



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 1st 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 2nd to 4th 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: