Potable Water Supply Agreement

The City of Moose Jaw
and
Saskatchewan Water Corporation
This Agreement made in triplicate as of the 8th day of November, 201_

Between:

The City of Moose Jaw
(the “City”)

and

Saskatchewan Water Corporation
(“SaskWater”)

Whereas:

A. Pursuant to The Saskatchewan Water Corporation Act, S.S. 2002, c. S-35.01, SaskWater owns and operates water supply facilities and may enter into agreements to supply customers with water; and

B. The City is a municipal corporation pursuant to The Municipalities Act, S.S. 2005, c. M-36.1; and

C. SaskWater is seeking a supply of potable water from the City with which to supply the Caron/Mortlach Regional Public Utility; and

D. In order to supply the volume of water as requested by SaskWater, the City is prepared to connect or allow for the connection of its potable water supply facilities to the SaskWater facilities to be constructed, and to supply SaskWater with potable water on terms set out herein.

Now therefore in consideration of the premises and the mutual covenants and agreements herein, and such other good and valuable consideration, the receipt of which is hereby acknowledged, the parties covenant and agree as follows:

1.0 Definitions

Words and terms used in this Agreement and the attached Schedule A, which is hereby incorporated into this Agreement, shall have the following meanings:

1.1 “Backflow Prevention Equipment” means equipment to eliminate the possibility of contamination or pollution resulting from the backflow of objectionable compounds from SaskWater’s Facilities to the City’s Facilities.

1.2 “Commencement Date” means the date upon which the City is prepared to supply Water to SaskWater and SaskWater is prepared to accept the supply of Water.

1.3 “City’s Facilities” means the facilities and equipment used or owned by the City to supply Water to SaskWater.

1.4 “City Reconnection Point” means the point or points where water is resupplied from SaskWater to the City as indicated on the diagram contained in Schedule A.
1.5 "Cubic Metre" or "m$^3$" means the volume of a cube with edges one (1) metre in length. One Cubic Metre shall contain One Thousand (1,000) litres.

1.6 "Measuring Equipment" means a meter or meters and such other necessary equipment for measuring the volume of Water supplied to SaskWater.

1.7 "Meter Fee" means the water service connection fee charged by the City to SaskWater as set out in Article 6.0 herein.

1.8 "Point of Delivery" means the location where the City’s Facilities connect to SaskWater’s Facilities as indicated on the diagram contained in Schedule A.

1.9 "Quarter" means a period of three (3) calendar months.

1.10 "SaskWater’s Facilities" means all facilities and equipment owned or operated by SaskWater to carry Water from the Point of Delivery.

1.11 "Water" means potable water.

1.12 "Water Supply Rate" means the rate charged by the City to SaskWater for the volume of Water supplied pursuant to this Agreement as set out in Article 6.0 herein.

2.0 Facilities for Water Supply

2.1 Following execution of this Agreement, SaskWater shall undertake the connection of SaskWater’s Facilities to the City’s Facilities at the Point of Delivery, such connection to meet the City’s specifications.

2.2 The parties agree:

(a) the Point of Delivery, Measuring Equipment, and the City’s Facilities will be located at or near the places indicated on the diagram contained in Schedule A, which is attached to and forms part of this Agreement; and

(b) SaskWater’s Facilities are located at or near the places indicated on the diagram contained in Schedule A.

2.3 The parties agree to set the Commencement Date, having regard to the state of readiness of their respective facilities and the readiness of Caron/Mortlach Regional Public Utility to receive Water from SaskWater.

2.4 If so requested by the City, SaskWater shall allow the City to install and maintain Backflow Prevention Equipment and Measuring Equipment on SaskWater’s Facilities. The City retains ownership and control of its Backflow Prevention Equipment and Measuring Equipment and SaskWater agrees to allow the City rights of entry to and exit from SaskWater’s Facilities where the Backflow Prevention Equipment or Measuring Equipment is located.
2.5 SaskWater will not charge the City for use of any new or existing easements required for the development and maintenance of the City’s Facilities. The City agrees to use reasonable efforts to return any SaskWater land upon which such easement is located to the same conditions as existed prior to the development of the Facilities.

