

TOWN OF LUMSDEN

BYLAW No. 5-2000

A BYLAW TO PROVIDE FOR ENTERING INTO AN AGREEMENT WITH DEER VALLEY DEVELOPMENT INC. FOR THE SUPPLY OF WATER.

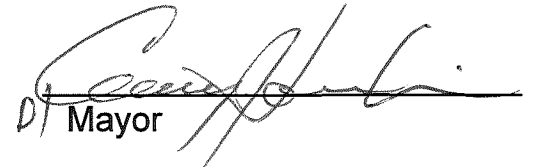
WHEREAS it is deemed desirable by the Council of the Town of Lumsden to enter into an agreement with Deer Valley Development Inc. for supply of water to a proposed development of 82 single family lots under phase 1 of a golf/residential development;

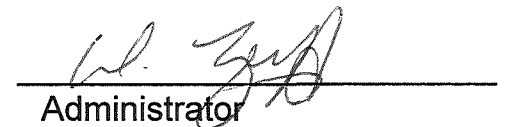
NOW, THEREFORE, the Council of the Town of Lumsden in the Province of Saskatchewan enacts as follows:

1. THAT the Mayor and Administrator are hereby authorized to execute under the seal of the Town of Lumsden an agreement in writing between the Town of Lumsden and Deer Valley Development Inc. for the supply of water to Phase 1 of the proposed golf/residential development,
2. THAT the agreement is marked as Exhibit "A", attached hereto and forms a part of this bylaw.

Read a first time this 10th Day of October , 2000.
Read a second time this 27th Day of November , 2000.
Read a third time this 27th Day of November , 2000.


(SEAL)


Mayor


Administrator

Certified a true copy of Bylaw No. 5-2000
adopted by resolution of Council on the
27th day of November, 2000.

(SEAL)


Administrator

THE TOWN OF LUMSDEN,

- AND -

DEER VALLEY DEVELOPMENT INC.

**Water Supply Agreement
(Phase One)**

MacLean Keith
Barristers & Solicitors
2398 Scarth Street
Regina, Saskatchewan
S4S 5P6
(306) 757-1611
(306) 757-0712 (fax)
Email Maclaw@macleankeith.com

THIS AGREEMENT MADE IN DUPLICATE THIS 27th DAY OF NOVEMBER, A.D. 2000.

BETWEEN:

THE TOWN OF LUMSDEN, a municipal corporation, operating pursuant to the
Urban Municipality Act, 1984

(hereinafter called "the town")
OF THE FIRST PART

- AND -

DEER VALLEY DEVELOPMENT INC., a body corporate, duly incorporated
under the Laws of the Province of Saskatchewan

(hereinafter called "the Developer")
OF THE SECOND PART

WHEREAS the Developer is the registered owner or has control of all that land as shown on a copy of a proposed subdivision plan and marked Plan "A" (which is attached hereto and forms part of this Agreement) and as outlined in red thereon (which lands are hereinafter called "the Subdivision Lands");

AND WHEREAS the Developer desires has requested that the Town provide potable water service ("Water") to the Subdivision Lands and to pay certain costs associated with the provision of Water in accordance with the provisions of this agreement and subject to the covenants and conditions hereinafter set forth;

AND WHEREAS the Town has been induced to enter into this agreement based on oral and written representations of the developer concerning the nature of the development, the number of persons to be provided Water and the consumption requirements of Water all of which have been relied upon by the Town in entering into this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

INTERPRETATION

1. In this Agreement:
 - 1.1 "*Contract Documents*" shall include this Agreement and Plans and Specifications drawn by the Town Engineer.

