



## EXECUTIVE COMMITTEE

Monday, August 12, 2019, to commence immediately following the City Council meeting  
Council Chambers, (Public)  
Scoop Lewry Room (In-Camera)  
2nd Floor, City Hall

### 1. CALL TO ORDER

### 2. REPORTS

- a. Administrative Review Officer – Complaint #2 of 2018, EC-2019-0060
- b. Moose Jaw Kinsmen Flying Fins Agreement, EC-2019-0129

### 3. CONFIDENTIAL MATTERS

- a. Confidential Matter, EC-2019-0125

The confidential matter may be considered in closed session pursuant to section 94(2) of *The Cities Act* as it contains information that is within one or more of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*, in particular section 16(1)(e).

- b. Confidential Matter, EC-2019-0134

The confidential matter may be considered in closed session pursuant to section 94(2) of *The Cities Act* as it contains information that is within one or more of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*, in particular section 16(1)(a) and (c) and section 18(1)(c)(iii).

- c. Confidential Matter, EC-2019-0123

The confidential matter may be considered in closed session pursuant to section 94(2) of *The Cities Act* as it contains information that is within one or more of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*, in particular section 21.

d. Confidential Matter, EC-2019-0126

The confidential matter may be considered in closed session pursuant to section 94(2) of *The Cities Act* as it contains information that is within one or more of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*, in particular section 18(1)(c)(iii).

e. Confidential Procedural Matter

The confidential procedural matter may be considered in closed session pursuant to section 94(2) of *The Cities Act* as it contains information that is within one or more of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*, in particular section 15.

f. Confidential Procedural Matter

The confidential procedural matter may be considered in closed session pursuant to section 94(2) of *The Cities Act* as it contains information that is within one or more of the exemptions in Part III of *The Local Authority Freedom of Information and Protection of Privacy Act*, in particular section 15.

4. **ADJOURNMENT**



# City of Moose Jaw

**COMMUNICATION # EC-2019-0060**

**TITLE:** Administrative Review Officer – Complaint #2 of 2018

**TO:** Executive Committee

**FROM:** City Manager

**DATE:** July 31, 2019

**PUBLIC:** PUBLIC DOCUMENT

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## **RECOMMENDATION**

To be a decision of City Council.

## **TOPIC AND PURPOSE**

The purpose of this report is to transmit the outcome of complaint #2 of 2018 to City Council.

## **BACKGROUND/DISCUSSION**

A copy of the letter dated May 1, 2019 from Mr. David Foley, Administrative Review Officer, is attached outlining a summary of his investigation, findings and conclusion. Mr. Foley will be in attendance at the Executive Committee meeting to answer questions.

## **BYLAW OR POLICY IMPLICATIONS**

This report is pursuant to section 12(1) of Bylaw No. 5200, "A Bylaw of the City of Moose Jaw to Establish an Administrative Review Body for the City of Moose Jaw".

## **PUBLIC NOTICE**

Notice of this meeting has been provided to affected property owners in Phase I of the Cast Iron Watermain Replacement program.

## **FINANCIAL IMPLICATIONS**

- Total Number of Affected Properties in Phase I: 35
- Total Amount (Cost to Property Owner) without the 10% discount: \$154,850.75
- Total Amount (Cost to Property Owner) with the 10% discount: \$139,365.68

**PRESENTATION**

VERBAL: Mr. Jim Puffalt, City Manager, will be in attendance to present the report.

**ATTACHMENTS**

- i. Letter dated May 1, 2019 from Mr. David Foley, Administrative Review Officer.

**REPORT APPROVAL**

Written by: Jim Puffalt, City Manager  
Reviewed by: Tracy Wittke, Assistant City Clerk  
Approved by: Jim Puffalt, City Manager  
Approved by: Fraser Tolmie, Mayor

*To be completed by the Clerk's Department only.*

Presented to Regular Council or Executive Committee on \_\_\_\_\_.

