

FIRE CAPITAL AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 2010.

BETWEEN:

WHEATLAND COUNTY
(the "County")

-and-

Rural Fire Association
(the "Association")

WHEREAS Section 7 of the *Municipal Government Act*, R.S.A. 2000, Chapter M-26, authorizes a council to pass bylaws for municipal purposes respecting the safety, health and welfare of people and the protection of people and property;

AND WHEREAS Section 7 of the *Municipal Government Act*, R.S.A. 2000, Chapter M-26, authorizes a council to pass bylaws for municipal purposes respecting services provided by or on behalf of the municipality;

AND WHEREAS both the County and the Association are signatories to the Wheatland Fire/Disaster Mutual Aid Agreement;

AND WHEREAS Wheatland County Council (the "Council") has established a fire tax rate which monies are to be utilized for the replacement of capital purchases utilized by the Association to fight fires within the County;

AND WHEREAS Wheatland County Council has established the Fire Capital Fund Committee (the "Committee") for the purposes of preparing a proposal for the purposes of distribution of the County's Fire Capital Fund;

NOW THEREFORE in consideration of the terms, covenants and agreements contained herein, it is mutually agreed between the County and the Association as follows:

Article 1: Term

1.1 The parties agree to be bound by the terms of this Agreement from the ____ day of _____, 2010 until either the dissolution of the Association or upon either party terminating this Agreement in accordance with the terms of this Agreement.

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- 1.2 Either party may terminate this Agreement by providing written notice to the other party to that effect on or before June 30 of any year, such termination to take effect on December 31 immediately following.
- 1.3 Notwithstanding any provision to the contrary, in the event that one party fails to properly discharge its obligations under this Agreement (the "Defaulting Party"), the party not in default of its obligations (the "Non-Defaulting Party") may terminate this Agreement by delivering notice to that effect to the Defaulting Party. Such termination shall be subject to a sixty (60) day cure period during which the Defaulting Party will be given a reasonable opportunity to cure the default or to provide evidence which is reasonably satisfactory to the Non-Defaulting Party that all reasonable steps have been taken to cure the default. If the default continues or remains in existence upon the expiry of the cure period, the Non-Defaulting Party may terminate this Agreement in writing effective upon delivery of written notice to the Defaulting Party.

Article 2: Purchase of Capital Items

- 2.1 The County and the Association will each cost share the purchase value of capital items which are to be utilized by the Association for the purposes of fighting fires within the boundaries of the County. This cost sharing shall be determined by Resolution of Wheatland County Council ("Council") and is set out in Appendix A of this Bylaw.
- 2.2 The Fire Capital Committee shall adopt policies setting out the definitions and criterion for purchasing fire capital items. Fire capital items shall include, but is not limited to: fire service vehicles; fire halls, renovations, additions, sheds, cold storage structures and fire fighting/protection equipment, as defined in the Fire Capital Committee policies.
- 2.4 The Fire Capital Committee shall make a recommendation to Council regarding approval of capital funding items.
- 2.5 Council's decision on whether or not to approve the County's funding of the purchase of the Fire Truck is final and binding on the parties.

Article 3: Ownership of Capital Items

- 3.1 The Association will be the registered owner of capital items purchased pursuant to the terms of this Agreement.
- 3.2 The County will maintain a lien on capital items purchased pursuant to the terms of this Agreement, and such liens will evidence the County's share of ownership/interest in the capital item. Such liens will only be discharged upon the written authority and instruction of the County in accordance with the terms of this Agreement.

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- 3.3 In the event that the Association dissolves within the Term of this Agreement, the registration of all mutually funded capital items which were purchased pursuant to the terms of this Agreement shall be transferred into the name of the County free and clear of any liens or encumbrances except for the County's lien set out in Clause 3.2 above.
- 3.4 In the event that the Association terminates this Agreement, at the sole discretion and option of the County, the registration of any or all mutually funded capital items which were purchased pursuant to the terms of this Agreement shall be transferred into the name of the County free and clear of any liens or encumbrances except for the County's lien set out in Clause 3.2 above.
- 3.5 In the event that the County chooses to exercise the option set out in Clause 3.4, the County shall pay the Association its share of the value of the capital items it chooses to assume ownership of. The value of the capital items is to be established in accordance with this Part.
- 3.6 In the event that the County does not chose to assume ownership of all or any of the capital items in accordance with Clause 3.4, then the Association shall pay to the County its share of the value of the capital items which were purchased pursuant to the terms of this Agreement which remain in the name of the Association. Upon receipt of full payment, the County shall discharge its liens on the said capital items. The value of the capital items is to be established in accordance with this Part.
- 3.7 In the event that the County terminates this Agreement, at the sole discretion of the Association, the registration of any or all mutually funded capital items which were purchased pursuant to the terms of this Agreement shall remain registered in the name of the Association.
- 3.8 In the event that the Association chooses to exercise the option set out in Clause 3.7, the Association shall pay to the County its share of the value of the capital items which shall remain in the name of the Association. Upon receipt of payment, the County shall discharge its lien on the capital items. The value of the capital items is to be established in accordance with this Part.
- 3.9 In the event that the Association chooses not to retain ownership of all or any of the capital items pursuant to Clause 3.7, then the registration of any or all mutually funded capital items which were purchased pursuant to the terms of this Agreement shall be transferred into the name of the County free and clear of any liens or encumbrances, except for the County's lien set out in Clause 3.2 above and the County shall pay the Association its share of the value of the capital items which are transferred into the County's name. The value of the capital items is to be established in accordance with this Part.
- 3.10 Notwithstanding any other provision in this Agreement, upon the termination of this Agreement by either party, the parties may mutually agree to sell any or all of the mutually funded capital items which were purchased pursuant to the terms of this

