

## WATER DISPOSAL AGREEMENT

**This Agreement** made in duplicate as of the 15<sup>th</sup> day of March, 2021 (the “**Effective Date**”).

### **BETWEEN:**

#### **The City of Moose Jaw**

A municipal corporation pursuant to *The Cities Act* of Saskatchewan  
(the “**City**”)

-AND-

#### **Saskatchewan Water Corporation**

A Crown corporation pursuant to *The Saskatchewan Water Corporations Act*  
(“**SaskWater**”)

### **WHEREAS:**

- A.** SaskWater and the City entered a Water Supply and Disposal Agreement dated April 13, 2011 (the “**Original Water Supply Agreement**”), which the parties wish to terminate as of the Effective Date;
- B.** SaskWater intends to enter a water supply agreement (the “**New Water Supply Agreement**”) with Temple Hotels Inc. (“**Temple Hotels**”) located in the City;
- C.** Pursuant to the New Water Supply Agreement, SaskWater will supply Temple Hotels with geothermal-heated mineralized water (the “**Water**”), all of which will eventually be disposed of in the City’s sanitary sewer and wastewater system (the “**City’s System**”);
- D.** The City has agreed to accept and dispose of the Water from Temple Hotels in the City’s System;
- E.** The City has agreed to charge SaskWater for the volume of Water disposed of by Temple Hotels in the City’s System at the sewage fees prescribed in the City of Moose Jaw Sewer & Water Utility Bylaw (the “**Water Disposal Rate**”), which SaskWater will in turn recover from Temple Hotels through the New Water Supply Agreement; and
- F.** SaskWater, Temple Hotels and the City have agreed to utilize the measurements for the volume of Water supplied to Temple Hotels to calculate the amount of Water which will be disposed of in the City’s System.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein, and such other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

## **1.0 THE CITY'S OBLIGATIONS**

### **1.1 Disposal of Water**

- (a) The City agrees to accept and dispose of Water from Temple Hotels by way of the City's System.
- (b) The City agrees that the volume of Water which is disposed of by Temple Hotels in the City's System shall be equal to the volume supplied to Temple Hotels by SaskWater.

### **1.2 Service Interruptions**

The ability to dispose of Water shall be available without interruption except for interruptions due to:

- (a) any of the events set forth in Article 6.0; or
- (b) reasons related to service or maintenance of the City's System.

## **2.0 SASKWATER'S OBLIGATIONS**

### **2.1 Water Quality**

SaskWater is not responsible for testing or maintaining Water quality disposed of in the City's System.

### **2.2 Measurement of Water**

- (a) SaskWater shall provide, maintain, and operate a meter or meters and such other necessary devices necessary for measuring the volume of Water that is supplied to Temple Hotels (the "**Measuring Equipment**").
- (b) SaskWater shall take monthly readings from the Measuring Equipment and provide the readings to the City to calculate the volume of Water disposed in the City's System.
- (c) SaskWater shall maintain and preserve the records of such readings for a period of at least six (6) years from the date the records were made, and such records shall be available to the City upon written request.
- (d) SaskWater shall carry out tests to verify the accuracy of its Measuring Equipment at reasonable intervals, although not more frequently than once each year, and shall provide such test results to the City.

- (e) SaskWater shall ensure the City has reasonable access to inspect the Measuring Equipment upon written request.

### **3.0 CHARGES**

- 3.1** SaskWater agrees to pay the City the Water Disposal Rate for the volume of Water Temple Hotels disposes in the City's System, as calculated each billing period. The Water Disposal Rate shall be \$1.4572 per cubic meter as of the Effective Date. Changes to the Water Disposal Rate shall only occur once per calendar year and shall only occur upon the City providing SaskWater with thirty (30) days written notice.
- 3.2** Commencing on the Effective Date, the City shall calculate and render to SaskWater a quarterly invoice setting forth the particulars of the Water disposed during the preceding billing period and all other monthly connection fees, taxes and interest. Payment shall be due and payable to the City by SaskWater within thirty (30) days of the date of the invoice.
- 3.3** 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.
- 3.4** In the event this Agreement is terminated pursuant to Article 4 of this Agreement, all outstanding charges for Water supplied to Temple Hotels shall become immediately due and payable on the termination date.

### **4.0 TERM AND TERMINATION**

- 4.1** This Agreement shall continue in force and effect for such period of time as SaskWater is supplying Water to Temple Hotels pursuant to the New Water Supply Agreement.
- 4.2** In the event SaskWater ceases to supply Water to Temple Hotels or any assignee or other successor at law to Temple Hotels under the New Water Supply Agreement, this Agreement shall immediately terminate.
- 4.3** In the event the City is unable to accept and dispose of Water due to a change in environmental laws or regulations which prohibits them from accepting and disposing of Water, then the City may terminate this Agreement upon providing one (1) year's notice to SaskWater of their intention to terminate the Agreement.
- 4.4** Notwithstanding anything contained herein, SaskWater may terminate this Agreement with or without cause by providing no less than thirty (30) days' prior written notice to the City specifying a termination date.