No. \_\_\_\_\_ Resolution No. \_\_\_\_\_

**DATE:** 01 May 2019  
**TO:** City Council  
**FROM:** Dave Foley, Administrative Review Officer  
**SUBJECT:** Complaint 2018 – 2  
Cast Iron Watermain Replacement Project Phase 1 Billings  
**FINAL REPORT AND RECOMMENDATIONS**

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As we have recently discussed, I have completed my investigation of the above-noted complaint and have prepared this final report and recommendation to bring the matter to a close. I understand that it requires a review by City Council before the recommendation can be approved, and this document will be my report to Council, as well.

### **COMPLAINT**

The complaint relates to billings to property owners under Phase 1 of the City's Cast Iron Watermain Replacement Project. Seven property owners (out of 33) are disputing their invoiced amounts. City Council referred the matter to the Administrative Review Officer for investigation and recommendation.

### **SUMMARY OF FINDINGS AND CONCLUSIONS**

I have reviewed the wealth of documents provided by City Administration as the background to the complaint. This includes material relating to the several iterations of the policy and procedures relating to the 2016 Cast Iron Phase 1 Local Improvement Program. Program advertising and information relating to that LIP model were provided to me, as well as samples of all documents provided to 33 affected property owners. After the 2016 municipal election, of course, the LIP model was changed by the new City Council, and, again, all of the relevant program materials and documents for property owners, was included for my review.

At this point in time, there are more questions than answers about some of what transpired, what was said to whom, and what verbal transactions might have taken place outside the written record. However, I am convinced that the information provided by the City to the affected property owners, read in its entirety, makes clear the obligations of the property owners as it relates to the costs being billed. This is supported by the fact that 27 (or 80%) of the affected owners accepted their invoices and have made appropriate arrangements to pay them. It must also be noted that the property owners would have to pay significantly more if they were required to pay under the terms and conditions in place today. I took one random property and determined that the property owner would have to pay 17% more than they were billed.

The City has made efforts to clarify and explain any confusion experienced by the seven property owners, and has held, in abeyance, the payment of the invoices while the matter has been subject to review, clarification and investigation.

This matter has been under consideration for almost three years and I believe it is advisable to take action to resolve the matter on a "go forward" basis, recognizing that both sides in the dispute might have to make some concessions in order to bring the matter to a satisfactory conclusion.

I have found no evidence to suggest that there should be any assignment of blame to anyone. All staff I have had cause to contact have been cooperative, professional and respectful. In particular, the City Manager, Jim Puffalt and the Director of Engineering Services, Josh Mickleborough, have expedited all of my requests for information or clarification. Any delays experienced are entirely my responsibility.

#### **RECOMMENDATION**

**That all of the property owners affected by this matter, be offered a "good will" discount of 10% of the amount owing for the work which was originally billed. This offer is made as full and final settlement of the dispute.**

Thank you for referring this matter to me.

Submitted respectfully,

David E. Foley, BSW, ARM®  
**Administrative Review Officer**



# City of Moose Jaw

**COMMUNICATION # EC-2019-0129**

**TITLE:** Moose Jaw Kinsmen Flying Fins Agreement  
**TO:** Executive Committee  
**FROM:** Department of Parks & Recreation  
**DATE:** July 31, 2019  
**PUBLIC:** PUBLIC DOCUMENT

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## **RECOMMENDATION**

THAT the Agreement between the City of Moose Jaw and Moose Jaw Kinsmen Flying Fins Inc. for the usage of aquatic facilities be approved substantially in the form attached; and,

THAT the Mayor and City Clerk be authorized to execute the Agreement on behalf of the City of Moose Jaw.

## **TOPIC AND PURPOSE**

The purpose of the report is to obtain authorization to enter into a two-year Agreement with the Moose Jaw Kinsmen Flying Fins for the usage of the Kinsmen Sportsplex and Phyllis Dewar Outdoor Pool at a fixed fee.