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Agreement and share the proceeds of the sale on the basis if the original cost sharing of the capital item. Any such sale is to be carried out in accordance with Article 5.

- 3.11 For the purposes of determining value of the capital item under this Part, the Association in consultation and agreement with Council shall set the value of the capital item at its fair market value as at the date of termination of this Agreement by either party.

Article 4: Maintenance of Capital Items

- 4.1 The Association shall maintain the capital items purchased pursuant to the terms of this Agreement in good and operating repair at all times and conform and comply with all applicable legislated requirements. The Association agrees to pay all reasonable expenses as may be required from time to time for the maintenance and repair of the capital items.
- 4.2 The Association shall ensure that the capital vehicles undergo a full mechanical inspection on a regular basis and such vehicles comply at all times with all legislated requirements pertaining to their operation. The Association shall provide the County with a copy of all required inspection reports pertaining to the capital vehicle.
- 4.4 The Association shall ensure that all capital buildings are properly insured, maintained and at all times comply and conform with all applicable building standards and regulations.
- 4.5 The Association shall ensure that all other capital items not identified or included in Clause 4.2 and Clause 4.3 are maintained and, if applicable, comply and conform with the appropriate legislation.
- 4.6 In the event of an accident or claim involving any of the capital items pursuant to the terms of this Agreement, the Association will immediately notify the County and provide the County with copies of all incident reports.
- 4.7 The parties agree that the County and any of the rural fire associations who are signatories to the Wheatland Fire/Disaster Mutual Aid Agreement, being the Cluny Rural Fire Protection Association Limited, the Dalum Fire Protection Association, the Gleichen District Fire Association, the Hussar Rural Fire Association, the Rockyford Rural Fire Association, the Rosebud Fire Association, the Standard Rural Fire Association and the Strathmore Rural Fire Fighting Association, shall not be billed for the use of any mutually funded Fire Trucks purchased pursuant to the terms of this Agreement on a mutual aid response call within the boundaries of the County pursuant to the terms of the Wheatland Fire/Disaster Mutual Aid Agreement.

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Article 5: Retirement and Replacement of Capital Items

- 5.1 The Association shall be responsible for making the recommendation to Council regarding the terms of the sale or disposal and replacement of all capital items under this Part. Council shall make the final decision regarding the sale, disposal and replacement of all capital items under this Part and shall direct the manner in which the sale, disposal and, if applicable, replacement shall take place.
- 5.2 Council's decision under this Part shall be final and binding on the parties.
- 5.4 Upon the sale or disposal of a capital item under this Part, both parties shall share in the sale or disposal revenue on the same basis as the capital item was purchased.

Article 6: Insurance

- 6.1 The Association shall, at its sole cost, obtain and maintain in force during the Term auto liability insurance for all Fire Trucks purchased pursuant to the terms of this Agreement with limits of not less than Five Million (\$5,000,000.00) Dollars for accidental injury or death to one or more persons or damage to or destruction of property as a result of any one (1) accident or occurrence. The Association shall ensure all other capital items have appropriate insurance coverage for liability and replacement.
- 6.2 All insurance required to be maintained by the Association shall be on terms and conditions and with insurers reasonably acceptable to the County and shall provide that the insurer shall provide thirty (30) days prior written notice to the County of any cancellation or alteration of policy terms.
- 6.3 The insurance policy shall name the County as an additional insured.
- 6.4 Upon request by the County, the Association shall provide the County with certificates or certified copies of the policies signed by the insurers of insurance as required under the terms of this Agreement.

Article 7: Indemnity

- 7.1 Each party hereto (the "Indemnifying Party") shall indemnify and save harmless the other party, its directors, elected officials, officers, employees, contractors, volunteers and agents from and against all liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind the Indemnified Party may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any

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occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:

- a) the misconduct, negligent action or negligent failure to act, as the case may be, of the Indemnifying party and/or any of those persons for whom the Indemnifying Party is responsible at law (including, without limitation, any of its employees or subcontractors) in connection with the performance of its obligations hereunder, or
- b) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or negligent failure to act of the Indemnifying Party and/or any of those persons for whom the Indemnifying Party is responsible at law (including, without limitation, any of its employees or subcontractors).