2.6 The City will provide necessary permits or approvals as may be required for the construction of SaskWater’s Facilities, including approval of pipeline construction in The City’s road allowance. The City will not charge SaskWater for use of any new or existing easements required for the development and maintenance of the SaskWater Facilities. SaskWater agrees to use reasonable efforts to return any City land upon which such easement is located to the same conditions as existed prior to the development of the Facilities.

2.7 SaskWater grants to the City, its servants, employees and agents, a right of entry onto and exit from SaskWater’s Facilities for the purpose of installing, reading, testing, calibrating, adjusting, maintaining, repairing and inspecting the Backflow Prevention Equipment and the Measuring Equipment located on or in SaskWater’s Facilities.

2.8 The City acknowledges and agrees that at least part of SaskWater’s Facilities are or will be located in or on the works owned by the Caron/Mortlach Regional Public Utility and as such, any grants of rights of access to SaskWater’s Facilities contained herein are subject to SaskWater’s rights of access in and to the Caron/Mortlach Regional Public Utility works.

3.0 Control of and Responsibility for Water

3.1 Control
Control of and responsibility for the Water supplied hereunder shall pass from the City to SaskWater at the Point of Delivery.

3.2 Responsibility for Losses
The City shall be responsible for the maintenance of the City’s Facilities, and for losses of Water attributed to the City’s Facilities. SaskWater shall be responsible for the maintenance of SaskWater’s Facilities and for losses of Water attributed to SaskWater’s Facilities.

4.0 The City’s Obligations

4.1 Water Quality
The Water supplied by the City to SaskWater at the Point of Delivery shall be of a potable quality meeting Saskatchewan Ministry of Environment’s Municipal Drinking Water Quality Standards, as amended from time to time.

4.2 City Connections
(a) The City shall deliver Water to the Point of Delivery at a sufficient flow rate to meet the rate of flow required by SaskWater plus the rate of flow as may be required at the City Reconnection Point.

(b) The City shall be responsible for managing the Water usage for the two (2) City Reconnection Points and ensuring that the City Reconnection Points have Backflow Prevention Equipment installed and functioning.
4.3 Water Volume

(a) Maximum Daily Volume
The Maximum Daily Volume of Water that may be supplied each day pursuant to this Agreement shall be 1,650 Cubic Metres plus an annual growth factor of 1.015%.

(b) Maximum Flow
The Maximum Rate of Flow of Water that may be supplied pursuant to this Agreement shall be 24.0 litres per second.

(c) Service Interruptions
The City does not guarantee an uninterrupted supply of Water. The City shall use all reasonable efforts to minimize the number and duration of service interruptions and shall provide SaskWater with advance notice of scheduled, known and anticipated interruptions.

4.4 Measurement of Water

(a) The City shall provide, maintain and operate the Measuring Equipment.

(b) The City shall take and record readings from the Measuring Equipment once each Quarter.

(c) The City shall maintain and preserve the records of such readings for a period of at least two (2) years from the date the records were made, and such records shall be available to SaskWater upon written request.

(d) The City shall carry out tests to verify the accuracy of its Measuring Equipment at reasonable intervals, although not more frequently than once each year.

(e) In the event the Measuring Equipment is out of service or registering inaccurately:

(i) the parties shall examine the Water supply records for previous periods when, under similar conditions, the Measuring Equipment was registering accurately;

(ii) the parties agree to use this information to negotiate a deemed volume of Water supplied during the period when the Measuring Equipment is not measuring accurately;

(iii) such adjustment between the parties shall be made, as is necessary in accordance with the payment provisions contained in this Agreement, for such deemed volume of Water supplied; and

(iv) the City shall adjust the meter to improve accuracy.

(f) Special Test of Measuring Equipment

(i) Upon receiving a written request from SaskWater, the City shall arrange a special test of the Measuring Equipment’s accuracy, such test to be completed by a third party.

(ii) The parties agree that the Measuring Equipment will be so tested by using a rate of flow equivalent to SaskWater’s average rate of demand during the preceding twelve (12) months.

(iii) The City and SaskWater agree to co-operate to promptly facilitate such test which shall be paid for on the following basis:

(A) If the City’s Measuring Equipment is found to be in error by less than two per cent (2%), no adjustment shall be made to previous metering records and
SaskWater agrees to reimburse the City for the cost of such special test, forthwith upon receiving documentation from the City regarding same.

(B) If the City’s Measuring Equipment is found to be in error by more than two per cent (2%), previous metering records will be adjusted to zero error for the elapsed period since the last previous test or twelve (12) months, whichever is a lesser period, and the cost of such special test shall be borne by the City. The City shall adjust the meter to improve accuracy.

4.5 Authority to Enter Into Agreement
The City represents and warrants that it has the legal authority to enter into and perform this Agreement and has passed all necessary bylaws or resolutions in relation thereto and the City shall provide the same to SaskWater on request.

5.0 SaskWater’s Obligations

5.1 Regulatory Compliance
(a) SaskWater shall comply with all laws, regulations and water quality standards that relate or apply to potable water for human consumptive use and for hygienic use, or that relate or apply to SaskWater’s Facilities, as may be in force from time to time.

(b) Starting at the Point of Delivery, SaskWater is responsible for maintaining water quality.

5.2 Manage Usage
(a) SaskWater is responsible for managing usage of the Water downstream of the Point of Delivery.

(b) SaskWater covenants not to extend SaskWater’s Facilities without obtaining the City’s prior written consent. The City acknowledges and consents to SaskWater resupplying the Water to Caron/Mortlach Regional Public Utility.

5.3 On / Off Valve
If so requested by the City, SaskWater shall provide, install, and maintain a valve on SaskWater’s Facilities to stop and start the flow of Water supplied at or near the point of delivery.

5.4 Resupply to City
SaskWater agrees to use SaskWater’s Facilities to resupply Water to the City at the City Reconnection Points. There shall be no charge to the City for the use of these facilities. The City acknowledges and agrees that SaskWater has no opportunity to test or treat the Water between the Point of Delivery and the City Reconnection Point and as such, SaskWater makes no representation or warranty regarding the potability or quality of the Water as supplied to the City.

5.5 Authority to Enter Into Agreement
SaskWater represents and warrants that it has the legal authority to enter into and perform this Agreement.
6.0 Charges

6.1 Water Supply Charges
(a) For the purposes of this agreement, the Water Supply Rate charged by the City pursuant to this Agreement shall be equal to the volumetric rate charged by the City to consumers whose connection is within the boundaries of the City of Moose Jaw plus a twenty-five per cent (25%) surcharge.

(b) SaskWater agrees to pay to the City the Water Supply Rate for the volume of Water supplied for each Quarter.

(c) For the purposes of this agreement, the Meter Fee charged by the City pursuant to this Agreement shall be the fixed water service connection fee charged to consumers with a similar connection within the boundaries of the City of Moose Jaw.

(d) SaskWater agrees to pay to the City the Meter Fee for each month.

(e) For greater clarity, SaskWater shall not be liable to the City for any fee or charge for sewer or wastewater services.

(f) The City agrees to provide not less than ninety (90) days written notice of its intention to adjust the Water Supply Rate or Meter Fee.

6.2 Taxes
SaskWater agrees that taxes applicable to any fees, charges or payments under this Agreement shall be its responsibility, and will be paid in excess of the fees, charges or payments set out in this Agreement.

7.0 Term of Agreement

7.1 This Agreement shall be effective upon execution.

7.2 Notwithstanding the date of execution of this Agreement, the obligations of the City to supply Water under this Agreement and the obligations of SaskWater to pay the fees herein shall become effective on the Commencement Date.

7.3 This Agreement shall continue in force and effect for a period of ten (10) years from the Commencement Date (the "Initial Term"). Thereafter, this Agreement shall be automatically renewed and continue in force, until terminated by either party in accordance with the provisions contained herein.

7.4 Either party may terminate this Agreement after the expiry of the Initial Term; such termination shall be effective by the terminating party providing twelve (12) months’ prior written notice to the other party specifying a termination date after the Initial Term.
8.0 Billings and Payments

8.1 Once each Quarter, the City shall calculate and render to SaskWater an invoice setting forth the particulars of the Water supplied during the preceding Quarter and all applicable charges, fees, taxes and interest.

8.2 Notwithstanding Article 4.4(b), the City may calculate and render to SaskWater an invoice setting forth the particulars of the estimated Water supplied during the preceding Quarter and all applicable charges and taxes.

8.3 Payment shall be due and payable to the City by SaskWater within thirty (30) days of the date of the invoice. Payment shall be made as directed on the invoice.

9.0 Interest on Late Payments

In the event SaskWater fails to pay an account in full within thirty (30) days of the invoice date, SaskWater agrees to pay interest to the City on the balance then owing at the rate specified on the invoice.

10.0 Indemnification

10.1 The City shall indemnify and hold harmless SaskWater, its directors, officers, employees and agents and Her Majesty the Queen in Right of Saskatchewan, as represented by the Minister of Crown Investments Corporation, and the Minister Responsible for SaskWater (collectively referred to in this Article 10.1 as the “Indemnified Parties”) from and against any and all claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties and that are caused or contributed to, by the negligent or willful act or omission of the City, its agents, officers or employees in the performance of its obligations under this Agreement. SaskWater shall be deemed to hold the provisions of this Article 10.1 that are for the benefit of the Indemnified Parties in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.

10.2 To the extent it is permitted in its enabling legislation, SaskWater shall indemnify and hold harmless the City, its councillors, officers, and employees (collectively referred to in this Article 10.2 as the “Indemnified Parties”) from and against any and all claims which may be suffered or incurred by, accrue against, or be charged to or recoverable from any one or more of the Indemnified Parties and that are caused or contributed to, by the breach by SaskWater in the performance of its obligations under this Agreement. The City shall be deemed to hold the provisions of this Article 10.2 that are for the benefit of the Indemnified Parties in trust for all such Indemnified Parties as third party beneficiaries under this Agreement.
11.0 Force Majeure

11.1 Neither party shall be liable for any loss, detention, default, damage or delay in fulfilling the obligations under this Agreement caused by or resulting from conditions or causes beyond its reasonable control including, but not limited to: depletion of water supply; shortage of power, materials and supplies; unforeseen breakdowns in or the loss of water treatment or distribution facilities; acts of God; war; acts of terrorism; strikes, lockouts, labour controversies or disputes; riots; fire; flood; explosion; governmental controls or regulations; embargoes; wrecks or delays in transportation; civil insurrection; civil or military authority; and inability to obtain necessary labour, materials or supplies due to such causes. In an event of a Force Majeure, each party shall be allowed a reasonable period of time to fulfil the obligations under this Agreement having regard to the applicable circumstances.

11.2 Nothing contained in this Article 11.0 shall be construed to require either party to settle a strike or lockout by acceding against its judgment to the demands of opposing parties.

12.0 Privacy

12.1 The parties acknowledge and agree that this Agreement is subject to the provisions of The Freedom of Information and Protection of Privacy Act, S.S. 1992, c. F-22.01 (the “FOIPP Act”), as amended from time to time. Accordingly, the City agrees that this Agreement and any materials or personal information provided to SaskWater through the performance of its obligations or as otherwise acquired or developed may be subject to disclosure or protection. To the extent that this Agreement may contain personal information as defined in the FOIPP Act, the City consents to the collection, use, and disclosure of all such personal information for the purposes of the SaskWater’s programming in respect of the covenants contained in this Agreement.