## **BACKGROUND**

The Moose Jaw Kinsmen Flying Fins is a competitive swim club that focuses on learning how to swim and transitioning from pre-competitive to competitive skills. The program runs from September to June. The total club members range from 100-125 swimmers per year from the ages 4 – 17 years. 90% of the members are also City of Moose Jaw citizens. The Club has been a tenant of the Kinsmen Sportsplex since it opened in 1996 and utilizes the Phyllis Dewar Outdoor Pool during the annual Kinsmen Sportsplex maintenance closure and for their annual long-track swim meet.

## **DISCUSSION**

Currently, the Moose Jaw Kinsmen Flying Fins are charged hourly rates for lane rentals and room rentals based on the City Council approved rates and fees for Recreation

Facilities. The Club also rents an office at the Kinsmen Sportsplex for business purposes. The City of Moose Jaw invoices the Club on a monthly basis based upon hourly usage.

In 2018 the Club used 727 hours at the Kinsmen Sportsplex and 65 hours at the Phyllis Dewar Outdoor Pool (including swim meets). Under the proposed Agreement, they are entitled to approximately 525 hours at the Kinsmen Sportsplex and 40 hours at the Phyllis Dewar Outdoor Pool on an annual basis (not including swim meets).

The total budgeted revenue for 2019 for the Club is \$45,707, which includes regular season rentals and swim meet rentals.

The main benefits of the Agreement are to allow for the City to accurately budget for revenue, allow the Club to budget accurately for expenses and to reduce the administration on the billing process. The current practice requires the invoicing to be done at 15-minute increments due to multiple rates associated with lane rentals, staffing fees and pool space.

The Agreement also reflects the current practices that were never agreed to in writing, which provides the same benefit to the City and the Club that was achieved in the Tenant Agreements signed with Moose Jaw Soccer Association and Saskatchewan Selects at the Yara Centre in early 2019. These Agreements confirm budgets, reduce administration time and maintain revenue while providing an avenue for our local athletes to grow within their respective sports.

### **OPTIONS TO RECOMMENDATION**

- The Executive Committee may request changes be made to the Agreement.
- Do not enter into an Agreement with the Moose Jaw Kinsmen Flying Fins Inc. and continue with the existing process.

### **PUBLIC AND/OR STAKEHOLDER INVOLVEMENT**

Meetings were held with the Moose Jaw Kinsmen Flying Fins executive to finalize the terms of the proposed agreement.

### **STRATEGIC PLAN**

The proposed Agreement aligns with the Strategic Priority of Community Wellness as outlined in the City of Moose Jaw Strategic Plan.

### **OFFICIAL COMMUNITY PLAN**

The proposed Agreement aligns with the following objectives of the Official Community Plan for the City of Moose Jaw:

- 13.1 (c) *To provide parks, open space and recreation program delivery at a level that aids in the attraction and retention of young families to and in the City.*



**FINANCIAL IMPLICATIONS**

The City will receive \$40,000 plus taxes per year over the 2-year term of the agreement. This does not include any revenue obtained through rentals for swim meets. In 2018 the Club hosted two swim meets at a cost of \$8,296.

The City currently budgets \$45,707 in revenue per year from the Moose Jaw Kinsmen Flying Fins. Therefore, there will be no financial implications unless the swim club decides to no longer host meets.

**OTHER CONSIDERATIONS/IMPLICATIONS**

There is no policy and privacy implications or other considerations.

**PUBLIC NOTICE**

Public Notice is not required.

**PRESENTATION**

VERBAL: The Director of Parks & Recreation will provide a verbal presentation and will be available to answer any questions related to the report. Members of The Moose Jaw Kinsmen Flying Fins Executive may also be in attendance to address questions directed towards the Club.

**ATTACHMENTS**

- i. Agreement – City of Moose Jaw and Moose Jaw Kinsmen Flying Fins Inc.

**REPORT APPROVAL**

Written by: Scott Osmachenko, Recreation Services Manager  
 Reviewed by: Tracy Wittke, Assistant City Clerk  
 Approved by: Derek Blais, Director of Parks and Recreation  
 Approved by: Jim Puffalt, City Manager  
 Approved by: Fraser Tolmie, Mayor

*To be completed by the Clerk's Department only.*

Presented to Regular Council or Executive Committee on \_\_\_\_\_.

