



WATER SERVICE AGREEMENT

Agreement dated _____, 2020

Between:

THE LYNBROOK GOLF AND COUNTRY CLUB, a corporation incorporated pursuant to the laws of Saskatchewan (the “**Consumer**”)

- and -

CITY OF MOOSE JAW, a municipal corporation continued under *The Cities Act* (the “**City**”)

WHEREAS the City is operating and maintaining a water storage and delivery system at Snowy Springs on SE9-16-27-W2;

AND WHEREAS the Consumer is desirous of utilizing the water for irrigation purposes;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreement herein and subject to the terms and conditions in this agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

WATER SERVICES

1. The City shall supply Snowy Springs water to the Consumer via Spring Creek when requested (Monday through Friday) subject to the availability of water at Snowy Springs and the delivery system being operable. The City will keep a log of the pump running times and will estimate the quantity of water delivered based on an estimated pump rate.
2. The City shall deliver water to the point of delivery located at Spring Creek, latitude 50.40861 N, longitude 105.57941 W, as per Schedule A. The “point of delivery” means the point on the delivery system from which the City delivers, and the user receives water and is at the discretion of the City.
3. The Consumer shall pay to the City the Total Service Cost, set out in Schedule “B” hereto, calculated annually by averaging adjusted costs over the most recent five-year period and shall include:
 - a) operation, maintenance and pumping charges; and
 - b) any administrative charges, tariffs, or other charges.
4. Payment of the Total Service Cost is due and payable on or before August 1st in each year water service is provided, with the first payment in the amount of **\$12,889.05** due on or before August 1, 2020.

- (a) Any outstanding arrears for amounts payable from the Consumer to the City under this Agreement shall accrue interest at a rate of seven percent (7%) per annum.
5. The Consumer shall have first option on the Snowdy Springs water supply. The City may permit other water users to access Snowdy Springs water only if a projected surplus of water exists. The projected surplus is at the sole discretion of the City.
 6. City Council cannot guarantee the provision of water supply from Snowdy Springs if the infrastructure becomes inoperable.

TERM

7. The term for supply of water by the City to the Consumer shall be for the year 2020 and expire on December 31, 2020 (the "Term"), unless otherwise terminated or modified in accordance with this Agreement.
8. The Term will automatically renew on a year to year basis unless the Consumer or the City gives the other written notice it does not intend to renew. Such written notice must be given at least 45 days prior to the end of the Term or any renewal period.

CONSUMER COVENANTS

9. The Consumer shall accept and assume all responsibility for the quality of water supplied by the City and shall save the City harmless from any and all claims, demands, losses, damages or liabilities arising there from or in respect thereof. Such water delivered by the City under this Agreement shall be deemed not potable and not suitable for domestic use.
10. The Consumer is responsible for preparing its land and any required irrigation ditches drainage work for the delivery of the water from the City.
11. The Consumer agrees not to cause, permit, or in any other manner allow water furnished by the City to be wasted.
12. The provision of water by the City to the Consumer shall be subject to any terms and conditions contained on any approvals or permits required by the City or any other applicable provincial or federal laws.
13. The Consumer shall be responsible for payment of all charges payable during the duration of this Agreement even in the event of termination of this Agreement, except where termination occurs due to the City losing the ability to supply water to the Consumer. These amounts due and owing shall be a debt due and owing by the Consumer to the City in any manner available to it by law, equity or in contract and shall survive the termination of this Agreement. For certainty these amounts owing shall survive the sale or other disposal by the Consumer of the lands receiving Snowdy Springs water.

14. The Consumer acknowledges and accepts that there may be temporary disruptions of service to the Consumer for the purpose of repairing and maintaining works, and due to the interruptible nature of power purchased under separate contract between the City and a power utility. The Consumer agrees the City shall not be responsible or liable to the consumer for any damages, costs or other claims attributable or related to, either directly or indirectly, the disruption of such services except where the repair is made necessary through the negligence of the City or its agents.
15. (1) The Consumer agrees that if any condition occurs in connection with the supply of water of which the Consumer deems it necessary to notify the City, the Consumer shall promptly give written notice to the City, stating the nature of such condition. The City shall promptly investigate said matter and take such action thereon as it deems appropriate.

(2) In the absence of such notice from the Consumer as set out in subsection 15(1), it shall be presumed that the City is performing under the Agreement to the Consumer's full satisfaction.

CITY COVENANTS

16. The City shall provide notice to the Consumer of its intention to undertake routine maintenance of the delivery system.
17. The City agrees to use its best efforts to undertake repairs or maintenance of works at a time which will have the least inconvenience to the Consumer.

WARRANTY

The City does not guarantee any volume(s) of water.

INDEMNITY

18. The Consumer shall indemnify and save the City, its servants, employees and agents, harmless from and against all and any actions, suits, claims and demands whatsoever which may be brought against or made upon the City and from and against all loss, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the City by reason of, or on account of the supply of water described under this Agreement or the exercise of the City's rights and obligations under this Agreement or any matter relating thereto.
19. Where the City is, without fault on its own part, to be made a party to any litigation commenced against the Consumer, then the Consumer shall protect and hold the City harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the City in connection with such litigation.

TERMINATION

20. The Consumer may, when not in default or in arrears of any payments due to the City, terminate this Agreement upon the provision of one (1) years notice to the City. In the event the Consumer gives such notice to the City the Consumer shall pay to the City, all payments due to the end of the notice period as contemplated herein.
21. (1) Failure by the Consumer to pay any sum due or owing to the City at the time stipulated herein shall entitle the City to immediately terminate this Agreement, which shall disentitle the Consumer to receive water supply services.

(2) If the City terminates this Agreement under Section 21(1), the Consumer shall continue to be responsible for all water supply services charges levied by the City.
22. In the event that an act of default occurs which entitles the City to terminate this Agreement, the City shall provide the Consumer with fifteen (15) days written notice of its intention to terminate this Agreement and the reason for such termination. During such fifteen (15) day notice period the Consumer may rectify any such reason for termination which shall render the notice ineffective.
23. The City may, at its sole discretion, terminate this Agreement by providing ninety (90) days' notice to the Consumer.
24. The City may, at its sole discretion, terminate this Agreement immediately by providing notice to the Consumer in the event that cost prohibitive repairs are required to the infrastructure, including the delivery system.

NOTICE

25. 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:
 - (i) in the case of the City:
Public Works & Utilities Department
228 Main Street North
Moose Jaw, SK S6H 3J8
 - (ii) in the case of the Consumer:
The Lynbrook Golf and Country Club
1525 – 4th Ave NW
Moose Jaw, SK S6H 4N8

Such notice shall be deemed to have been served on the expiration of forty-eight (48) hours after it is posted or forwarded by registered mail or courier and such notice shall be deemed to have been served at the time of receipt if it is served personally.

GENERAL PROVISIONS

26. It is understood and agreed by the parties hereto that this Agreement shall constitute the entire agreement between the parties and that no other contract or agreement of any kind whatsoever by, or on behalf of the Consumer shall arise or be implied for anything contained in this Agreement. It is further understood and agreed that the express provisions contained herein are and shall be the only covenants and warranties upon which any rights against the City are to be founded. The Consumer further represents that on entering into this Agreement it has not relied on any previous representation of any kind or nature whether oral, written or implied.
27. This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. This Agreement shall not be assignable by the Consumer without the express prior written consent of the City.
28. Section 9, 18 and 19 shall survive the expiration or termination of this Agreement.
29. No amendment to this Agreement shall be binding upon either party unless in writing and signed by the parties.
30. The Consumer agrees to accept all responsibility and liability in respect to the contractual obligations of this Agreement.
31. This Agreement supersedes and takes the place of all prior agreements entered into by the parties.
32. This Agreement shall be interpreted in accordance with the laws of the Province of Saskatchewan.

IN WITNESS WHEREOF the Consumer has hereunto affixed its corporate seal, duly attested to by the hands of its proper officers in that behalf on the date identified above.

**THE LYNBROOK GOLF
AND COUNTRY CLUB**

(SEAL)

per: _____

per: _____

IN WITNESS WHEREOF the City has hereunto affixed its corporate seal, duly attested to by the hands of its proper officers in that behalf on the date identified above.

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

(SEAL)

MAYOR

CITY CLERK

Schedule A



Schedule B

2020 Britannia Park & Snowdy Springs Cost Detail							
Explanation		5 year average	2019	2018	2017	2016	2015
Operation, Maintenance, Repair		\$5,386.14	\$6,909.71	\$8,572.00	\$4,413.24	\$2,153.37	\$4,882.38
Cost of Pumping (Power)		\$20,391.96	\$23,649.23	\$22,792.43	\$22,806.49	\$9,527.85	\$23,183.80
Total		\$25,778.10	\$30,558.94	\$31,364.43	\$27,219.73	\$11,681.22	\$28,066.18
Cost Allocations (%)	O, M & R	20.9%	22.6%	27.3%	16.2%	18.4%	17.4%
	Power	79.1%	77.4%	72.7%	83.8%	81.6%	82.6%
	Hillcrest Charge	\$12,889.05					
	Lynbrook Charge	\$12,889.05					