- 1.2 The Term "*Cost of the Work*" includes, but is not limited to, all labour, materials and services required, as shown or described in the Plans and Specifications, supplied and installed or erected and shall include the full cost of Engineering Services for the Work, the full cost of any contractors engaged by the Town to provide or undertake the Work or any portions thereof, the full cost of labour, materials and services provided by any Town staff or employees, the full costs paid by the Town for Maintenance and an Administration Fee equal to 10% of the Town's share of the Cost of the Work prior to the imposition of this Administration Fee for the time and effort expended by the Town in its administration and Management of the Work.
 - 1.3 "*Developer*" means the person or corporation responsible for carrying out the terms of this Agreement and shall include, where the context requires the water users group, water utility or other corporation or association formed by the owners of the Subdivision Lands in respect of the provision of potable water to the Subdivision Lands and wherever the singular is used herein it shall be construed as including the plural. In the event of a disagreement between the parties as to the apportionment of such future costs, the question shall be submitted for arbitration, in accordance with the provisions of *The Arbitration Act*, before the Saskatchewan Municipal Board, whose decision shall be final and binding on the parties hereto.
 - 1.4 "*Maintenance*" (without limiting the generality of the term) for which the Developer shall be responsible shall include failure of or damage to the Works resulting from defective materials or improper installation; and adjustment and repairs to water mains, main valves, water hydrants, hydrant valves, service lines and valves and valve operating mechanisms including the casings enclosing these mechanisms but shall not include ordinary wear and tear (meaning normal upkeep) or Town winter maintenance operations.
 - 1.5 "*Maintenance Period*" shall be one year commencing from the date of issuance by the Town Engineer of a Construction Completion Certificate.
 - 1.6 "*Street*" shall mean any portion of a plan of subdivision which vests in Her Majesty in the right of and to the use of Her Province of Saskatchewan and shall include any road allowance, street named as an avenue, circle, crescent, bay, road, drive, place, boulevard, lane, gate or way of by a similar term.
 - 1.7 "*Town*" means the Corporation of the Town of Lumsden or a representative duly authorized by the Town.
 - 1.8 "*Town Engineer*" means such Consulting Engineers as may, from time to time be engaged by the Town to design and supervise the Work.
 - 1.9 The term "*Work*" or "*to construct*" means to perform such work as may be required to provide Water to the Subdivision Lands in accordance with Plans and Specifications drawn by the Town Engineer.
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GOVERNING LAW

2.1 The laws of the Province of Saskatchewan shall govern all the terms of this Agreement.

CONTRACT DOCUMENTS

3.1 The contract documents are complementary and what is called for by one shall be as binding as if called for by all. The intention of the documents is to include all labour and materials, equipment, superintendence and transportation reasonably necessary for the proper execution of the Work.

3.2 Description of materials for the Work in words, which so applied, has well known technical or trade meanings shall be meant to refer to recognized standards. Should specifications conflict with drawings of plans or should there be a discrepancy between the drawings, the Developer or his Engineer shall notify the Town in writing, immediately upon becoming aware of such discrepancy and the Town will rule as to whether the specifications of drawings shall govern or as to which drawing shall govern.

3.3 The specifications and drawings for all of the work required to be done pursuant to this Agreement shall be prepared and approved by the Town Engineer registered in the Province of Saskatchewan retained by the Town for that purpose.

WORKS TO BE CONSTRUCTED

4.1 *THE TOWN AGREES AS FOLLOWS:*

The Developer shall construct, or cause to be constructed, in accordance with the plans and specifications for the Work prepared by the Town Engineer, those Works generally described in *Schedule "B"* hereto and which are more particularly described in the said plans and specifications. The Town may, at its option, construct certain portions of the Works by the Town or installed by the Developer, in which case the provisions of clause 5 shall apply.

DEVELOPERS OBLIGATIONS

5.1 *THE DEVELOPER AGREES AS FOLLOWS:*

To construct and pay the total cost of construction of those works which the Town requires to be constructed or installed by the Developer in accordance with clause 4 hereof. Those portions of the Work shall be installed by the developer in accordance with this Agreement, and in accordance with plans and specifications approved by the Town

5.4 The town is hereby granted permission to enter on to lands owned by the Developer for the purpose of carrying out the Work and the Developer shall provide such lands, and agrees to transfer to the Town, or its nominee, at no cost to the Town, such lands as may be necessary, or in the opinion of the Town Engineer desirable, for the purpose of carrying out the Work and the Developer shall further grant such easements as may be necessary, or in the opinion of the Town Engineer desirable for the purpose of carrying out the Work.

