, insuring against liabilities arising from bodily injury, death and property damage to policy limits of at least \$5,000,000.00 per occurrence, arising out of or in consequence of Vale's provision of the Services, which insurance shall include all available standard extensions; and
- (c) such other insurance as Vale shall deem appropriate to obtain and to which Vale and the City shall mutually agree.

The insurance described above must (i) name the City as an additional insured, but only with respect to the activities of the City under this Technical Services Agreement; and (ii) state, by endorsement or otherwise, that all insurers waive their rights of subrogation against the City. Vale agrees to furnish to the City copies of the insurance policies described above, or insurance certificates in lieu thereof, on demand.

ARTICLE 7 – LIMITATION OF LIABILITY

- 7.1 **Vale's Limitation of Liability and Indemnification.**

- (a) Vale's liability in connection with this Technical Services Agreement shall be limited to a sum equal to the aggregate amount of the Service Charge in the 12 months prior to the claim being made.
- (b) Vale shall not be liable to pay the City for any indirect, consequential, aggravated, special, incidental or punitive damages.
- (c) In no event shall Vale be liable for any loss, damages, liabilities, claims or demands of any kind relating to a suspension or interruption of the supply of Potable Water from the Thompson WTP for any reason, or in relation to the quality or composition of the Potable Water.

- (d) Vale's directors, officer, employees, agents and affiliates (in this Section, the "**Vale Related Parties**") shall have no personal liability under this Technical Services Agreement and the City hereby irrevocably indemnifies and saves harmless and waives any claims against the Vale Related Parties in connection with this Technical Services Agreement.
- (e) The City hereby indemnifies and saves harmless Vale and the Vale Related Parties from any and all third party claims, demands, liabilities, actions, damages or expenses whatsoever which they may incur or become liable to account for, arising out of, related to or attributed to, any acts or omissions of or by Vale or any of the Vale Related Parties, in connection with the provision of the Services.
- (f) The City acknowledges that Vale is acting as trustee and agent for the Vale Related Parties in relation to the foregoing limitations of liability and indemnities under this Technical Services Agreement and that the Vale Related Parties shall have the full right and entitlement to take the benefit of and enforce such limitations of liability and indemnities, notwithstanding that the Vale Related Parties are not individually be parties to this Technical Services Agreement. The City agrees that Vale may enforce such limitations of liability and indemnities for and on behalf of the Vale Related Parties and, in such event, the City will not in any proceeding to enforce such limitations of liability and indemnities assert any defense thereto based on the absence of authority or consideration or privity of contract and the City hereby irrevocably waives the benefit of any such defense.

ARTICLE 8 - GENERAL

- 8.1 **Differences and Arbitration.** In the event that the City shall dispute the accuracy of any of the Quarterly Invoices, the City shall pay the undisputed portion of such invoice and the parties shall promptly meet and seek to resolve the disputed amount of the invoice. Subject to the foregoing, all matters in dispute and any differences between the Parties in relation to this Technical Services Agreement shall be resolved in accordance with the provisions of Article 9 of the Transaction Agreement (Differences & Arbitration).
- 8.2 **Notice.** Any notice, approval or other communications required or permitted to be given in connection with this Technical Services Agreement (each, a "**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery) or if transmitted by facsimile or e-mail to the addresses designated below or such other addresses as may be designated by Notice given hereunder, and shall be effective upon such personal delivery or facsimile or e-mail transmission:

(i) If to the City:

City of Thompson
City Hall
226 Mystery Lake Road
Thompson, MB
R8N 1S6

Tel: (204) 677-7920
Fax: (204) 677-7936

Attention: Chief Administrative Officer
Email: gceppetelli@thompson.ca

(ii) If to Vale:

Vale Canada Limited
Thompson Operations
Thompson, MB

Tel: (204) 778-2336
Fax: (204) 778-2278

Attention: Vice-President, Manitoba Operations
Email: Mark.Scott@vale.com

- 8.3 **Waiver.** No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
- 8.4 **Amendment.** No amendment, supplement, modification or waiver or termination of this Technical Services Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound.
- 8.5 **Assignment.** No Party may assign this Technical Services Agreement or any of the benefits, rights or obligations under this Technical Services Agreement without the prior written consent of the other Party, provided that: (i) Vale may assign its benefits, rights and obligations under this Technical Services Agreement to the purchaser of all or substantially all of the assets of Vale's Manitoba operations, effective from and after the date of such transfer, upon giving Notice to the City, and (ii) upon the agreement of such Vale affiliate or third party purchaser to be bound by and irrevocably attorn to the terms of this Technical Services Agreement and to honour all of Vale's obligations under this Technical Services Agreement, Vale shall be released from all further obligations under this Technical Services Agreement. For greater certainty, no assignment of this Technical Services Agreement by Vale shall operate to release Vale from

liability from and after the effective date of such assignment in respect of all of the covenants, terms and conditions of this Technical Services Agreement as they may relate to the period prior to the effective date of such assignment.

- 8.6 **Enurement.** This Technical Services Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.
- 8.7 **Compliance with Law.** Each Party covenants that, in all of its activities in connection with this Technical Services Agreement, it shall at all times comply with all applicable laws, regulations and legislation, including, but not limited to, the *Corruption of Foreign Public Officials Act (Canada)* and the *Foreign Corrupt Practices Act (United States)*, as well as any other anti-bribery, anti-corruption or conflict of interest law applicable to either Party.
- 8.8 **Further Assurances.** Each Party shall, with reasonable diligence, do all things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Technical Services Agreement and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Technical Services Agreement and carry out its provisions, whether before or after the Closing Date.
- 8.9 **Relationship Between Parties.** Nothing in this Technical Services Agreement shall be deemed to create a relationship of partnership, principal and agent or trustee and beneficiary between Vale and the City.
- 8.10 **Survival.** The termination of this Technical Services Agreement does not release a Party from any obligation relating to this Technical Services Agreement that, by its nature, survives completion of the Technical Services Agreement, including any obligation of indemnity or confidentiality.
- 8.11 **Execution and Delivery.** This Technical Services Agreement may be executed by the Parties in counterparts, all of which counterparts together shall constitute one and the same instrument. Delivery of an executed counterpart signature page of this Technical Services Agreement by facsimile transmission or via email in PDF or similar format shall be deemed to be an original and shall be as effective as delivery of a manually executed counterpart of this Technical Services Agreement.

**[THIS SPACE LEFT INTENTIONALLY BLANK.
EXECUTION PAGE TO FOLLOW.]**

IN WITNESS WHEREOF the Parties have executed this Technical Services Agreement effective as of the date first set out above.

THE CITY OF THOMPSON

Per: _____
Name: Kathy Valentino
Title: Deputy Mayor

Per: _____
Name: Gary Ceppetelli
Title: Chief Administrative Officer

VALE CANADA LIMITED

Per: _____
Name: Mark Scott
Title: VP, Manitoba
Operations

SCHEDULE "A"

SERVICES

	Service	Duration	Service Charge	Other Information
1.	<p>Instrumentation Maintenance & Repair Services:</p> <p>Provision by Vale of instrumentation maintenance and repair services, by its qualified instrumentation mechanic.</p>	Indefinite	<p>Per Vale's standard internal charge rates for tradespeople, as established on an annual basis. For 2016, the rate was \$85/hour.</p> <p>[NTD: In 2015, there were 223 hours required. This would imply at total Service Charge of \$18,955 using a charge rate of \$85/hour.]</p>	<p>Service to be provided upon request, pursuant to work orders issued by the City from time to time.</p> <p>Scope of work would include: (i) Maintenance Standard Tasks (or MST's) to be performed on a periodic basis (i.e., monthly and quarterly), and (ii) Repair services as required.</p>
2.	<p>Operator-in-Charge:</p> <p>Provision by Vale of an employee of Vale who holds a 3rd Class Water Treatment Plant License (as required by applicable law) to serve as the operator-in-charge of the Thompson WTP.</p>	Annual basis	\$1,000 per month	<p>Operator-in-Charge would be expected to provide one or two hours per week of on-site service.</p> <p>[NTD: Parties may include the services of an Operator-in-Charge under this Technical Services Agreement, to the extent that: (i) the City has not yet hired/trained an individual for this position as at the Closing Date, and (ii) Vale has a qualified/available person on its staff. This service would be provided on a temporary basis only.]</p>
3.	Other Services - TBD	TBD	TBD	TBD

Execution Version

**TRANSACTION AGREEMENT
SCHEDULE "G"**

FORM OF EASEMENT AGREEMENT

(See attached)

TDS DRAFT: December 12, 2016

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT made as of [December 31, 2017].