No. \_\_\_\_\_ Resolution No. \_\_\_\_\_



## AGREEMENT – MOOSE JAW KINSMEN FLYING FINS INC.

This Agreement made in duplicate this \_\_\_\_ day of \_\_\_\_\_, 2019

Between:

**THE CITY OF MOOSE JAW**, a municipal City continued under the Cities Act, (the "City")

- and -

**THE MOOSE JAW KINSMEN FLYING FINS INC.**, a registered non-profit corporation in the Province of Saskatchewan, (the "Club")

**WHEREAS** the City of Moose Jaw is a municipal corporation continued pursuant to The Cities Act;

**AND WHEREAS** the Moose Jaw Kinsmen Flying Fins Inc. is a non-profit corporation providing aquatic programs and competitive swimming.

**AND WHEREAS** the City is the owner of the buildings and land generally referred to as the Kinsmen Sportsplex and Phyllis Dewar Outdoor Pool.

**AND WHEREAS** the Club desires use of the Kinsmen Sportsplex and Phyllis Dewar Outdoor Pool to provide aquatic programs and competitive training to its members and the City wishes to maximize the utilization of the pools.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree with one another as follows:

### 1. DEFINITIONS AND INTERPREATION

**1.1 DEFINITIONS** - In this Agreement, including the recitals and the attached schedules and appendices, the following terms have the meaning indicated:

- a) "**Premises**" means the building and land location at either the Kinsmen Sportsplex, 855 MacDonald St W or the Phyllis Dewar Outdoor Pool, 200 Fairford St E;
- b) "**Term**" has the meaning assigned in Section 2.1;
- c) "**Recreation Services Supervisor**" means the person appointed by the City, which may include his or her designate;

- 1.2 FAIR MEANING** - The language in all parts of this Agreement will, in all cases, be construed simply, according to its fair meaning and not strictly for or against either of the Parties hereto. For greater certainty, any rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement. If parts of this Agreement become invalid, it does not invalidate the entire Agreement only the clause the invalid part pertains to.
- 1.3 GOODS AND SERVICE TAXES** - Unless expressly stated otherwise, all fees payable hereunder are exclusive of Goods and Service Tax or other applicable taxes. It is understood that Goods and Service Tax and any other applicable taxes will be added where applicable.
- 1.4 ASSIGNMENT** - The terms "the City" and "the Club" and references thereto shall include the executors, administrators, directors, (successors in the case of a corporation) and permitted assignees of the City and the Club respectively. This agreement may not be assigned unless the written permission of the City by resolution of City Council is first had and obtained.
- 1.5 ARBITRATION** - If any dispute or controversy shall occur between the parties hereto relating to the interpretation or implementation of any of the provisions of this Agreement, the parties shall firstly attempt to resolve said dispute or controversy using whatever mediation or dispute resolution process they can mutually agree on. In the event this process fails to settle the dispute or controversy such dispute shall be resolved by arbitration, in which case the following provisions apply:
- a) Any disagreement or dispute amongst the Parties over the interpretation of this Agreement will be resolved by a single arbitrator appointed and acting pursuant to *The Arbitration Act, 1992* (Saskatchewan), whose decision will be final and binding.
  - b) Both Parties will bear the cost of the arbitration equally and each party will be responsible for all the costs of its own professional consultants and legal representatives.
- 2. TERM, NEGOTIATIONS AND TERMINATION**
- 2.1 TERM** - The term of this Agreement is to commence September 1, 2019 and end August 31, 2021. Notwithstanding, occupancy of the facility prior to the date of commencement may be provided by mutual agreement.
- 2.2 NEGOTIATIONS** - Further negotiations and discussions will take place in May 2021 to develop the next agreement for partnership.
- 2.3 TERMINATION** - Either party may unilaterally terminate this Agreement by providing ninety (90) days' notice to the other party.