- 5.5 If the Developer does not proceed with the construction or installation of that portion of the Works to be constructed or installed by it within 5 business days of notice from the Town, the Town may proceed to install or construct such portions of the Works at the total cost of the Developer plus an administration fee of 20% of the total cost. In the case of emergency work, the Town shall have the right to perform the work immediately and charge the Developer with the cost thereof.
- 5.6 The Developer shall provide the Town with a complete set of as-built plans and records of any portions of the works constructed by it pursuant to this clause. All drawings shall conform to the size, scale and layout of the Town standards for such drawings, as such standards are established from time to time.
- 5.7 The Developer shall indemnify and save harmless the Town from all or any claims arising out of any portions of the works constructed by it pursuant to this clause both during the construction of the Works and during the Maintenance Period.
- 5.8 The Developer shall provide and maintain adequate access to and within the development area in respect of any portions of the works constructed by it pursuant to this clause.

OWNERSHIP OF WORKS

- 6.1 It is agreed between the parties hereto that the Works, or such portions of the Works when constructed on, in or under any street, avenue, lane public place, town-owned property, as well as any right-of way granted by virtue of an easement shall, be the property of the Town.

MAINTENANCE OF WORKS

- 7.1 The Town shall own and be responsible for and shall maintain all portions of the Works within the boundaries of the Town, and outside the boundaries of the Town on town-owned property, as well as any right of way or easement granted in favour of the town. The Developer shall own and be responsible for and shall maintain all portions of the Works lying outside of the boundaries of the Town as shown in red on Plan "B" (which is attached hereto and forms part of this Agreement).
- 7.2 If the Developer does not maintain that portion of the Works as show in red on Plan "B", within 5 business days of notice from the Town, the Town may proceed to maintain that portion of the Works at the total cost of the Developer plus an administration fee of 20% of the total cost. In the case of emergency work, the Town shall have the right to perform the work immediately and charge the Developer with the cost thereof.

COSTS TO BE BORNE BY BOTH PARTIES

- 8.1 Costs of the Work shall be paid by each of the Parties as set out on Schedule "C", hereto. In the event of a disagreement between the parties as to the apportionment of the costs of the Work, the question shall be submitted for arbitration, in accordance with the provisions of *The Arbitration Act*, before the Saskatchewan Municipal Board, whose decision shall be final and binding on the parties hereto.
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- 8.2 The Parties agree that they shall share proportionally, based on the benefit to each party, all of the future costs of new water supply infrastructure, which benefits both the Town and the Deer Valley Subdivision including, but not limited to the development of future wells, pipelines, hydro geological explorations, and the construction of a water treatment plant. In the event of a disagreement between the parties as to the apportionment of such future costs, the question shall be submitted for arbitration, in accordance with the provisions of *The Arbitration Act*, before the Saskatchewan Municipal Board, whose decision shall be final and binding on the parties hereto.

PAYMENT FOR WATER SUPPLIED

- 9.1 As a part of the Works, the Town shall install and maintain a meter to measure the sale of potable water to the Developer at or near the location shown in *Plan "B"*.
- 9.2 The Developer shall pay to the Town for water supplied to the Subdivision Lands, the following:
- (A) The current base rate as established from time to time by the Town for water charged to residents of the Town (currently \$4.60 per 1000 gallons); plus
 - (B) An initial per gallon surcharge fee to cover additional operation and pumping costs, chlorine testing, and depreciation of existing infrastructure equal to 40% of the current base rate as established from time to time by the Town for water charged to residents of the Town.
 - (C) The per gallon surcharge fee as determined by the Town, may be adjusted from time to time to reflect any dramatic or unexpected operational cost increases incurred in the water supply process. In the event of a disagreement between the parties as to the calculation of the surcharge fee, the question shall be submitted for arbitration, in accordance with the provisions of *The Arbitration Act*, before the Saskatchewan Municipal Board, whose decision shall be final and binding on the parties hereto.

OTHER TOWN OR RURAL RESIDENTS MAY CONNECT TO PIPELINE

- 10.1 The Town may, from time to time, on such conditions as the Town may require, if sufficient capacity exists in the pipeline serving the Subdivision Lands, allow other persons, resident within or outside of the boundaries of the Town, to hook into the pipeline to obtain water from the Town.

INFORMATION TO BE PROVIDED

- 11.1 The Town agrees that it will provide information concerning the development of the potable water supply to the developer, or any water users group, public utility or other corporation or association formed by the owners of the Subdivision Lands in respect of the provision of potable water to the Subdivision Lands.