12.2 The City and SaskWater shall strictly maintain confidential and secure all materials provided, directly or indirectly, by the other party pursuant to this Agreement. Subject to the relevant privacy legislation and regulations, and any other laws, neither party shall directly or indirectly disclose to any person, either during or following the Term of this Agreement, any such material information provided to it by the other party without first obtaining the written consent of the party who provided such material or information, allowing such disclosure.

12.3 Notwithstanding anything contained in this Article 12.0, the City hereby acknowledges that SaskWater is a Provincial Crown Corporation and consents to the disclosure of the fact that it is a supplier of SaskWater, and of the volumes of Water supplied and the amounts paid by SaskWater, or any other information that SaskWater is required to disclose by statute, policy or Parliamentary practice to Crown Investments Corporation, any Member of the Cabinet of the Government of Saskatchewan, including without limitation, the Minister Responsible for SaskWater and the Premier, and the Cabinet and Committees of the Saskatchewan Legislature, or under the operation of The Freedom of Information and Protection of Privacy Act. SaskWater agrees to limit the disclosure permitted by this section as much as is reasonably possible as contemplated by this Agreement.
13.0 Termination upon Default and Remedies

13.1 Suspension for Non-Payment
In the event SaskWater fails to pay the full amount of any invoice, including any outstanding balance, within thirty (30) days of being invoiced, the City, in addition to any other remedy it may have, may, upon fifteen (15) days’ written notice, suspend the supply of Water and the City’s obligations under this Agreement until full payment is made. Notwithstanding any suspension of the supply of Water under this Article, SaskWater’s obligation to pay any and all charges, taxes and interest shall continue to accrue, and SaskWater shall remain obligated to pay the City for any charges that have or continue to become due and owing pursuant to this Agreement.

13.2 In the event one party defaults on any of its obligations contained in this Agreement:

(a) the party complaining of the default shall provide written notice to the defaulting party of the act of default;

(b) the defaulting party shall have sixty (60) days from the date of service of the notice of default to correct the default; and

(c) if the defaulting party fails to correct the act of default within the time specified in the notice of default, then this Agreement may be terminated without further notice.

13.3 In the event of early termination for cause under this Article or otherwise, the wronged party shall be entitled to pursue all remedies available to it at law, including an action in any court of competent jurisdiction in Saskatchewan.

13.4 Service Interruptions or Termination Arising From Safety or Environmental Concerns
In any case at or after the Point of Delivery SaskWater or anyone to whom SaskWater is distributing Water contravenes any law or regulation in force from time to time, the City may, at the request of any regulatory authority having jurisdiction at the time the contravention occurs, immediately upon notice in writing to SaskWater of its intention to do so, suspend its service to SaskWater.

14.0 Costs

In the event SaskWater fails to make any payment as provided in this Agreement and the City takes action to enforce payment, SaskWater agrees to pay all costs and expenses including legal fees on a solicitor and his own client basis incurred by the City with respect to any proceedings taken for the purpose of enforcing its rights and remedies.

15.0 Waiver and Future Default

No waiver by either the City or SaskWater of any one or more defaults by the other party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different nature.
16.0 Notices and Communications

16.1 Any notice, demand or other communication required or permitted to be given to any party to this Agreement shall be in writing and shall be either:

(a) personally delivered to the reception desk at the municipal address given herein for the party;

(b) sent by registered mail, postage prepaid to the registered office of the other party; or

(c) sent by facsimile.

16.2 Any party may from time to time change its address by written notice to each other party given in accordance with the provisions in this Article.

16.3 Any notice given by personal delivery, registered mail or facsimile shall be deemed to be received on the date of delivery.

16.4 Legal Notices
Any notice given pursuant to this Agreement shall be delivered or sent to the intended recipient at its address as follows:

City of Moose Jaw
Attention: City Clerk/Solicitor
228 Main Street North
Moose Jaw, SK S6H 3J8
Facsimile: (306) 692-4518

SaskWater
Attention: General Counsel
200 - 111 Fairford Street East
Moose Jaw, SK S6H 1C8
Facsimile: (306) 694-3207

16.5 Customer Communications
(a) Service Interruptions
For issues relating to service interruptions, water quality or emergencies, SaskWater should contact the City Engineer at (306) 694-4473 or the City’s Wastewater office at (306) 694-4479.

