

**TRIVILLAGE REGIONAL SEWAGE SERVICES COMMISSION
(THE "COMMISSION")**

BYLAW NO. 12-2021

**BEING A BYLAW RESPECTING THE PROCESS FOR ADDING OR REMOVING MEMBERS OF THE
COMMISSION**

WHEREAS:

- A. the Commission has been established by Ministerial Order; and
- B. pursuant to Section 602.09(1)(d) of the *Municipal Government Act*, the Commission must pass a bylaw respecting the process adding or removing Members;

NOW THEREFORE the Board of Directors of the Commission enacts the following:

1 DEFINITIONS

- 1.1 "**Act**" means the *Municipal Government Act*, RSA 2000, c. M-26;
- 1.2 "**Arbitrator**" means the person appointed to act as such to resolve any dispute;
- 1.3 "**Arbitration**" means a process whereby each of the Parties to a dispute, with or without legal counsel, agree to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any disputes;
- 1.4 "**Arbitration Notice**" has the meaning as set out in Section 4.7 hereto;
- 1.5 "**Board**" means the Board of Directors of the Commission;
- 1.6 "**Commission**" means the TriVillage Regional Sewage Services Commission;
- 1.7 "**Director**" means a person appointed to the Board of Directors of the Commission in accordance with this Bylaw;
- 1.8 "**Disclosed Information**" means the information disclosed by a party to a dispute for the purpose of settlement, negotiation, Mediation, or Arbitration;
- 1.9 "**Dispute Notice**" has the meaning as set out in Section 4.2 hereto;
- 1.10 "**Dispute Resolution Procedure**" has the meaning as set out in Section 4.1 hereto;
- 1.11 "**Mediation**" means a process whereby a Representative of each party to a dispute, with or without legal counsel, agree to jointly engage and meet with a Mediator to participate in a mediation, conciliation, or similar dispute resolution process;
- 1.12 "**Mediation Notice**" has the meaning as set out in Section 4.3 hereto;
- 1.13 "**Mediator**" means the person appointed to facilitate the resolution of a dispute between the Parties;
- 1.14 "**Member**" or "**Members**" means the member municipal authorities as set out in the Ministerial Order;

- 1.15 **"Membership Application"** means that application from a municipality who wishes to join the Commission;
- 1.16 **"Parties"** means any of the Members or the Commission;
- 1.17 **"Proposed Member"** has the meaning ascribed in Section 2.1 hereto;
- 1.18 **"Representative"** means an individual who has no direct operational responsibility for the matters comprising a dispute, who holds a senior position with a party involved in the dispute and who has full authority to settle a dispute;
- 1.19 **"Withdrawal Notice"** has the meaning ascribed thereto in Section 3.1; and
- 1.20 **"Withdrawing Member"** has the meaning ascribed thereto in Section 3.1.

2 PROCESS FOR ADDING MEMBERS

- 2.1 Another municipality which is not a Member may make an application to the Commission to join the Commission as a Member (the "Proposed Member") by submitting a Membership Application. Upon the Commission's receipt of an application, the Board shall determine which additional information that is relevant to processing of that Membership Application, which may include but not be limited to:
- i. A capital payment from the Proposed Member to the Commission for its anticipated proportionate share of the value of the capital assets of the Commission. The Board shall be the party to determine what this respective proportion shall be;
 - ii. Such additional fees that shall be payable by the Proposed Member to the Commission to fully pay the Commission's anticipated fees, including, but not limited to, such third party accounting fees and legal fees on a solicitor and his own client full indemnity basis, such that the Commission can properly review and consider the Membership Application;
 - iii. Receipt of a certified council resolution of the Proposed Member which acknowledges and approves of the anticipated capital payment owed by the Proposed Member to the Commission and the anticipated rates to be charged by the Commission to the Proposed Member in accordance with the Service Fees Bylaw; and
 - iv. Any other information that the Board deems is relevant to consider the Membership Application.
- 2.2 Upon the Board's review that a Membership Application should be forwarded for consideration, the Board shall send same to each Member for their respective approval. The Members agree that a simple majority of the Members, as evidenced by certified council resolutions from each of them, shall be sufficient to support the Membership Application and admit the Proposed Member as a new Member of the Commission.
- 2.3 Upon admittance as a new Member, the Proposed Member shall execute an Operating Agreement with the Commission to govern the operation and administration of the services.

3 PROCESS FOR WITHDRAWAL

- 3.1 If a Member wishes to withdraw from the Commission, that Member (the "Withdrawing Member") agrees and acknowledges that any Director as appointed by the Withdrawing

Member shall have no vote at the Board concerning any capital budget or operation budget which shall take effect after the effective date of withdrawal of the Withdrawing Member.

- 3.2 The Withdrawing Member further acknowledges and agrees that, in the event of its decision to withdraw from the Commission, it will:
- i. provide written notice to the Commission at least two (2) years in advance of the effective withdrawal date of its intention to withdraw, along with a certified council resolution evidencing the same (the "Withdrawal Notice");
 - ii. forfeit all rights and claims to any and all assets of the Commission, even if these are assets that were initially provided by the Withdrawing Member to the Commission;
 - iii. not terminate any lease of real property that the Withdrawing Member has leased to the Commission;
 - iv. shall meet with the Commission prior to the effective withdrawal date to determine that Withdrawing Member's proportionate responsibility for:
 - a. Reclamation obligations of any component of the lagoon that the Withdrawing Member should be responsible for, in accordance with its proportionate amount;
 - b. Any unfunded capital obligations of the Commission that the Commission has committed to incur in contemplation prior to the Withdrawal Notice, but in expectation of the Withdrawing Member continuing to be a Member of the Commission; and
 - c. Any other amount that is reasonable for the Withdrawing Member to incur.
- 3.3 In the event that the Withdrawing Member and the Commission are unable to mutually agree upon those costs as set forth in Section 3.1 hereof, the resolution of this amount shall be determined in accordance with the Dispute Resolution Procedure as set forth herein.
- 3.4 The Withdrawing Member shall be able to withdraw its Withdrawal Notice at any time on or before the first anniversary of the date on which the Withdrawing Member provided its Withdrawal Notice, after which time the Withdrawing Member shall not be permitted to withdraw its Withdrawal Notice, and shall be required to withdraw from the Commission in accordance with the provisions of this Bylaw.

4 RESTRUCTURING

- 4.1 In the event that a Member municipality restructures through change of status, dissolution, amalgamation, or annexation or any other process as may be undertaken pursuant to the Act, the Members agree that, as part of the process, the Members will meet to establish a new equitable board structure based on key factors such as respective population size, respective contribution to the service revenue, and respective capital contributions by the parties.
- 4.2 In the event that the parties are unable to agree upon the establishment of a new equitable board structure, the parties agree to follow the dispute resolution process as outlined in Section 5 hereof.

5 DISPUTE RESOLUTION

- 5.1 In the event that the parties are unable to agree in respect of Sections 3 and 4 hereof, the resolution of such dispute shall be determined in accordance with the Dispute Resolution Procedure as set forth herein.
- i. first, by negotiation;
 - ii. second, by way of Mediation; and
 - iii. third, if agreed to mutually by the Parties, by way of Arbitration.
- 5.2 A party shall give written notice ("Dispute Notice") to the other Party of a dispute and outline in reasonable detail the relevant information concerning the dispute. Within seven (7) days following receipt of the Dispute Notice, the Parties shall each appoint a representative, who shall meet in person or by electronic means and attempt to resolve the dispute through discussion and negotiation. If the dispute is not resolved within thirty (30) days of the appointment of a Representative by each Party, the negotiation shall be deemed to have failed.
- 5.3 If the Representatives cannot resolve the dispute through negotiation within such thirty (30) day period, then the dispute shall be referred to Mediation. In such event, either Party shall be entitled to provide written notice to the other Party ("Mediation Notice") specifying:
- i. the subject matter(s) remaining in the dispute, and the details of the matter(s) in the dispute which are to be mediated; and
 - ii. the nomination of an individual to act as the Mediator.
- 5.4 The Parties shall, within thirty (30) days of the Mediation Notice, jointly nominate or agree upon a Mediator.
- 5.5 Where a Mediator is appointed, the Parties shall submit in writing their dispute to the Mediator, and afford to the Mediator access to all records, documents, and information the Mediator may reasonably request. The Parties shall meet with the Mediator in person or by electronic means at such reasonable times as may be required and shall, through the intervention of the Mediator, negotiate in good faith to resolve their dispute. All proceedings involving a Mediator are agreed to be without prejudice, and the cost of the Mediator shall be shared equally between the Parties.
- 5.6 In the event that:
- i. the Parties do not agree on the appointment of a Mediator within thirty (30) days of the Mediation Notice;
 - ii. the Mediation is not completed within thirty (30) days after the appointment of the Mediator; or
 - iii. the dispute has not been fully resolved within sixty (60) days from the date of receipt of the Mediation Notice;

either Party may by notice to the other withdraw from the Mediation process and in such event, the dispute shall be deemed to have failed to be resolved by Mediation.

- 5.7 If Mediation fails to resolve the dispute, the dispute shall be submitted to binding Arbitration. Either of the Parties may provide the other Party with written notice ("Arbitration Notice") specifying:
- i. the subject matter(s) remaining in the dispute, and the details of the matter(s) in the dispute which are to be arbitrated; and
 - ii. the nomination of an individual to act as the Arbitrator.
- 5.8 Within fourteen (14) days following the receipt of the Arbitration Notice, the other Party shall, by written notice, advise as to which matters stated in the Arbitration Notice it accepts and which matters it disagrees with, and shall also advise whether it agrees with the resolution of the disputed items by Arbitration, and whether it agrees with the Arbitrator selected by the initiating Party, or provide the name of one Arbitrator selected by that other Party. Should the Parties fail to agree to resolve any disputed items by Arbitration, the Dispute Resolution Process shall come to an end.
- 5.9 Subject to agreement of the Parties to resolve any disputed items by Arbitration as contemplated above, the Parties shall, within thirty (30) days of the Arbitration Notice, jointly nominate or agree upon an Arbitrator.
- 5.10 Should the Parties fail to agree on a single Arbitrator within the fourteen (14) day period referred to above, then either Party may apply to a Justice of the Court of Queen's Bench to have the Arbitrator appointed.
- 5.11 The terms of reference for Arbitration shall be those areas of dispute referred to in the Arbitration Notice, and the receiving Party's response thereto.
- 5.12 The Arbitrator shall conduct the Arbitration in accordance with the commercial arbitration rules (the "Rules") established from time to time by the Alternative Dispute Resolution Institute of Canada Inc., unless the Parties agree in writing to modify the same. The *Arbitration Act* (Alberta), as amended from time to time, shall apply to the Arbitration but, if there is a conflict between the Rules and the provisions of the Act, the Rules shall prevail. Notwithstanding the foregoing, any such Arbitration shall be conducted in the English language.
- 5.13 The Arbitrator shall proceed to hear and render a written decision concerning any dispute within:
- i. forty-five (45) days, if the subject matter of the dispute is less than \$250,000.00; or
 - ii. ninety (90) days, if the subject matter of the dispute is greater than \$250,000.00.
- 5.14 The Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest, but does not have the right to award punitive, consequential, or other exemplary damages.
- 5.15 The Arbitrator's decision is final and binding, but is subject to appeal or review by any court of proper jurisdiction only with respect to an allegation of fraud.
- 5.16 Judgment upon any award (an "Award") rendered in any such Arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for judicial acceptance of the Award and an enforcement order, as the laws of such jurisdiction may require or allow.

- 5.17 The Parties acknowledge and agree that, where a dispute involves a claim for injunctive relief, a Party may refer such matter to Arbitration in accordance with this Section or may apply to the appropriate court for relief.
- 5.18 The Parties and their Representatives will participate in good faith in the negotiation, Mediation, and, if applicable, Arbitration processes and provide such assistance and Disclosed Information as may be reasonably necessary.
- 5.19 The place for Mediation and Arbitration shall be within the municipal boundaries of the Party which is or was a Member, or such other location as the Parties may agree. Any of the Parties may attend by telephone or electronically with the consent of all Parties to the dispute, with the requirement that all Parties must be able to hear one another and the Mediator or Arbitrator, as applicable.
- 5.20 Subject to Section 4.14 hereto, in the case of Arbitration, the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation, and, if applicable, Arbitration, except that the Parties shall equally share the fees and expense of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.
- 5.21 All Disclosed Information shall be treated as confidential and neither its delivery or disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules for discovery, each party agrees not to disclose the Disclosed Information to any other person or for any other purposes. Such Disclosed Information cannot be used in any other proceedings without the consent of the Party who has made the disclosure. The Parties agree that any Representative, Mediator, and, if applicable, Arbitrator, shall not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of the Dispute Resolution Procedure. Nothing in this Dispute Resolution Procedure shall require a Party to disclose information that is subject to confidentiality provisions with third parties.

6 AMENDMENTS

- 6.1 A bylaw to amend this Bylaw does not come into force until the bylaw is passed by a majority of the Board.

READ A FIRST TIME this 19TH day of JULY, 2021

READ A SECOND TIME this 19TH day of JULY, 2021

READ A THIRD TIME and duly passed this 19TH day of JULY, 2021



 CHAIRPERSON



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