AGREEMENT CONTINGENT AND COVERS ONLY PHASE ONE

- 12.1 This Agreement shall be contingent upon the Developer obtaining all necessary Development Approvals that may be required from the Rural Municipality of Lumsden No. 189 to proceed with the registration of the Plan of Subdivision as set out on Schedule "A" and each of the phases of the development as set out therein.
- 12.2 The parties acknowledge that, subject to the provisions of this clause, the Town has agreed with the Developer to provide water services to all 4-development phases of the Subdivision, as set out on Schedule "A". As each phase of the Subdivision Lands is ready for development, and the Developer wishes to obtain water service for such phase, the Developer shall make application for such water service to the Town. The parties agree that prior to the Town providing water services to any phase, the availability of water and the water requirements of both parties shall be reviewed and the cost sharing or allocation of the cost of any water supply infrastructure or facility to service such phase shall be determined by agreement between the parties. If the Developer and the Town cannot agree as to the need for any new or expanded, modified or changed infrastructure or facility, or the cost sharing or allocation of the cost between them for any aspects of the supply of water to that phase, then the matter shall be resolved by arbitration in accordance with the provisions of clause 8.2 hereof.

NO GUARANTEE OF SUPPLY ETC.

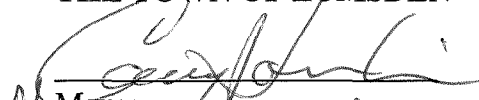
- 13.1 The Town shall endeavour to supply water to the Subdivision Lands at all times, however, the Town cannot and does not guarantee the uninterrupted supply, quantity, quality, or pressure of the water supplied to the Subdivision Lands. Notwithstanding the generality of the foregoing, the Developer also expressly acknowledges that the amount of supply and/or pressure supplied by the Town pursuant to this agreement is not sufficient to support a fire safety sprinkler system. It is understood that the Developer will supply its own on site water storage facility along with a pumping system sufficient to support a fire hydrant system within the Subdivision Lands.
- 13.2 The Town shall not be liable for any damages caused from or through the operation of the Works or for any flooding of the lands, or any other damage whatsoever arising from the Works, nor shall the Town be liable for any damages caused or incurred in any whatsoever as a result of the interruption of supply or the insufficiency of the supply to the Subdivision Lands.
- 13.3 In the event of the pipeline or reservoir servicing the Subdivision Lands ruptures or leaks and the Developer does not attend to the repairs thereof forthwith, the Town may discontinue the supply of water until such time as the ruptured or leaking line is repaired by the Developer.
- 13.4 In the event the pipeline ruptures or leaks or any connection fails, the Town (or an agent, contractor or employee of the Town) may immediately attend to the repair thereof should the Developer fail to do so, and all costs of repairs effected by the Town plus and administration charge of 20% of the cost of repairs shall be paid by the Developer upon demand thereof by the Town.
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13.5 The Developer covenants and agrees that it shall observe, and shall cause to be observed, to the best of its abilities, all water conservation and management practices with which town water customers are asked to comply.

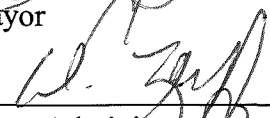
IN WITNESS WHEREOF the Town has affixed its Corporate Seal duly attested by the hands of its Mayor and Town Administrator duly authorized in that respect and the Developer have affixed their corporate seal as attested to by its proper officers, duly authorized in that respect as of the date and year first above written.

THE TOWN OF LUMSDEN

(Seal)



Mayor



Town Administrator

DEER VALLEY DEVELOPMENT INC.

(Seal)





President

Secretary Treasurer

Attached: Plan "A", Phase 1 Subdivision Plan
Plan "B", Developer Owned Works Plan
Schedule "A", 4 Phases of Development Plan
Schedule "B", Description of Works
Schedule "C", Cost Schedule for Works

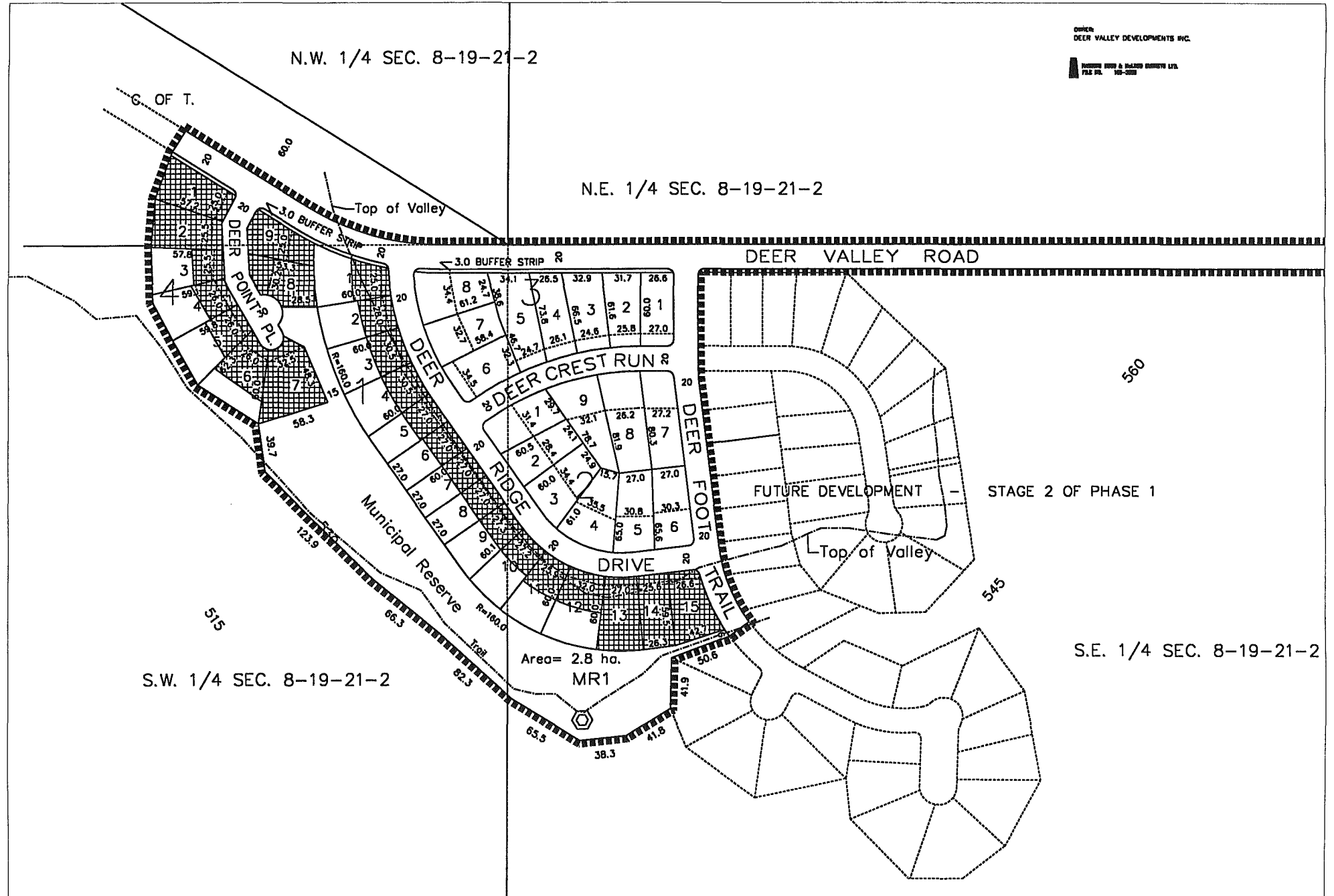
F AN "A" TO WATER SUPPLY AGREEMENT (PHASE ONE) PHASE 1 SUBDIVISION PLAN

1. This plan is prepared in accordance with the provisions of the Municipal Act, R.S.O. 1990, c. M.26, and the Planning Act, R.S.O. 1990, c. P.22.
 2. The plan is prepared in accordance with the provisions of the Planning Act, R.S.O. 1990, c. P.22, and the Municipal Act, R.S.O. 1990, c. M.26.
 3. The plan is prepared in accordance with the provisions of the Planning Act, R.S.O. 1990, c. P.22, and the Municipal Act, R.S.O. 1990, c. M.26.
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 5. The plan is prepared in accordance with the provisions of the Planning Act, R.S.O. 1990, c. P.22, and the Municipal Act, R.S.O. 1990, c. M.26.