BETWEEN:

THE CITY OF THOMPSON,

(hereinafter called the "City"),

OF THE FIRST PART,

- and -

VALE CANADA LIMITED,

(hereinafter called "Vale"),

OF THE SECOND PART.

(each a "Party" and collectively, the "Parties")

RECITALS:

- A. Pursuant to a Transaction Agreement dated as of **[December 15, 2016]** and a Deed of Gift of even date herewith, Vale has transferred to the City certain assets directly related to the Thompson Water Treatment Plant (the "**Thompson WTP**"), including the lands described in Part One of Schedule "A" attached hereto (the "**Servient Land**");
- B. Vale remains the registered owner of the lands described in Part Two of Schedule "A" attached hereto (the "**Dominant Land**");
- C. Vale owns and operates a fresh water intake facility (the "**Pump House**"), located on part of the Dominant Lands, which draws water from the Burntwood River and supplies untreated process water to Vale's facilities and the Thompson WTP; and
- D. Vale is desirous of obtaining:
 - (i) easements across, over, upon and through all of the Servient Land;

- 2 -

(ii) easements across, over, upon, under and through the area (the **"Easement Area"**) described on the Plan of Easement bearing Deposit No. PLTO 0405/215 and registered in the Portage la Prairie Land Titles Office as Plan No. **[TBD]**, a sketch of which is attached hereto as Schedule "B";

(iii) rights of access to the Thompson WTP buildings situated on the Servient Land, for the purposes of accessing, operating and maintaining certain electric power distribution lines and related plant, equipment, towers, poles and facilities, including the Manitoba Telecom Services junction box located on a power pole outside the Thompson WTP (collectively, the **"Power Facilities"**); and

(iv) rights of access to the Thompson WTP buildings situated on the Servient Land, for the purposes of accessing, operating and maintaining certain process water supply lines and potable water service lines and related facilities, as more particularly described below:

- i. the 36" process water supply main and the 24" process water supply main, which provide process water from the Pump House to Vale and to the Thompson WTP, including the valve chamber in relation to such supply mains (each, a **"Supply Main"** and collectively, the **"Supply Mains"**);
- ii. the 10" process water supply line running from the 24" Supply Main into the Thompson WTP, up to and including the applicable valves (the **"Process Water Supply Line"**);
- iii. the 10" and 8" potable water service lines running from the Thompson WTP to Vale's operations, from and after the applicable valves (which valves are located inside of the Thompson WTP and are owned by the City) (collectively, the **"Potable Water Service Lines"**);
- iv. the valves for the Potable Water Service Lines (which valves are located inside of the Thompson WTP and are owned by the City); and
- v. any and all other mains, lines, valves, valve chambers, flow meters, pressure gauges, equipment, facilities or other such things related or necessary to the operation and maintenance of the foregoing

(collectively, the **"Water Facilities"**).

NOW THEREFORE in consideration of the sum of ONE (\$1.00) DOLLAR and other good and valuable consideration now paid by Vale to the City (the receipt and sufficiency whereof is hereby acknowledged) and the mutual covenants and agreements hereinafter set forth, the Parties covenant and agree as follows:

- 3 -

1. The Recitals hereto shall form an integral part of this Easement Agreement.
2. The City hereby grants to Vale, for the benefit and use of its respective officers, employees, agents, contractors, successors and assigns (together, the "**Benefitted Persons**"), as appurtenant to its interest in and to the Dominant Land, the following rights, free and without charge:
 - (a) a right-of-way and easement for pedestrian and vehicular access, with or without equipment, over, across and upon the Servient Land to and from the Easement Area, the Thompson WTP buildings and any other location or part of the Power Facilities or the Water Facilities on the Servient Land (collectively, the "**Easement Locations**") for the purposes of accessing, operating and maintaining the Power Facilities and the Water Facilities;
 - (b) a right of access, license and easement to enter into the Thompson WTP buildings and access the Power Facilities or Water Facilities located therein, with two (2) hours' notice in the ordinary course or without notice in the case of an emergency or safety concern, which emergency or safety concern shall be determined at the sole and absolute discretion of Vale, together with a right of access, license and easement to access any Power Facilities or Water Facilities located outside of the Thompson WTP buildings in the Easement Area, without notice;
 - (c) a right, license and easement, at all times, to enter upon the Easement Area and use, excavate, construct, place, operate, inspect, maintain, repair, alter, add to and remove, on, under, across, along, through or from the Easement Area, the Power Facilities and the Water Facilities, as applicable.
3. The City shall not at any time unreasonably impede or restrict access to the Easement Locations and shall not excavate any earth on or from the Easement Area, affect the path or slope of the Easement Area or take any action which would limit the use or enjoyment of the Easement Area by the Benefitted Persons. The City shall at all times maintain the Servient Land such that it is passable by the Benefitted Persons.
4. Vale will not unreasonably obstruct the use of and access to the Servient Land by the City and will make good any physical damage to the Servient Land or the Thompson WTP that results from use by the Benefitted Persons thereof, reasonable wear and tear excepted.
5. The City shall not, without prior consent in writing of Vale, which consent may be withheld at its sole discretion, excavate, drill, place, install, erect or permit to be excavated, drilled, placed, installed or erected on, over, or under the Easement Area, any pit, well, foundation, pavement, material, fence, structure or thing, but otherwise,

- 4 -

the City shall have the right, fully to use and enjoy the Easement Area, subject always to and so as not to interfere with the rights, licenses, and easements hereby granted.

6. The City shall supply to Vale all such keys, access codes and alarm codes as may be necessary to enter into the Easement Locations (including the Thompson WTP buildings), and Vale shall take and maintain such reasonable precautions and security measures with respect to such keys, access codes or alarm codes and with respect to securing the Easement Locations (including the Thompson WTP buildings) as it would take with its own property.

7. The Parties agree that this Easement Agreement creates an interest in land, for the benefit of Vale in and to the Dominant Land, and that a caveat giving notice thereof may be registered against title to the Servient Land and the Dominant Land.

8. Any notice required under this Easement Agreement shall be effected by personal delivery (whether in person, by registered mail or courier service), or by electronic communication (including by facsimile or email), provided that receipt of the electronic communication is confirmed, at the following address:

If to the City, at:

CITY OF THOMPSON
City Hall
226 Mystery Lake Road
Thompson, MB
R8N 1S6

Tel: (204) 677-7920
Fax: (204) 677-7936

Attention: Chief Administrative Officer
Email: gceppetelli@thompson.ca

If to Vale, at:

VALE CANADA LIMITED
Thompson Operations
Thompson, MB

Tel: (204) 778-2336
Fax: (204) 778-2278

Attention: VP, Manitoba Operations
Email: Mark.Scott@vale.com

9. This Easement Agreement shall be governed by the laws of the Province of Manitoba.

10. This Easement Agreement shall be binding upon the Parties, and their respective successors and assigns.

11. This Easement Agreement may be executed in one or more counterparts each of which may be delivered by facsimile or electronic means and shall be deemed to be an original copy of this Easement Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF the Parties have executed this Easement Agreement as of the date and year first above written.