## 5.0 INDEMNIFICATION

5.1 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 Corporations, and the Minister responsible for SaskWater (collectively referred to in this Article 5.1 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 5.1 that are for the benefit of the Indemnified Parties, in trust for all such Indemnified Parties as third-party beneficiaries under this Agreement.

5.2 Subject to its enabling legislation, SaskWater shall indemnify and hold harmless the City, its mayor, councilors, directors, officers, employees and agents (collectively referred to in this Article 5.2 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 negligent or willful act or omission of SaskWater its agents, officers or employees in the performance of its obligations under this Agreement, or that are caused or contributed to by the Used Water. The City shall be deemed to hold the provisions of this Article 5.2 that are for the benefit of the Indemnified Parties, in trust for all such Indemnified Parties as third-party beneficiaries under this Agreement.

## 6.0 FORCE MAJEURE

6.1 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 pumps or distribution facilities; acts of God; war; acts of terrorism; strikes, lockout, labour controversies or disputes; riot; 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.

6.2 Nothing contained in Article 6.1 shall be construed to require either Party to settle a strike or lockout by acceding against its judgment to the demands of opposing Parties.

## 7.0 PRIVACY

7.1 The parties acknowledge and agree that SaskWater is a government institution pursuant to *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, F-22.01

(the “**FOIPP Act**”) and that the City is a local authority pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1991, Chapter L-27.1 (the “**LAFOIPP Act**”), both as amended from time to time. Accordingly, the parties acknowledge and agree that this Agreement is subject to the provisions of the FOIPP Act and the LAFOIPP Act. The parties agree that this Agreement and any materials or personal information provided by either party to the other through each party’s 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 or the LAFOIPP Act, the City consents to the collection, use, and disclosure of all such personal information for the purposes of SaskWater’s programming in respect of the covenants contained in this Agreement.

**7.2** Subject to Article 7.1, SaskWater and the City shall strictly maintain confidential and secure all materials provided, directly or indirectly, by the other Party pursuant to this Agreement and 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.

## **8.0 COSTS**

**8.1** In the event the City breaches any provision as provided in this Agreement and SaskWater takes legal action in respect of said breach, the City agrees to pay all costs and expenses including legal fees on a solicitor-client basis of SaskWater incurred with respect to any proceedings taken for the purpose of enforcing its rights and remedies.

**8.2** In the event SaskWater breaches any provision as provided in this Agreement and the City takes legal action in respect of said breach, SaskWater agrees to pay all costs and expenses including legal fees on a solicitor-client basis of the City incurred with respect to any proceedings taken for the purposes of enforcing its rights and remedies.

## **9.0 WAIVER AND FUTURE DEFAULT**

No waiver by either SaskWater or the City 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.

## **10.0 NOTICES AND COMMUNICATIONS**

**10.1** 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;

(c) sent by facsimile;

(d) sent by electronic email.

**10.2** Any Party may from time to time change its address by written notice to the other Party given in accordance with the provisions in this Article.

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

**10.3 Legal Notices**

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

**The City of Moose Jaw**

Attention: City Clerk/Solicitor  
228 Main Street North  
Moose Jaw, SK S6H 3J8  
Facsimile: (306) 694-4528  
Email:

**SaskWater**

Attention: Legal Counsel  
200-111 Fairford Street East  
Moose Jaw, SK S6H 1C8  
Facsimile: (306) 694-3207  
Email: customerservice@saskwater.com

**11.0 ENTIRE AGREEMENT**

This Agreement including all documents and Schedules 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.

**12.0 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.

### **13.0 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 at the election of SaskWater:

- (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.

### **14.0 TRANSFER AND ASSIGNMENT**

Any person, company, customer, governmental agency, or other entity that shall succeed SaskWater as the supplier of Water to Temple Hotels shall be entitled to the rights and subject to the obligations of SaskWater under this Agreement. This Agreement shall not be assignable by the City without the prior written consent of SaskWater.

### **15.0 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.

### **16.0 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.

### **17.0 SURVIVAL**

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

### **18.0 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.

**19.0 TIME**

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

**20.0 EXECUTION IN COUNTERPARTS**

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

**21.0 CONDITIONS PRECEDENT**

This Agreement shall be conditional upon the occurrence of SaskWater and Temple Hotels executing the New Water Supply Agreement in a form and substance satisfactory to SaskWater. The Parties agree that in the event that this condition precedent is not fulfilled, this Agreement shall be deemed to be void and of no force and effect.

**22.0 TERMINATION OF ORIGINAL WATER SUPPLY AGREEMENT**

The Parties agree that as of the Effective Date, the Original Water Supply Agreement shall be mutually terminated and cancelled. As of the Effective Date, the Parties hereby release each other from any and all claims, causes of action, demands and liabilities of whatever nature which either Party had in the past, has now or may have in the future arising from the Original Water Supply Agreement.

**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.

**Saskatchewan Water Corporation**

( seal )

Per: \_\_\_\_\_  
Doug Matthies, President

**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.

**The City of Moose Jaw**

( seal )

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

Print Name and Title: \_\_\_\_\_

\_\_\_\_\_