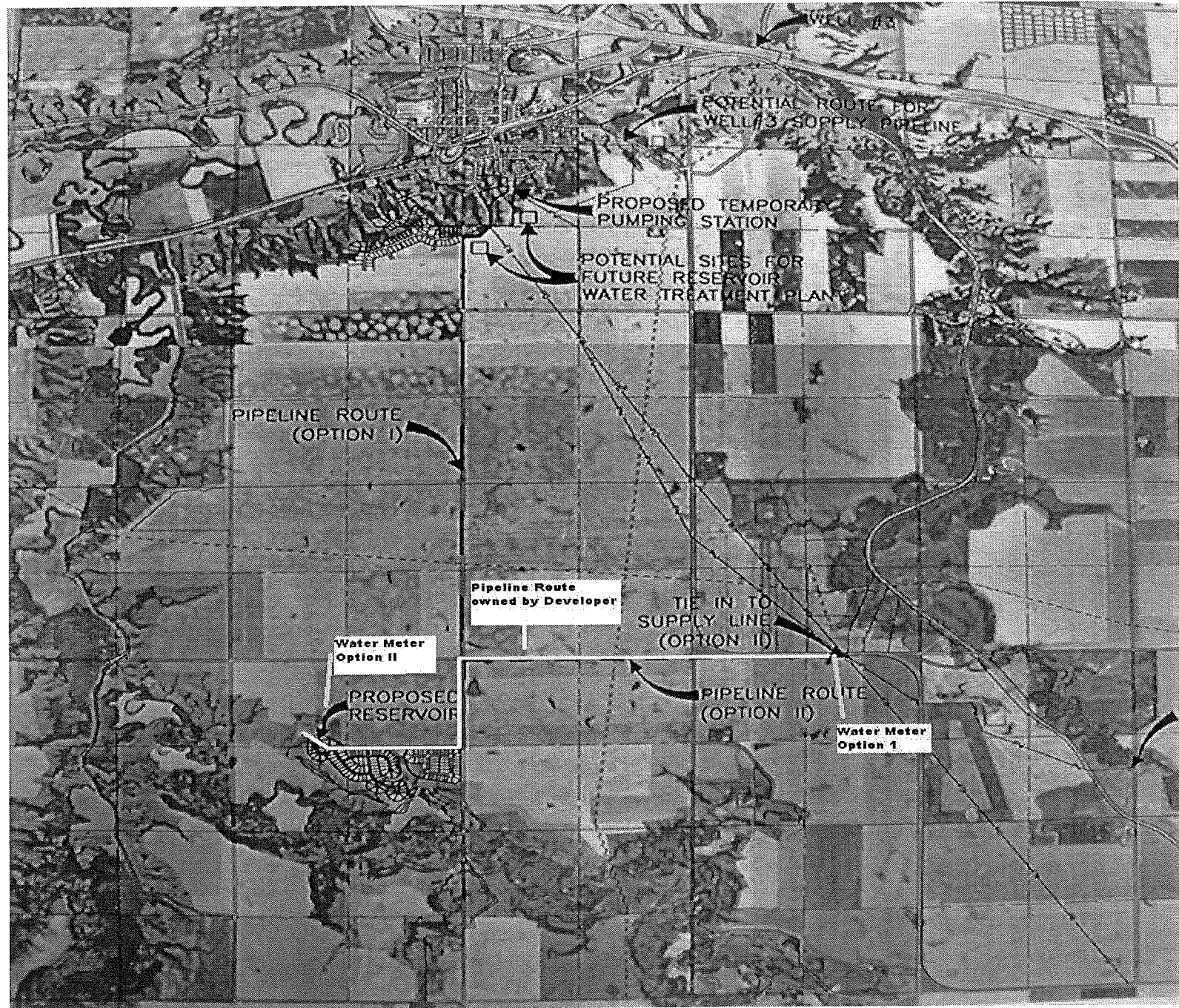
DEER VALLEY
 PHASE 1 STAGE 1
 PLAN SHOWING
 PROPOSED SUBDIVISION
 OF PART OF
 S.E., S.W. & N.W. 1/4 SEC. 8
 TWP. 19, RGE. 21, W. 2M.
 NEAR
 LUMSDEN, SASKATCHEWAN

OWNER:
DEER VALLEY DEVELOPMENTS INC.