CITY OF THOMPSON

Per: _____
Name: Kathy Valentino
Title: Deputy Mayor

Per: _____
Name: Gary Ceppetelli
Title: Chief Administrative Officer

VALE CANADA LIMITED

Per: _____
Name: Mark Scott
Title: Vice-President, Manitoba
Operations

SCHEDULE "A"
DESCRIPTION OF SERVIENT LAND & DOMINANT LAND

PART ONE - SERVIENT LAND:

AT THOMPSON AND BEING
BLOCK B PLAN 4620 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 79-3 WPM

PART TWO - DOMINANT LAND:

Title No. 2486133/1

PARCEL E PLAN 6856 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT,
BUT WITHOUT RESERVING A STRIP OF LAND ONE ANY ONE-HALF CHAINS
IN WIDTH, MEASURED FROM THE ORDINARY HIGHWATER MARK
OR FROM THE BOUNDARY LINE, AS THE CASE IS
IN 78-3 WPM

Title No. 2739673/3

PARCEL 1:
PARCEL 4 PLAN 4745 (N DIV)
EXC FIRSTLY: PLANS 5943 PLTO (N DIV), 6452 PLTO (N DIV)
6856 PLTO (N DIV), 33680 PLTO, 34932 PLTO AND 56373 PLTO
AND SECONDLY: ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 77 & 78-2 WPM AND 77 & 78-3 WPM

PARCEL 2:
PARCEL A PLAN 5943 PLTO (N DIV)
EX FIRSTLY: PLAN 6452 PLTO (N DIV)
AND SECONDLY: ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 78-3 WPM

PARCEL 3:
BLOCK 10 PLAN 6452 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 4, 5 & 8-78-3 WPM

PARCEL 4:
PARCELS A, C & F PLAN 6856 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 78-3 WPM

PARCEL 5:
PARCEL B PLAN 6856 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT,
BUT WITHOUT RESERVING A STRIP OF LAND ONE AND ONE-HALF CHAINS
IN WIDTH, MEASURED FROM THE ORDINARY HIGHWATER MARK
OR FROM THE BOUNDARY LINE, AS THE CASE IS
IN 78-3 WPM

Title No. 2739670/1

LOT 1 BLOCK 2 PLAN 56373 PLTO
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN UNSURVEYED NW 1/4 4, NE 1/4 5, S 1/2 8 AND SW 1/4 9-78-3 WPM
AND UNSURVEYED GOVERNMENT ROAD ALLOWANCES

Title No. 2739671/3

LOT 1 BLOCK 3 PLAN 56373 PLTO
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN UNSURVEYED NW 1/4 4, NE 1/4 5, S 1/2 8 AND SW 1/4 9-78-3 WOM
AND UNSURVEYED GOVERNMENT ROAD ALLOWANCES

Title No. 2739672/1

LOT 12 BLOCK 4 PLAN 56373 PLTO
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN UNSURVEYED NW 1/4 4, NE 1/4 5, S 1/2 8 AND SW 1/4 9-78-3 WPM
AND UNSURVEYED GOVERNMENT ROAD ALLOWANCES;

Title No. 2486118/3

AT THOMPSON AND BEING
PARCEL 1

LOT 1 BLOCK 5 PLAN 865 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 78-3 WPM

PARCEL 2

PARCEL A PLAN 5498 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 78-3 WPM

Title No. 2724299/3

PARCEL ONE

THAT PORTION OF PARCEL 3 PLAN 4745 PLTO (N DIV) LYING EAST
OR PUBLIC ROAD PLAN 4782 PLTO (N DIV)
EXC FIRSTLY: PLANS 847 PLTO (N DIV), 848 PLTO (N DIV),
5295 PLTO (N DIV), PLAN 5521 PLTO (N DIV) AND PLAN 55901 PLTO
AND SECONDLY: ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 77-2 AND 3 WPM AND 78-2 AND 3 WPM

PARCEL TWO

PARCELS A, C, D, E AND F PLAN 5521 PLTO (N DIV)
EXC ALL MINES, MINERALS AND OTHER MATTERS
AS SET FORTH IN THE CROWN LANDS ACT
IN 77 AND 78-3 WPM

SCHEDULE "B"
SKETCH OF EASEMENT AREA

(See attached)

Plan

OAK

75'

STREET

No.

BLOCK 141

834

(N. Div.)

BLOCK 142

Plan

BURNTWOOD

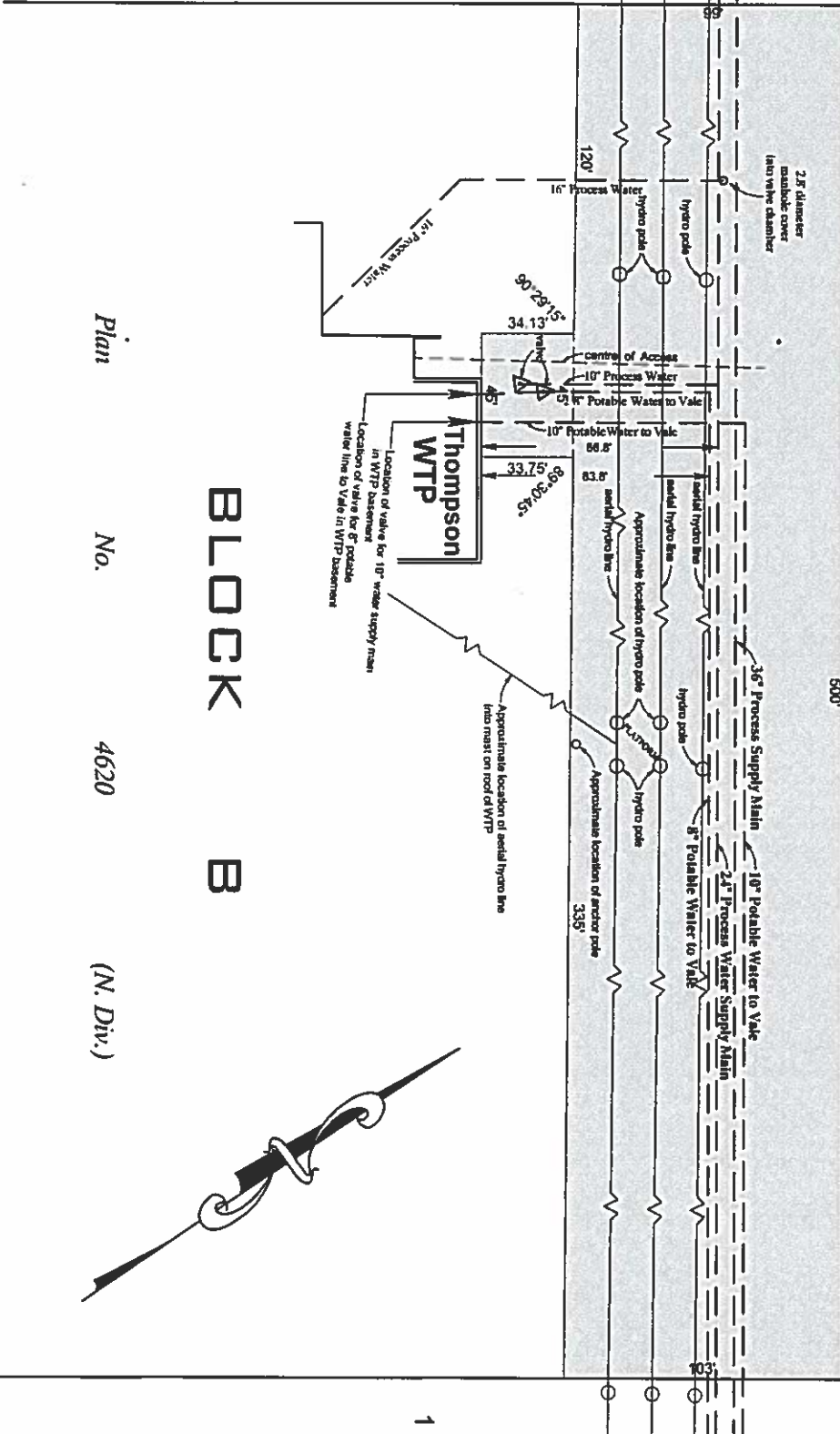
No.