- a) If the Club refuses, neglects or omits to perform any of its obligations contained in this agreement, the Parks and Recreation Department may give notice to the Club specifying the nature of the default. Such notice shall require the Club to remedy its default or to provide the City with a schedule for the remedying of such default within thirty (30) days of service of the default.
- b) The parties agree that the City will have grounds to immediately terminate the agreement in the following circumstances:
  - i. the Pool becoming unusable due to use that is not contemplated by this agreement;
  - ii. the Club failing to pay the full amount of the rent payable hereunder;
  - iii. the Club declaring insolvency or bankruptcy;
  - iv. the Club failing to comply with the Non-Profit Corporations Act, 1995;
  - v. the Club failing to comply with the terms of any Bylaws or Provincial or Federal Acts or Regulations governing the rights of the users of the pool; or
  - vi. if at any time during the term of this agreement the Club ceases to deliver competitive swim programs during its scheduled pool times.

### **3 FEES**

- 3.1** Subject to the provisions of this Agreement, the Club agrees to pay unto the City a base rent during each year of the term of this Agreement, that is \$40,000 Dollars. It is further understood and agreed that the Club shall be responsible to pay any additional Provincial or Federal taxes which may apply.
- 3.2** The Club shall pay to the City the Goods and Services Tax payable on the rent set out in this Agreement pursuant to the terms of the *Excise Tax Act (Canada)*.
- 3.3** The annual base fees will be paid in four (4) quarterly installments of \$10,000.00 Dollars plus taxes over the term of the Agreement and will be payable on the 1st day of the month in March, June, September and December.
- 3.4** The Club will have their rental rate prorated if their swim time is lost due to maintenance on the pool or where the City does not provide seven (7) days' notice for cancellation of swim times.
- 3.5** Should any default be made in payment of any fees hereunder at the times or in the manner specified in this Agreement, or any default be made in the Club's performance of any of the covenants or agreements herein contained, and should such default continue for thirty (30) days following the delivery of a notice of default to the address set forth herein, the Agreement will immediately terminate, at the option of the City.
- 3.6** All costs related to swim meets including pool rentals, lifeguard fees and meeting room rentals are not included in the fees outlined in section 3.1.

## 4 CITY COMMITMENTS

### 4.1 THE CITY SHALL

- a) Provide the Club with use of the Kinsmen Sportsplex Main Pool, Leisure Pool and Phyllis Dewar Outdoor Pool during the times specified below beginning September 1<sup>st</sup> and concluding June 30 and the use of hot tub for no more than 10 minutes, at the end of the lessons, at the discretion of the coach. The Kinsmen Sportsplex annual shutdown is scheduled the 2<sup>nd</sup> to 4<sup>th</sup> week of June and is unavailable for use.

Monday	4:30 PM to 7:00 PM (5 Lanes - Main Pool)
Tuesday	6:15 AM to 7:45 AM (3 Lanes – Main Pool) 4:30 PM to 7:30 PM (4 Lanes – Main Pool)
Wednesday	4:30 PM to 7:00 PM (5 Lanes - Main Pool)
Thursday	6:15 AM to 7:45 AM (3 Lanes – Main Pool) 4:30 PM to 7:30 PM (4 Lanes – Main Pool)
Friday	6:15 AM to 7:45 AM (2 Lanes – Main Pool) 4:30 PM to 7:00 PM (5 Lanes – Main Pool)
Saturday	9:00 AM to 12:00 PM (4 Lanes – Main Pool)

Usage of the Leisure Pool will be coordinated and scheduled with City Staff. City Sponsored programs have priority in the Leisure Pool Usage.