PREPARED BY:
 JAMES W. & DAVID BROWN LTD.
 P.L.S. NO. 100-0000

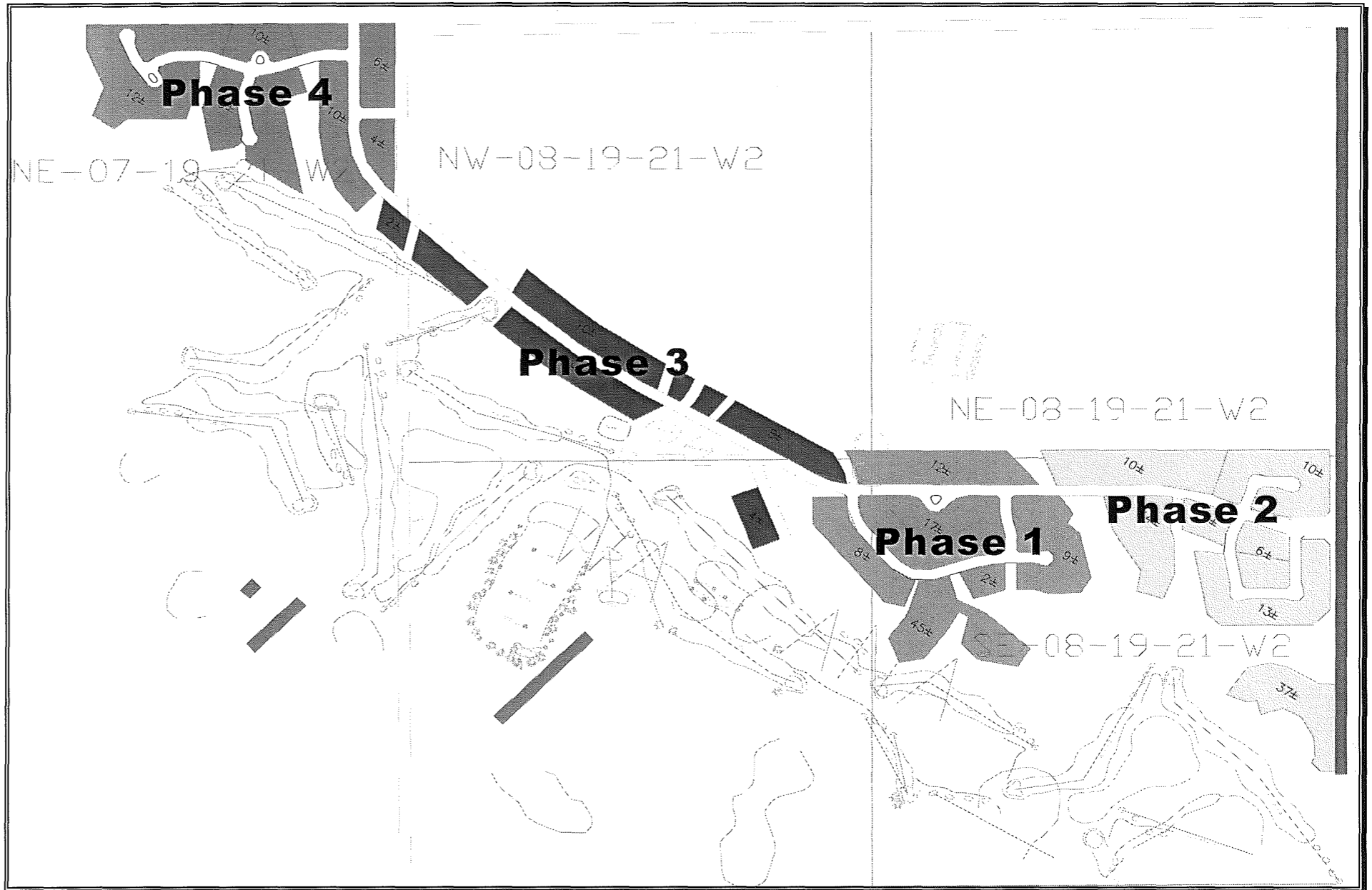


PLAN TO WATER SUPPLY AGREEMENT (PH ASE ONE)



SCHEDULE "A" TO WATER SUPPLY AGREEMENT (PHASE ONE)

Map -4 Phases of Deer Valley Development



SCHEDULE "B" TO WATER SUPPLY AGREEMENT (PHASE ONE)
Description of Works to be constructed by Developer

Town of Lumsden - Water Servicing Plan

SECTION 6 - GOLF COURSE SUPPLY

6.5 OPTION NO. 4: CONNECTION TO WELL NO. 4 SUPPLY MAIN

This option consists of a new pipeline from the Well No. 4 supply pipeline to the proposed Deer Valley Golf and Estates reservoir. The pipeline would consist of a 150 mm diameter pipeline to convey the required maximum day demand. A 100 mm diameter pipeline is slightly too small creating excessive pipeline water velocity which requires additional pumping costs and posing surge problems within the system.