739

(N. Div.)

ROAD

60'



Plan

No.

4620

(N. Div.)

BLOCK B

BLOCK

5

Plan

No.

865

(N. Div.)

Plan

No.

910 (N. Div.)

BERENS ROAD

Parcel A

Plan No.

5498 (N. Div.)

70'

Execution Version

**TRANSACTION AGREEMENT
SCHEDULE "H"**

FORM OF LICENSE AGREEMENT

(See attached)

TDS DRAFT: December 12, 2016

**LICENSE AGREEMENT
(RE: NETWORK FACILITIES AND ENVIRONMENTAL MONITORING FACILITIES
AT THE THOMPSON WATER TREATMENT PLANT)**

THIS LICENSE AGREEMENT is dated as of [December 31, 2017]

BETWEEN:

**THE CITY OF THOMPSON
(hereinafter, the "City")**

– and –

**VALE CANADA LIMITED
(hereinafter, "Vale")**

(each a "Party" and collectively, the "Parties")

RECITALS:

- A.** Pursuant to a Transaction Agreement dated as of [December 15, 2016] (the "Transaction Agreement"), and a Deed of Gift of even date herewith (the "Deed of Gift"), Vale has transferred to the City certain assets directly related to the Thompson Water Treatment Plant (the "Thompson WTP"), including the "Network Facilities" and the "Environmental Monitoring Facilities" (both as defined herein).
- B.** The Networking Facilities include certain Vale control lines that are required for communications and other purposes and the Environmental Monitoring Facilities include a monitoring station for weather and SO2 emissions.
- C.** Vale requires continuing access to the Network Facilities and the Environmental Monitoring Facilities as part of its ongoing operations and in order to meet its regulatory reporting obligations.
- D.** Accordingly, Vale has requested, and the City has agreed to grant, a license to Vale to allow Vale to locate the Network Facilities and the Environmental Monitoring Facilities at the Thompson WTP and to permit access in and to the Thompson WTP (including portions of the rooftop, the electrical room, the lab, the basement pump room and the front office, all as more particularly described in this License Agreement), for the purposes of operating and maintaining the Network Facilities and the Environmental Monitoring Facilities, all on the terms and conditions set forth in this License Agreement.

- 2 -

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

ARTICLE 1 – INTERPRETATION

1.1 **Definitions.** In this License Agreement, the following capitalized terms shall have the meanings set out below in this Section 1.1:

- (a) **“Agent”** means any employee, agent, contractor or subcontractor or consultant (and includes the employees of such agents, contractors or subcontractors or consultants) of a Party;
- (b) **“Basement Pump Room”** means the pump room located in the basement of the Building, as shown on the second page of the plan attached to this License Agreement as Schedule “A”;
- (c) **“Building”** means the building comprising the Thompson WTP, and includes the Lands where the context so requires;
- (d) **“Business Day”** means a day other than a Saturday, Sunday or a public holiday in the Province of Manitoba;
- (e) **“Closing Date”** has the meaning ascribed to it in the Transaction Agreement;
- (f) **“Commencement Date”** has the meaning ascribed to it in Section 2.2;
- (g) **“Deed of Gift”** has the meaning ascribed to it in the Recitals;
- (h) **“Electrical Room”** means the electrical room located within the Building, as shown on the first page of the plan attached to this License Agreement as Schedule “A”;
- (i) **“Environmental Monitoring Facilities”** means those assets set out under the heading “Environmental Monitoring Facilities” in Schedule “B” and any other weather or SO₂ monitoring facilities to be constructed, erected, installed, operated and maintained by Vale on and within the Licensed Premises, including related equipment, facilities, wires and cables as may be required in connection with the operation of the Environmental Monitoring Facilities by Vale;

- 3 -

- (j) **"Front Office"** means the front office located within the Building, as shown on the first page of the plan attached to this License Agreement as Schedule "A";
- (k) **"Governmental Authority"** means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal, dispute settlement panel or body or other law, rule or regulation-making entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, state or other geographic or political subdivision thereof, or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;
- (l) **"Lab"** means the lab located within the Building, as shown on the first page of the plan attached to this License Agreement as Schedule "A";
- (m) **"Lab Bench"** means the lab bench and nearby cabinets and panels located in the Lab, containing certain of the Environmental Monitoring Facilities;
- (n) **"Lands"** means the real property on which the Thompson WTP is located, which land is legally described as follows:

 AT THOMPSON AND BEING
 BLOCK B PLAN 4620 PLTO (N DIV)
 EXC ALL MINES, MINERALS AND OTHER MATTERS
 AS SET FORTH IN THE CROWN LANDS ACT
 IN 79-3 WPM;
- (o) **"License"** has the meaning ascribed to it in Section 2.1;
- (p) **"License Agreement"** means this License Agreement, including all schedules and all amendments or restatements as permitted, and references to **"Article"** or **"Section"** mean the specified Article or Section of this License Agreement;
- (q) **"License Fee"** has the meaning ascribed to it in Section 3.1;
- (r) **"Licensed Premises"** means that certain portion of the Thompson WTP licensed by Vale from the City, consisting of (i) the Rooftop Area, (ii) those certain portions of the Electrical Room containing the Network Facilities or the Environmental Monitoring Facilities; (iii) those certain portions of the Lab containing the Network Facilities or the Environmental Monitoring

- 4 -

Facilities; (iv) those certain portions of the Basement Pump Room containing the Environmental Monitoring Facilities, and (v) those certain portions of the Front Office containing the Network Facilities;

- (s) **"Network Facilities"** means those assets set out under the heading "Network Facilities" in Schedule "B" and any other network facilities to be constructed, erected, installed, operated and maintained by Vale on and within the Licensed Premises, including related equipment, facilities, wires and cables as may be required in connection with the operation of the Network Facilities by Vale;
- (t) **"Notice"** has the meaning ascribed to it in Section 7.2;
- (u) **"Rooftop Area"** means the area situated on the rooftop of the Building, as shown on the first page of the plan attached as Schedule A;
- (v) **"Term"** has the meaning ascribed to it in Section 2.2;
- (w) **"Thompson WTP"** has the meaning ascribed to it in the Recitals;
- (x) **"Transaction Agreement"** has the meaning ascribed to it in the Recitals; and
- (y) **"Water Supply and Services Agreement"** has the meaning ascribed to it in the Transaction Agreement.

1.2 **Certain Rules of Interpretation.** In this License Agreement:

- (a) **Recitals** – The Recitals form an integral part of this Transaction Agreement.
- (b) **Headings** - Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this License Agreement.
- (c) **Including** - Where the word **"including"** or **"includes"** is used in this License Agreement, it means **"including (or includes) without limitation"**.
- (d) **No Strict Construction** - The language used in this License Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

- 5 -

- (e) **Number and Gender** - Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (f) **Severability** – If, in any jurisdiction, any provision of this License Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this License Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (g) **Statutory References** – A reference to a statute includes all regulations and rules made pursuant to that statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (h) **Governing Law** - This License Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.
- (i) **Time** - Time shall be of the essence in the performance of the Parties' respective obligations under this License Agreement.

1.3 **Entire Agreement.** This License Agreement is entered into pursuant to the terms of the Transaction Agreement. The Transaction Agreement and the Ancillary Agreements as defined therein (including this License Agreement) constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter thereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise, including the Letter of Intent among Vale, the City and the Local Government District of Mystery Lake dated April 27, 2015. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, between the Parties in connection with the subject matter of this License Agreement, except as specifically set forth in the Transaction Agreement and the Ancillary Agreements (including this License Agreement).

1.4 **Conflict.** If there is a conflict between any provision of this License Agreement and any provision of the Transaction Agreement, the relevant provisions of this License Agreement shall prevail.

- 6 -

1.5 **Schedules.** The following Schedules annexed to this License Agreement are deemed to be an integral part of this License Agreement:

Schedule "A" - Licensed Premises

Schedule "B" - Network Facilities and Environmental Monitoring Facilities

ARTICLE 2 – GRANT OF LICENSE

2.1 **Grant of License.** The City hereby grants Vale and its Agents a non-exclusive license (the "**License**") for access to (and egress from) and to use the Licensed Premises, in order to install, operate, maintain and replace the Network Facilities and the Environmental Monitoring Facilities. The City further grants Vale and its Agents the right to install, operate, maintain and replace such further equipment and facilities as may be necessary or desirable for the ongoing operation of the Network Facilities and the Environmental Monitoring Facilities.

2.2 **Term.** The term of this License Agreement (the "**Term**") shall commence on the date of this License Agreement (the "**Commencement Date**") and may only be terminated in accordance with Section 2.3.

2.3 **Termination.** This Agreement may be terminated by Vale upon not less than 30 days' prior written notice to the City of its intention to terminate this License Agreement.

2.4 **Surrender.** Upon termination of this License Agreement in accordance with Section 2.3, Vale shall, at its own cost and expense, remove the Network Facilities and the Environmental Monitoring Facilities from the Licensed Premises and repair any damage caused by such removal; provided, however, that if at such time, the Network Facilities and/or the Environmental Monitoring Facilities, or any parts thereof, are in use by the City, or it is impractical to remove such facilities, then Vale shall have the option, in its sole discretion, to donate the Network Facilities and/or the Environmental Monitoring Facilities, or such parts thereof, to the City, and the City shall accept those donated facilities as if such facilities were donated to the City on the original terms of the Transaction Agreement and the Deed of Gift.

ARTICLE 3 – LICENSE FEE, TAXES AND UTILITIES

3.1 **License Fee.** Vale shall pay to the City in respect of the License, a fee (the "**License Fee**") in the amount of one hundred dollars (\$100.00) per annum. The City shall invoice Vale for the License Fee with respect to each calendar year of the

- 7 -

Term under the "Final Invoice" (as defined in and delivered by the City to Vale in accordance with Section 3.5 of the Water Supply and Services Agreement). The License Fee is exclusive of all goods and services taxes, provincial sales taxes or other applicable taxes in relation to the License Fee, all of which shall be the sole responsibility of Vale.

3.2 Property Taxes. For greater certainty, the City shall be solely responsible for the payment of any and all Property Taxes that may be assessed in respect of the Thompson WTP or the Lands.

3.3 Electrical Power. The City shall be solely responsible for providing electrical power to the Thompson WTP and Vale shall have access to such electrical power as may be required in connection with the Network Facilities and the Environmental Monitoring Facilities without any further charge or supplement to the License Fee. For greater certainty, any increase in fees for electrical power charged to the City which may be attributed to Vale's use of the Network Facilities and the Environmental Monitoring Facilities shall be considered part of the operating costs of the Thompson WTP and governed in accordance with the terms of the Water Supply and Services Agreement.

ARTICLE 4 – USE AND ACCESS

4.1 Permits. Vale, at its own cost and expense, shall be responsible for obtaining any permits, authorizations or licenses that may be necessary for Vale to occupy and use the Licensed Premises for the purpose described in Section 2.1. The City makes no representation or warrant of any kind, express or implied, either at the Commencement Date or thereafter, as to the sufficiency or suitability of the License for the use to be made of it by Vale or its Agents.

4.2 Access. Vale and its Agents shall have a right of ingress and egress to the Licensed Premises and any other portion of the Thompson WTP containing any equipment or facilities related to the Network Facilities and the Environmental Monitoring Facilities on a 24 hours per day, 7 days per week basis to enable Vale to construct, erect, install, operate and maintain the Network Facilities and the Environmental Monitoring Facilities, provided that Vale shall have notified and made prior arrangements with the City for such purpose and the City operator or other City representative shall be present at the Thompson WTP during any such time that Vale and its Agents access any portion of the Thompson WTP other than the Licensed Premises. The City shall provide Vale with access keys and codes to the Thompson WTP (including the Front Office, the Electrical Room, the Rooftop Area and the Lab), as may be required to facilitate access to the Licensed Premises.

- 8 -

4.3 Prohibited Uses. Vale shall not cause or permit:

- (a) any nuisance in the Licensed Premises, including using the Licensed Premises in such a manner so as to cause a nuisance or otherwise cause or permit annoying noises or vibrations or offensive odours to emanate from the Licensed Premises;
- (b) any waste or damage to the Licensed Premises; or
- (c) any interference to or with the City's operations of and in respect of the Thompson WTP.

ARTICLE 5 – IMPROVEMENTS, MAINTENANCE AND TITLE

5.1 Improvements. Vale, at its own cost and expense, shall be entitled to construct, erect, install, operate and maintain the Network Facilities and the Environmental Monitoring Facilities. Prior to commencing any construction in relation to the Network Facilities and the Environmental Monitoring Facilities, Vale shall submit its construction plans to the City for approval, which approval shall not be unreasonably withheld or unduly delayed. Vale shall not modify or alter the structural elements of the Building in any way, and shall not cut into or puncture any part of the Building in such a way that the thermal, vapour or moisture barriers of the Building are damaged.

5.2 Liens. Vale promptly shall pay for all materials supplied and work done on behalf of Vale in respect of its occupation of the Licensed Premises so as to ensure that no lien is registered against any portion of the Lands or the Building or against the City's interest in the Lands or the Building. If a lien is registered or filed, Vale immediately shall discharge such lien at its expense, failing which the City, at its option, may discharge the lien by paying the amount claimed to be due into court or directly to the lien claimant, and the amount so paid and all reasonable expenses of the City shall be paid by Vale to the City.

5.3 Title to Network Facilities and Environmental Monitoring Facilities. Subject to the terms of Section 2.4, the City acknowledges and agrees that ownership of the Network Facilities and the Environmental Monitoring Facilities, and any part thereof, shall remain with Vale, notwithstanding that the Network Facilities and the Environmental Monitoring Facilities and any part thereof may be affixed to the Thompson WTP for the time being, and Vale shall be entitled to remove the Network Facilities and the Environmental Monitoring Facilities, and all parts thereof, at any time (including upon termination of this License Agreement).

ARTICLE 6 – LIMITATION OF LIABILITY AND INSURANCE

6.1 Limitation of Liability. Vale agrees that the City shall not be liable or responsible in any way for any personal and bodily injury (including death) or property damage that may be sustained by Vale or any of its Agents who may be upon the Licensed Premises in relation to the Network Facilities and the Environmental Monitoring Facilities, except where caused by the gross negligence or wilful misconduct of the City or those for whom it is in law responsible, and Vale hereby indemnifies and saves the City harmless from any and all loss, damage, cost or expense that may be sustained or incurred by the City, including any injury to any person, or damage to the Licensed Premises or any property therein, arising out of the use of the Licensed Premises by Vale.

6.2 Vale Insurance. Vale will purchase and keep in force throughout the term of this License Agreement:

- (a) Worker's compensation coverage in accordance with the laws of the Province of Manitoba for all of its Agents who may be upon the Licensed Premises in relation to the Network Facilities and the Environmental Monitoring Facilities;
- (b) Commercial general liability insurance, insuring against liabilities arising from bodily injury, death and property damage to policy limits of at least \$5,000,000.00 per occurrence, arising out of or in consequence of Vale's ownership and operation of the Network Facilities and the Environmental Monitoring Facilities, which insurance shall include all available standard extensions; and
- (c) such other insurance as Vale shall deem appropriate to obtain and to which Vale and the City shall mutually agree.

Vale agrees to furnish to the City copies of the insurance policies described above, or insurance certificates in lieu thereof, on demand.

ARTICLE 7 – GENERAL

7.1 Differences and Arbitration. All matters in dispute and any differences between the Parties in relation to this License Agreement shall be resolved in accordance with the provisions of Article 9 of the Transaction Agreement (Differences & Arbitration).

- 10 -

7.2 **Notice.** Any notice, approval or other communications required or permitted to be given in connection with this License Agreement (each, a "Notice") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery) or if transmitted by facsimile or e-mail to the addresses designated below or such other addresses as may be designated by Notice given hereunder, and shall be effective upon such personal delivery or facsimile or e-mail transmission:

(i) If to the City:

City of Thompson
City Hall
226 Mystery Lake Road
Thompson, MB
R8N 1S6

Tel: (204) 677-7920
Fax: (204) 677-7936

Attention: Chief Administrative Officer
Email: gceppetelli@thompson.ca

(ii) If to Vale:

Vale Canada Limited
Thompson Operations
Thompson, MB

Tel: (204) 778-2336
Fax: (204) 778-2278

Attention: VP, Manitoba Operations
Email: Mark.Scott@vale.com

7.3 **Waiver.** No waiver of any condition or other provision, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

7.4 **Amendment.** No amendment, supplement, modification or waiver or termination of this License Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound.

- 11 -

7.5 Assignment. No Party may assign this License Agreement or any of the benefits, rights or obligations under this License Agreement without the prior written consent of the other Party, provided that: (i) Vale may assign its benefits, rights and obligations under this License Agreement to the purchaser of all or substantially all of the assets of Vale's Manitoba operations, effective from and after the date of such transfer, upon giving Notice to the City, and (ii) upon the agreement of such Vale affiliate or third party purchaser to be bound by and irrevocably attorn to the terms of this License Agreement and to honour all of Vale's obligations under this License Agreement, Vale shall be released from all further obligations under this License Agreement. For greater certainty, no assignment of this License Agreement by Vale shall operate to release Vale from liability from and after the effective date of this License Agreement in respect of all of the covenants, terms and conditions of this agreement as they may relate to the period prior to the effective date of this License Agreement.

7.6 Enurement. This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

7.7 Compliance with Law. Each Party covenants that, in all of its activities in connection with this License Agreement, it shall at all times comply with all applicable laws, regulations and legislation, including, but not limited to, the *Corruption of Foreign Public Officials Act* (Canada) and the *Foreign Corrupt Practices Act* (United States), as well as any other anti-bribery, anti-corruption or conflict of interest law applicable to either Party.

7.8 Further Assurances. Each Party shall, with reasonable diligence, do all things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this License Agreement and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this License Agreement and carry out its provisions, whether before or after the Closing Date.

7.9 Relationship Between Parties. Nothing in this License Agreement shall be deemed to create a relationship of partnership, principal and agent or trustee and beneficiary between Vale and the City.

7.10 Survival. The termination of this License Agreement does not release a Party from any obligation relating to this License Agreement that, by its nature, survives completion of the Agreement, including any obligation of indemnity or confidentiality.

7.11 Execution and Delivery. This Agreement may be executed by the Parties in counterparts, all of which counterparts together shall constitute one and the same

- 12 -

instrument. Delivery of an executed counterpart signature page of this License Agreement by facsimile transmission or via email in PDF or similar format shall be deemed to be an original and shall be as effective as delivery of a manually executed counterpart of this License Agreement.

**[THIS SPACE LEFT INTENTIONALLY BLANK.
EXECUTION PAGE TO FOLLOW.]**

IN WITNESS WHEREOF the Parties have executed this License Agreement effective as of the date first set out above.

THE CITY OF THOMPSON

Per: _____
Name: Kathy Valentino
Title: Deputy Mayor

Per: _____
Name: Gary Ceppetelli
Title: Chief Administrative Officer

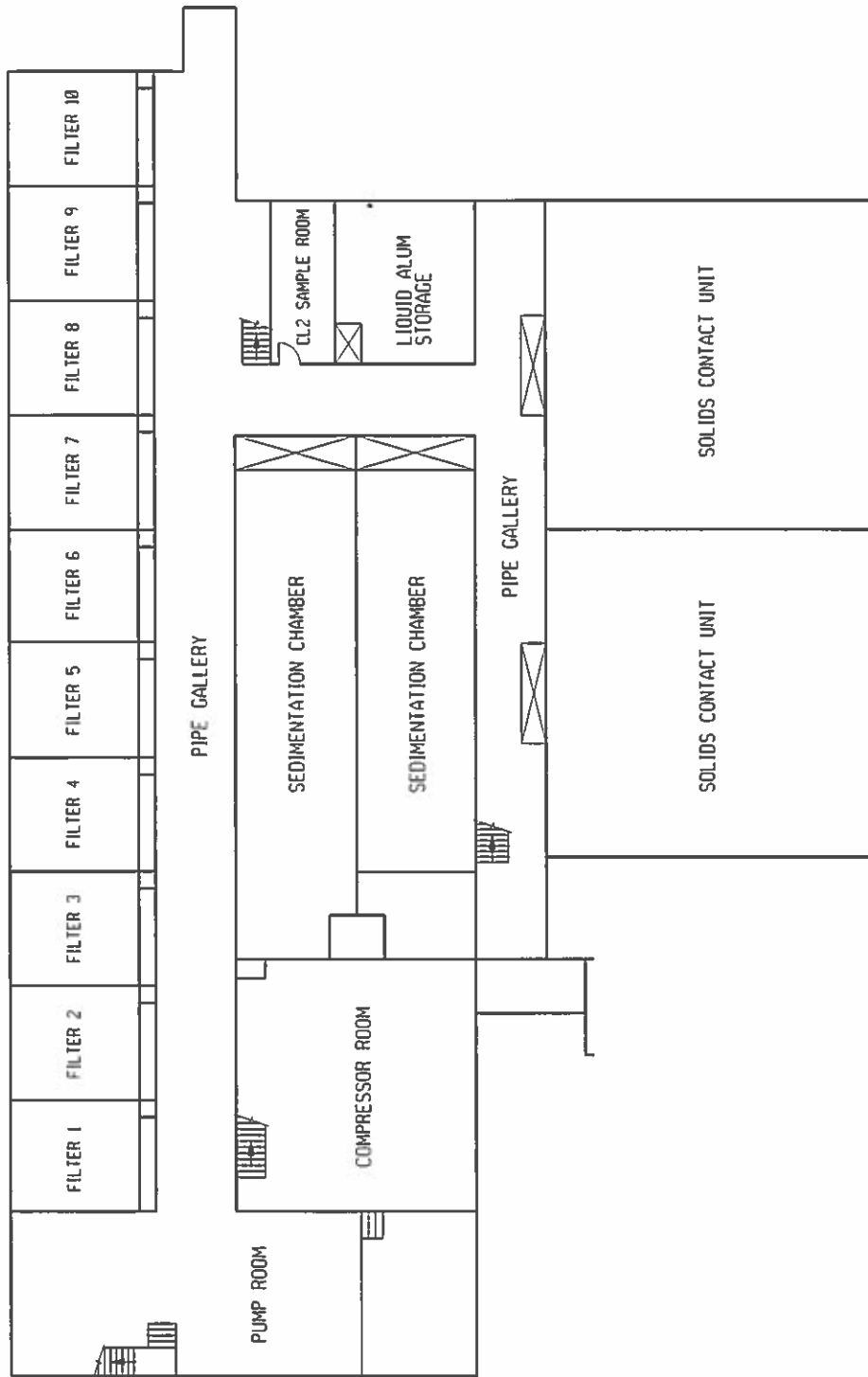
VALE CANADA LIMITED

Per: _____
Name: Mark Scott
Title: Vice-President, Manitoba
Operations

TDS DRAFT: December 12, 2016
SCHEDULE "A"
LICENSED PREMISES

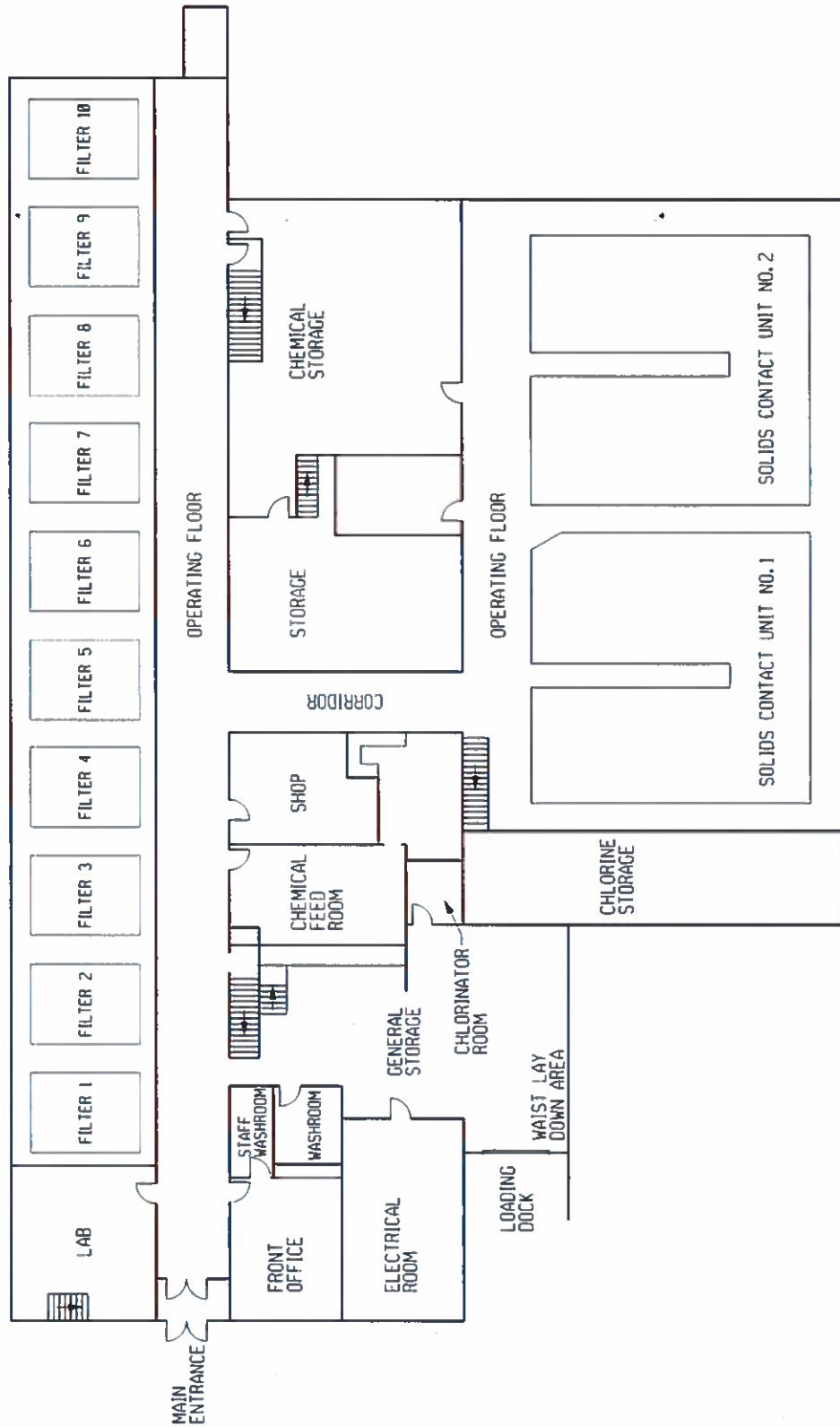
(See attached)

LICENSE AGREEMENT
SCHEDULE "A" - LICENSED PREMISES
THOMPSON WTP - BASEMENT



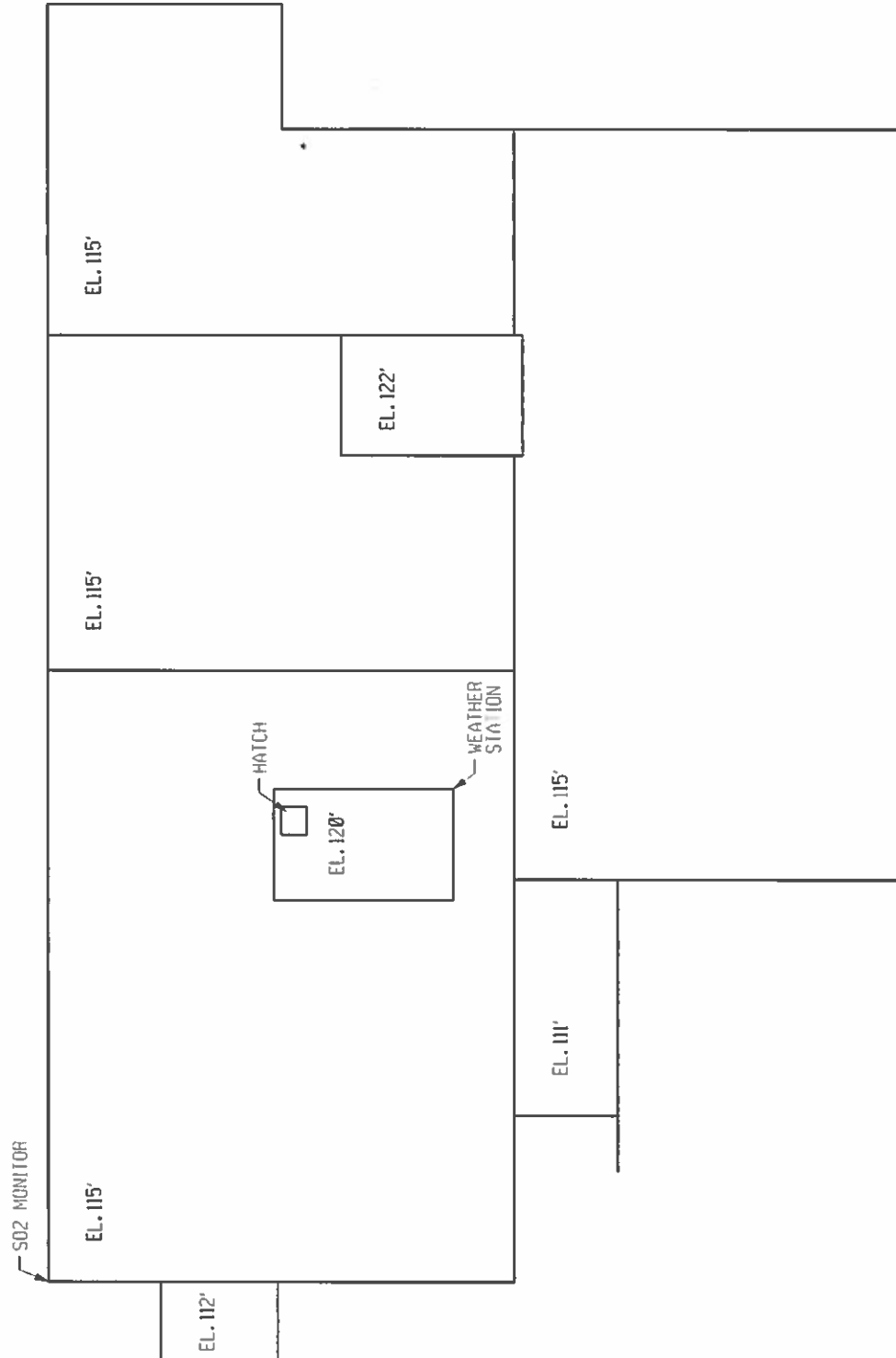
WATER TREATMENT PLANT
FLOOR PLAN AT EL. 90.25'

LICENSE AGREEMENT
SCHEDULE "A" - LICENSED PREMISES
THOMPSON WTP - MAIN FLOOR



WATER TREATMENT PLANT
FLOOR PLAN AT EL. 104.75'

LICENSE AGREEMENT
SCHEDULE 'A' - LICENSED PREMISES
THOMPSON WTP - ROOF



WATER TREATMENT PLANT
ROOF PLAN

TDS DRAFT: December 12, 2016

SCHEDULE "B"
NETWORK FACILITIES AND ENVIRONMENTAL MONITORING FACILITIES

Network Facilities

The equipment set forth in the table below comprises the "Network Facilities":

Network Facilities				
Equipment	Requirements	Location	Typical Access Requirement	Periodic Maintenance Schedule
24 Port Cisco Switch	Network access and monitoring	Electrical Room	24/7	Quarterly
8 port Cisco Switch	Process control access and monitoring	Electrical Room	24/7	Quarterly
24 power Injector	Provides power to cameras	Electrical Room	24/7	Quarterly
Copper Lines	Modem DSL access	Electrical Room	24/7	Quarterly
UPS	Battery backup	Electrical Room	24/7	Quarterly
MTS DSL Modem	Network access backup	Electrical Room	24/7	Quarterly
Computer\Printer	Computer and printer access to Vale network	Front Office	Mon-Friday, 8am to 4pm	Not applicable

- 2 -

Environmental Monitoring Facilities

The equipment set forth in the table below comprises the “**Environmental Monitoring Facilities**”:

Environmental Monitoring Facilities				
Equipment	Serial # / Identifier	Location	Typical Access Requirement	Periodic Maintenance Schedule
Lab Bench	N/A	Lab	24/7	Monthly
Thermo Model 43i SO2 Analyzer & Zero Air Scrubber	080292740	Lab (Lab Bench)	24/7	Monthly
VICI Model 120-4 Dynacalibrator	M-1886	Lab (Lab Bench)	24/7	Monthly
AQDL3 Remote Terminal Unit & 12V Back-up battery	WTP AQDL3-1-2015	Lab (Lab Bench)	24/7	Monthly
Lantronix 1100-IAP Universal Device Server	MAC 00-20-4A-9C-F8-C7	Lab (Lab Bench)	24/7	Monthly
Smart UPS APC 750 (Power Supply)	A507441-40791	Lab (Lab Bench)	24/7	Quarterly
R.M Young Model 05103L Anemometer (i.e., Wind Monitoring Instrument)	WTP ANE-1-2009	Rooftop Area (Accessed from the hatch in the Air Scour Room)	24/7	Annual
Sample and Exhaust Lines	N/A	Lab (Conduit anchored to (exterior) East Wall, leading to the Lab Bench)	24/7	Annual

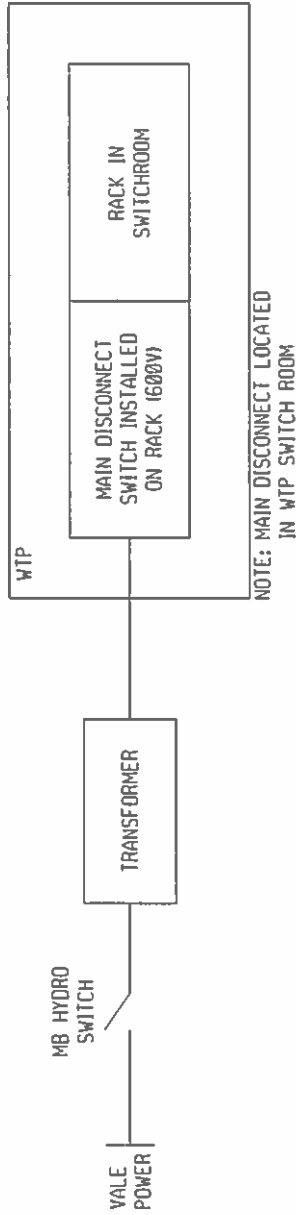
Power Supply	Lighting Panel LB – B1-1 Breaker #17	Basement Pump Room	24/7	Quarterly
Distribution Board	Panel 103-MPI.1-1.1	Lab (North Wall, above the Lab Bench)	24/7	Quarterly

**TRANSACTION AGREEMENT
SCHEDULE "I"**

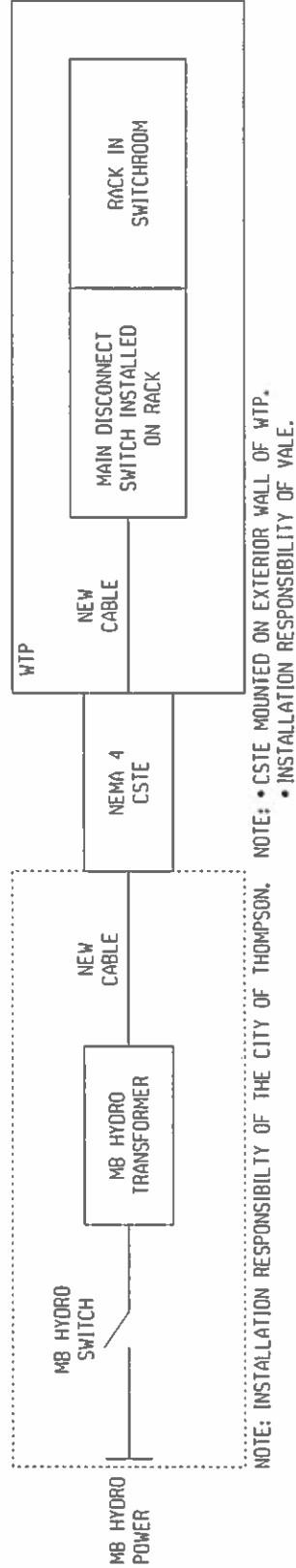
EXISTING AND PROPOSED POWER SUPPLY TO THOMPSON WTP

(See attached)

EXISTING POWER SUPPLY FROM VALE SUB-STATION TO WTP



PROPOSED POWER SUPPLY AFTER TRANSFER



CSTE = CUSTOMER SERVICE TERMINATION ENCLOSURE

CSTE = CUSTOMER OWNED BUT UNDER THE JURISDICTION OF MB HYDRO