(b) Water Services
For all Customer Service inquiries, including billing or meter inquiries, SaskWater should contact the City’s Water Department Customer Service at (306) 694-4441.
17.0 Entire Agreement

This Agreement including all documents and schedules attached hereto supersedes all prior representations, arrangements, negotiations, understandings and agreements between the parties, both written and oral, relating to the subject matter hereof and sets forth the entire complete and exclusive agreement and understanding between the parties hereto relating to the subject matter hereof; no party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement.

18.0 Amendments and Modifications

No amendment, modification or variation of any of the terms of this Agreement shall be valid unless in writing and executed by the parties hereto with the same formality as this Agreement.

19.0 Severability

It is intended that all provisions of this Agreement shall be fully binding and effective between the parties, but in the event that any particular provision or provisions or a part of one is found to be void, or unenforceable for any reason whatever, then, in the following order:

(a) the particular provision or provisions shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force;

(b) the provisions shall be read down in so far as is necessary to comply with law; or

(c) the Agreement shall be terminated.

20.0 Transfer and Assignment

Any person, company, governmental agency, or other entity that shall succeed SaskWater as owner or operator of SaskWater’s Facilities shall be entitled to the rights and subject to the obligations of SaskWater under this Agreement. This Agreement shall not be assignable by either party without the prior written consent of the other party, such consent not to be unreasonably withheld.

21.0 Extended Meanings

It is agreed that unless the context of the Agreement requires otherwise, the singular number shall include the plural and vice versa, the number of the verb shall be construed as agreeing with the word so substituted, words importing the masculine gender shall include the feminine and neuter genders, and words importing person shall include firms and corporations, and vice versa.

22.0 Schedules

All schedules attached hereto form part of this Agreement.
23.0 **Headings**

The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

24.0 **Survival**

All representations, warranties and indemnities given by each of the City and SaskWater shall survive indefinitely the termination of this Agreement.

25.0 **Governing Law**

The laws in effect in the Province of Saskatchewan, as amended, govern this Agreement. The parties hereto submit to the jurisdiction of the courts of the Province of Saskatchewan.

26.0 **Time**

26.1 Time shall be of the essence in all respects of this Agreement.

26.2 For billing purposes, any calculation of time that involves less than a full Quarter or year shall be prorated accordingly.

27.0 **Execution in Counterparts**

This Agreement may be signed in counterpart and by facsimile or other electronic transmission, without affecting its validity.

28.0 **Conditions Precedent**

28.1 The obligations of SaskWater are conditional upon SaskWater receiving approval from the SaskWater Board of Directors.

28.2 The obligations of SaskWater are conditional upon obtaining the necessary construction, environmental and other permits and approvals necessary to expand their facilities.

28.3 The obligations of SaskWater are conditional upon SaskWater entering into an agreement, on terms and conditions satisfactory to SaskWater in its sole discretion, for the supply of Water to the Caron/Mortlach Regional Public Utility.

28.4 The conditions precedent set out in this Article 28.0 are for the sole benefit of SaskWater. SaskWater agrees to make all reasonable efforts to remove these conditions.
29.0 No Transfer of Ownership

Notwithstanding the payment of the Meter Fee or any other fees, nothing contained herein shall give SaskWater any equitable or ownership stake, title or interest in any of the City’s Facilities, and nothing contained herein shall be interpreted as granting SaskWater an interest running with the City’s land.

In Witness Whereof The City of Moose Jaw has caused its corporate seal to be affixed, as attested to by its duly authorized officer effective on the date first written above.

( seal )

The City of Moose Jaw

Per: 

Print Name and Title: Myron Gulek-Tischko, City Clerk/Solicitor

In Witness Whereof Saskatchewan Water Corporation has caused its corporate seal to be affixed, as attested to by its duly authorized officer effective on the date first written above.

( seal )

Saskatchewan Water Corporation

Per: Doug Matthes, President