The cost to complete this option is estimated as follows:

· Pipeline: Approx. 4500 m	= \$180,000
· Hydrogeological Investigation	= 10,000
· Pressure Reducing Station	= 10,000
· Standby/Backup Well No. 4 c/w Pump and Controls	= 90,000
· Engineering	= 30,000
· Contingency, Land and Legal	= 30,000
TOTAL	<u>\$350,000</u>

This is the lowest capital cost option available to provide water to Deer Valley Golf and Estates. This option has the shortest length of pipeline and does not require a booster pump station. The absence of a pump station saves on capital costs, but also eliminates a substantial long term operation and maintenance cost that would be associated with a booster pump station; providing more profit to the Town on the sale of water.

Other benefits of this system include:

- The revenue meter could be located in the Deer Valley water treatment plant for ease of service;
- When the future Town water treatment plant is constructed, the water purchased by Deer Valley would not have a wastewater component that the Town would have to manage. Deer Valley will generate their own wastewater and treat it accordingly with their system.
- Once the Town constructs an Iron and Manganese removal plant, Deer Valley will not be able to utilize the treated water unless the water treatment plant is constructed in the area of Well No. 4. The actual location of the future water treatment plant will be determined during the pre-design phase of the water treatment plant project.

CONCLUSIONS AND RECOMMENDATIONS

1. The Town can provide water to the Deer Valley Golf and Estates Development and still meet the 20 year projected Town requirements based on a Town growth rate of approximately 3%/year.
2. The most economical and profitable method for the Town to provide water to Deer Valley is to supply water from the Well No. 4 pipeline.
3. Additional system security is required to supply water to Deer Valley from Well No. 4. It is recommended that a hydrogeological investigation be undertaken as soon as possible to determine if there is additional water available within the aquifer supplying Well No. 4.
4. If the results of the hydrogeological investigation prove that additional water is available, the construction of the Well No. 5 should be implemented. Should the investigation prove that there is no additional water available, construction of a back-up well to Well No. 4 should be implemented.
5. If there is a sufficient quantity of water available from the Well No. 4 aquifer, then the treatment plant could be located either in the area of Well No. 4 and No. 5 or in Town on top of the new reservoir. The location of the treatment plant should be investigated following confirmation of the hydrogeological investigation.
6. If the water treatment plant is located in Town, the piping from Well No. 3 should be redirected to the water treatment plant. However, if sufficient well water is made available in the area of Well No. 4, the piping from Well No. 3 can remain connected to the distribution system as an emergency supply.

EXCERPTS FROM REPORT

P:\004640\REPORT\NEWTEXT.WPD FINAL REPORT

ASSOCIATED
ENGINEERING

SCHEDULE "C" TO WATER SUPPLY AGREEMENT (PHASE ONE)

Cost Schedule for Works

TOWN OF LUMSDEN

9 - CONCLUSIONS AND RECOMMENDATIONS

Table 9-1

Capital Works Plans

ITEM DESCRIPTION OF WORKS	YEAR PROPOSED	ESTIMATED PROJECT BUDGETS (\$)	DEER VALLEY SHARE (\$)	TOWN OF LUMSDEN SHARE (\$)
1 <u>Additional Well and Pipeline to Deer Valley</u>				
1.1 Pipeline 4500 m, 150 mm diameter HDPE	Fall 2000	\$180,000	\$180,000	\$0
1.2 Hydrogeological Investigation	Fall 2000	10,000	10,000	0
1.3 Pressure Reducing Station	Spring 2001	10,000	10,000	0
1.4 New Back-up Well No. 4 c/w pitless adaptor, pump and controls	Spring 2001	90,000	90,000	0
1.5 Engineering	2000-01	30,000	30,000	0
1.6 Contingency, Land and Legal	2000-01	30,000	30,000	0
Sub Total Item 1		\$350,000	\$350,000	\$0