- c) The Club's scheduled time will be reviewed annually with any changes to these times being agreed upon by both the Club and the City including Statutory Holidays.
- d) Should the Phyllis Dewar Outdoor Pool become unavailable during the scheduled pool times provided to the Club, the City agrees to provide the equivalent time at the Kinsmen Sportsplex if time is available and at no cost to the Club.
- e) The City may cancel the Club's scheduled pool times for such reasons as it, in its sole discretion deems appropriate and in particular, but not to limit the generality of the foregoing, to accommodate City, Provincial or Interprovincial events which are hosted by the City or by other Clubs or organizations, provided the City gives the Club at least sixty (60) days' notice.
- f) The City agrees to provide lifeguards as per the City of Moose Jaw Aquatic Safety Plan ratios during the Club's scheduled pool times.

- g) In the event that the City offers a program to the public, which coincides with the Clubs training times, the City will assume the responsibility of providing a lifeguard and associated costs of the lifeguard during that period of time.
- h) The City agrees to provide 35 hours of meeting room space for the purpose of Club business and meetings in the fees outlined in section 3.1.
- i) The City agrees to provide an office space at the Kinsmen Sportsplex for Club business the fees outlined in section 3.1.
- j) The City agrees to provide Pool Storage space on the Kinsmen Sportsplex Pool Deck in the southwest corner for the fees outlined in section 3.1.
- k) Provide pool space as per the terms of the Elite Swimmer Policy.

## **5 CLUB COMMITMENTS**

### **5.1 THE CLUB SHALL**

- a) Provide the Recreation Services Supervisor a list of the Club's executive within fifteen (15) days of their annual meeting and within fifteen (15) days of any changes which occur between annual meetings. The Club will also appoint official contacts to the City for schedules and bookings.
- b) Incorporate, and remain incorporated, under The Non-Profit Corporations Act of the Province of Saskatchewan. The Club will provide the Recreation Services Supervisor with a copy of its Saskatchewan Corporate Registry Profile Report within thirty (30) days of receipt of same from the Corporations Branch.
- c) Provide the Recreation Services Supervisor, prior to August 1st of each year, with the dates the Club anticipates hosting meets, major Provincial and Interprovincial swim meets.
- d) Agree to notify the City of how many lifeguards are required for their scheduled pool times based on the following ratios:
  - 1 – 25 swimmers requires 2 lifeguards
  - 26 – 50 swimmers requires 2 lifeguards
  - 51 – 75 swimmers requires 3 lifeguards
- e) Unless the Club receives prior written approval from the Recreation Services Supervisor, the Club's scheduled pool time is to be used exclusively for training purposes for members of the Club.
- f) Obtain written consent from the Recreation Services Supervisor prior to subletting the premises.

- g) Remain responsible for the conduct of its members during its scheduled pool time. Further, the Club agrees that it shall enforce all pool rules and regulations as provided by the City during its scheduled pool time.
- h) After each scheduled pool time, the Club shall leave the pool area and change rooms in a clean and orderly state. Without limiting the generality of the foregoing, at each session of scheduled pool time, the Club agrees to be responsible for setting up, promptly removing and storing all equipment which remains at the Pool.
- i) Agree that all members will vacate the pool deck by the end of the scheduled pool time and that a coach will remain at the facility until all members have left the change rooms.
- j) Agree that the Pool office area is to be utilized by Club personnel only. All facility keys issued to the Club shall remain the property of the City. The Club agrees not to allow any keys to be copied and to promptly report any loss of keys to the Department.
- k) Not allow any person not directly connected with its training session to have access to any area of the Pool during the Club's scheduled pool time with the exception of parents, siblings, caregivers and club executive being permitted to access the spectator areas within the pool.
- l) Obtain permission from the Recreation Services Supervisor for all competitive swimmers accessing the pool as per the City of Moose Jaw Elite Athlete Swimmer Policy.
- m) Obtain written consent of the Director of Parks and Recreation prior to the display of commercial advertising at the Premise and shall retain any revenue derived through their own advertising and sponsorship initiatives. The Club agrees that all advertising display material shall be in accordance with standards set by Advertising Standards Canada and the City of Moose Jaw Advertising and Sponsorship Policy.

## **6. DAMAGE PROVISIONS**

- 6.1 CITY LIABILITY** - The City shall not be liable, whether in contract, tort or otherwise, for consequential or indirect loss, or any loss of revenue, earnings, profits or economic loss whatsoever arising out of any damage to the Premises.
- 6.2 DAMAGE TO OR ALTERATION OF FACILITY** – the Club will not damage or mar, nor in any manner deface the Premises, and will not cause anything to be done whereby the Premises will be in any manner damaged, marred or defaced, and will not make alterations or modifications of any kind thereon without the prior written consent of the City.

- 6.3 DAMAGE AND RESTORATION OF THE FACILITY** – the Club agrees that if the Premises are damaged by the act, default or negligence of Club or the Club's members to the said Premises by the Club, the Club will pay to the City, on demand, such sum as is necessary to restore the Premises to its condition as of the date herein.

## **7. INSURANCE**

- 7.1** During the Term of this Agreement, the Club shall, at its sole cost and expense, take out and keep in full force and effect:
- a) A commercial general liability insurance policy for bodily injury, including death, property damage or loss, including personal and advertising injury and cross liability in an amount of not less than \$5,000,000 per any one occurrence, or any greater, reasonable, amount as required by the City from time to time;
- 7.2** The insurance policies required by this section shall:
- a) Be in a form and amount approved by the City;
  - b) Contain a waiver by the insurer of any rights of subrogation or indemnity or any other claim over to which the insurer might otherwise be entitled against the City and persons for whom in law the City is responsible;
  - c) List the City as an additional insured; and
  - d) Include provisions that the City will be notified in writing of cancellation or changes to the policy at least thirty (30) days prior to such cancellation or change.
- 7.3** Annually or upon request, the Club shall provide the Recreation Services Supervisor with a certified copy of the insurance policies required by this section.
- 7.4** If the Club fails to secure or maintain policies of insurance required by this section, or fails to prove the existence of such policies, the City may purchase on behalf of and at the expense of the Club, the required insurance coverage.
- 7.5** At its own expense, the Club may obtain coverage in addition to that required to this section.

## **8. INDEMNITY**

- 8.1** The Club shall indemnify and save harmless the City from and against any and all manner of claims, damages, losses, costs, charges, judgements or awards whatsoever occasioned to, suffered by or imposed upon the City, either directly or indirectly, arising out of the occupancy or use of the Premises by the Club prior to and after the Term, including construction of any buildings or structures or any improvements on the Premises.
- 8.2** The Club shall indemnify and save the City harmless from and against all and any losses, claims, demands, actions, damages, costs, liabilities and/or expenses in



connection with the loss of life, personal injury or damage to persons or property arising from any occurrence in or upon the Premises, or the occupancy, ownership or use of the Premises or any part thereof, by the Club.

**8.3** Articles 8.1 and 8.2 shall survive the termination and expiration of this Agreement.

## **9. GENERAL**

**9.1 INTELLECTUAL PROPERTY** - Neither the City nor the Club will use the name, trademarks or other intellectual property of the other without prior written consent; however, consent will not be unreasonably withheld.

**9.2 PHOTOGRAPHS** - The City will have and does retain and reserve the right to take photographs of the Club for its own records and for other non-commercial privileges and uses, provided always that the City will not sell or offer for sale any records or photographs that depict the Club or any of its logos or any of their players without first obtaining the Club's written consent

**9.3 COMPLIANCE WITH LAWS** – The Club shall comply with:

- a) All laws of the Government of Canada and the Province of Saskatchewan;
- b) All policies and procedures of the City;
- c) To adhere to any applicable health and safety standards and regulations throughout the term of this Agreement;
- d) All rules and regulations from time to time adopted or prescribed by the City for the governance and management of the Premises described in this Agreement; and
- e) All rules and requirements of the police and fire departments or other municipal authorities, and the Club will obtain and pay for all necessary permits and licenses, and will not do, or permit or suffer to be done, anything on the Premises or other City Premises during the Term of this Agreement in violation of any such laws, by-laws, rules, regulations on the part of the Club or any person employed by or admitted to the said Premises by the Club, the Club will immediately desist from and correct such violation.