Article 8: Arbitration

8.1 If any dispute arises between the parties with respect to any of the provisions of this Agreement that cannot be resolved by mutual agreement by the parties, such dispute shall be determined by arbitration in accordance with the following terms and conditions:

- a) The parties desiring to refer a dispute to arbitration shall notify the other party in writing of the details of the nature and extent of the dispute;
- b) Within seven (7) days of receipt of notice contemplated in Section 8.1(a), the parties shall agree upon a single arbitrator (the "Arbitrator") and in the event that the parties are unable to agree upon the Arbitrator, the matter shall be referred to Court of Queen's Bench of Alberta to have the arbitrator appointed;
- c) Within seven (7) days of the appointment of the Arbitrator, or such further period as may be agreed upon by the parties, the Arbitrator shall resolve all matters and disputes which are the subject of the arbitration;
- d) the decision of the Arbitrator shall be final and binding upon the parties;
- e) the Arbitrator shall not alter, amend nor otherwise change the terms and conditions of this Agreement;
- f) the cost of each arbitration shall be borne by the party against which the award is made by the Arbitrator, unless the Arbitrator decides otherwise;
- g) except as modified herein, the provisions of the Alberta *Arbitration Act*, R.S.A. 2000, Chapter A-43, as amended from time to time, shall apply to any arbitration conducted pursuant to this Agreement; and

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circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall remain valid and enforceable.

- 10.8 There are no conditions to this Agreement, either subsequent nor precedent, except as set forth herein. This Agreement constitutes the entire Agreement between the parties.
- 10.9 This Agreement may be altered or amended from time to time by the mutual consent of both parties. A record of any such amendment shall be in writing and a copy thereof shall bear the signatures of the parties and shall be attached to and form part of this Agreement.
- 10.10 The parties covenant and agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time to carry out the terms and conditions of this Agreement in accordance with their true intent.
- 10.11 The parties acknowledge and agree that the provisions of this Agreement which, by their context, are meant to survive the termination or expiry of the Term shall survive the termination or expiry of the Term and shall not be merged therein.

IN WITNESS WHEREOF the parties have set their seals and hands of their proper offices in that behalf on the day and year first written above.

WHEATLAND COUNTY

Per: _____

Per: _____

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- Carried Unanimously.

RESOLUTION 08-638

Fire Capital **ARMSTRONG MOVED** that the 2009 municipal budget reflect an increase in the Fire Capital in the amount of 0.1 of a mill, with this increase to be allocated for Buildings such as fire halls, renovations, additions, sheds and cold storage and with these large capital buildings to be at a 60/40 cost sharing split, 60% being funded by Wheatland County. Further moved that any monies allocated to this Fire Capital Building account that is unexpended at year end is to be placed in a Reserve account with these reserves to be used for future fire capital building projects.

Carried Unanimously.

(Note: above information included in the Fire Capital Committee Policies)

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Appendix A

Fire Protection Mill Rate

Policy adopted effective January 1, 2000. Provided for a portion of a mill to be dedicated to fire protection with the Power and pipeline assessment to go towards capital and the balance to operating. Originally .2000 mills were levied and in 2002 this was changed to .2000 mills towards operating and .1000 mills towards capital. Fire areas were recognized and their assessment allocated accordingly. Originally capital was shared 50/50 between the fire associations and the County. This was later changed to 60/40 with the Capital Committee making the recommendations on the capital purchases.

At the November 18, 2008 Council meeting the following Resolutions were approved:

RESOLUTION 08-636

2009 Fire
Operating
Fund

KOESTER MOVED acceptance of the November 6, 2008 Fire Association/Fire Capital Committee recommendation regarding the Wheatland County Fire Association 2009 Operating Fund distribution, with the 2009 fire operating funds to be distributed as unanimously agreed upon by the fire associations, that being 30% of the operating fund to the Strathmore Rural/Carseland fire department and 10% of the operating fund to each of the remaining fire departments (Cluny, Dalum, Hussar, Gleichen, Rockyford, Rosebud and Standard).

- Carried Unanimously.

RESOLUTION 08-637

Fire Capital **REINHARDT MOVED** acceptance of the October 23, 2008 Fire Association/Fire Capital Committee recommendation that fire halls, renovations, additions, and other fire department buildings such as sheds and cold storage be added to the large capital expense at a 60/40 split, 60% being funded by Wheatland County's large capital fund. Further moved, that the involved fire associations/fire departments, that being Strathmore Rural/Carseland, Cluny, Dalum, Hussar, Gleichen, Rockyford, Rosebud and Standard reconfirm that in the future, should their fire department/association dissolve, any assets that Wheatland County has contributed towards reverts and becomes the property of Wheatland County.