**9.4 FORCE MAJEURE** - In the event that the Premises is destroyed or damaged by fire, water or any other cause, or if any other eventuality or unforeseen occurrence such as a power outage or labour strike or employee lockout by management renders the fulfillment of this Agreement by the City impossible, then and thereupon the Club will be relieved of payments for any such period of time that the Premises is unavailable for the various uses contemplated in this Agreement and the Club hereby waive any claim for damages or compensation should the Facility be so rendered unavailable. In the case of damage, the City will, if possible, endeavor to relocate the Club. The Club will retain the opportunity to negotiate the terms of rental of such replacement facility and will not be obliged to accept them if, in the Club's opinion, they are unsuitable for their purposes.

**9.5 REMOVAL OF PATRONS** - The City reserves the right to eject any objectionable person or persons from the Premises and the Club hereby agrees to indemnify and save harmless the City for any and all claims for damages arising from its exercise of such right.

**9.6 THE CLUB'S EMPLOYEES** – The Club acknowledge that their servants, agents and workers will not be deemed to be agents, servants or employees of the City and the Club acknowledge that neither the City nor anyone on its behalf has made any warranty or representation as to the state of repair for the Premises which are the subject of this Agreement.

**9.7 NOTICES** - Any notice, communication or other document required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given if it is sent or delivered to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada and addressed as follows:

In the case of the City  
City of Moose Jaw  
228 Main Street North  
Moose Jaw, Saskatchewan S6H 2W9  
Attention: Director of Parks & Recreation

In the case of the Club:  
MJKFF  
PO Box 603  
Moose Jaw, Saskatchewan S6H 4P4  
Attention: President

Such notice shall be deemed to have been served when signed for by the receiving party.

**9.8 WAIVER** - No delay, neglect or forbearance on the part of either party in enforcing against the other party any term, condition or obligation of this Agreement will be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement, and any waiver of any term, condition, obligation or breach of this Agreement must be in writing to be effective.

**9.9 ENTIRE AGREEMENT** - This Agreement, including any schedules, constitutes the entire agreement between the parties and supersedes all prior agreements, undertakings, representations and understandings, written or oral, between the parties or their representatives relating thereto.

**9.10 SEVERABILITY** - If any of the provisions in this Agreement are for any reason held to be invalid or unenforceable, such provision is severed from this Agreement and such invalidity or unenforceability will not invalidate, affect or impair the

remaining provisions, and this Agreement will be construed as if such invalid or unenforceable provision had never been part of the Agreement.

**IN WITNESS WHEREOF THE CLUB** has hereunto affixed its corporate seal as attested to by the hands of its duly authorized officers this \_\_\_\_ day of \_\_\_\_\_, 2019.

**MOOSE JAW KINSMEN FLYING FINS INC**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**IN WITNESS WHEREOF** the **City** has hereunto affixed its corporate seal as attested to by the hands of its duly authorized officers on the day and year first above written.

**THE MUNICIPAL CORPORATION OF  
THE CITY OF MOOSE JAW**

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

CANADA )  
 PROVINCE OF SASKATCHEWAN )  
 TO WIT: )

AFFIDAVIT VERIFYING CORPORATE SIGNING PSP

We, \_\_\_\_\_ (name) and \_\_\_\_\_ (name) of  
 \_\_\_\_\_ (place) in the Province of Saskatchewan

SEVERALLY MAKE OATH AND SAY THAT:

1. We are the \_\_\_\_\_ and \_\_\_\_\_ (positions) respectively of  
 \_\_\_\_\_ (corporation name) named in this document.
2. We are authorized by the corporation to execute the document with affixing a corporate seal.

SEVERALLY SWORN BEFORE ME at the City of)  
 Moose Jaw, in the Province of Saskatchewan, ) \_\_\_\_\_  
 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. )  
 )  
 )  
 )  
 )  
 )

A COMMISSIONER FOR OATHS  
 For Saskatchewan  
 Being a Solicitor, OR  
 My commission expires: