

Water Services Supply Agreement
Mahana Ridge

MAHANA RIDGE LIMITED

MAHANA RIDGE RESIDENTS' ASSOCIATION INCORPORATED

THIS AGREEMENT is made the 7th day of August 2020

PARTIES

MAHANA RIDGE LIMITED

(Company)

MAHANA RIDGE RESIDENTS' ASSOCIATION INCORPORATED

(Association)

BACKGROUND

- A. The Company holds the Consent and provides water supply to the Association for use by Lots in the Trafalgar Road, Mahana Ridge subdivision and may supply water to others.
- B. The Company agrees to provide specified water supply to the Association, on the terms of this agreement.
- C. The Association agrees to receive and pay for such water supply on the terms of this agreement.

AGREEMENT

1. Definitions and interpretation

1.1 In this agreement unless the context otherwise requires:

Accounting Period means the period from 1 April in any given year.

Bore means a deep, narrow hole made in the ground to locate water.

Business Day means a day which is not a Saturday, Sunday or public holiday in Nelson, New Zealand.

Commencement Date means 1 September 2020.

Company Land means the land comprised in record of title 567581.

Consent means resource consent RM171403 or any consent issued in substitution therefore.

Default Interest Rate means the Company's bank overdraft rate applicable during the continuance of the default, computed on a daily basis from the due date until the date on which payment has been made in full by the Association.

Easement Instrument means easement instrument 1122520.7.

Fee means the amount invoiced annually by the Company for each Accounting Period beginning 1 April 2020, and payable by the Association to the Company for the supply of the Water Volume, as determined by the Company from time to time in accordance with clause 4.3.

Force Majeure Event means an event or occurrence:

- (a) which is beyond a party's reasonable control (including, without limitation, acts of God or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargoes, riot or civil disturbances); and
- (b) which the affected party could not have reasonably foreseen or taken reasonable measures to prevent.

GST means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Invitee means any invitee, visitor or occupier of the Lot authorised or approved by the Lot Owner.

Lot means a record of title subject to a land covenant requiring the Lot Owner to be a member of the Association.

Lot Owner means the registered owner of a Lot.

Scheme Facilities means a low pressure water supply system including generator, pipes, pumps, pump sheds, storage tanks, meters, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground) and anything in replacement or other infrastructure necessary to take and convey the Water Volume from the Bore on the Company Land through the Scheme Facilities to the boundary of each Lot.

Term has the meaning given to it in clause 2.1.

Water Volume means an amount of water not exceeding 11,506 litres per week per Lot.

1.2 In this agreement unless the context otherwise requires:

- 1.2.1 expressions defined in the main body of this agreement have the defined meaning in the whole of the agreement, including the background;
- 1.2.2 section, clause and other headings are for convenience only and will not affect the interpretation of this agreement;
- 1.2.3 singular will include plural and vice versa;
- 1.2.4 where any term defined in this agreement takes a different form for reasons of grammar, the different form has a corresponding meaning;
- 1.2.5 reference to a party will include that party's executors, administrators, successors and permitted assigns;
- 1.2.6 reference to "dollars" and "\$" refers to New Zealand dollars (NZ\$);
- 1.2.7 references to times of day or dates are to New Zealand times and dates respectively unless specifically stated otherwise;
- 1.2.8 any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- 1.2.9 the terms "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form.

2. Term

- 2.1 This agreement shall commence on the Commencement Date and shall continue until terminated in accordance with its terms (**Term**).

3. Provision of Water Supply

- 3.1 Subject to the terms of this agreement, the Company shall throughout the Term provide the Association with the Water Volume in accordance with the terms of this agreement and in consideration of payment of the Fee.
- 3.2 The Association shall only take Water Volume for the purpose of a private community supply.

4. Fees

- 4.1 The Association shall pay the Fee to the Company for the Water Volume, in accordance with the terms of this agreement.
- 4.2 The Fee for the period from the Commencement Date to the 31 March 2021 is estimated at \$5,000 plus GST plus the actual costs incurred by the Company to repair, replace and maintain the Scheme Facilities.
- 4.3 Subject to clause 4.3, no less than 60 days prior to the end of each Accounting Period during the Term, the Company:
- 4.3.1 will (in its discretion) undertake a review to determine the Fee to apply in the following Accounting Period;
 - 4.3.2 in determining the Fee, the Company shall take into account operational costs, provision for adequate capital reserves for maintenance and replacement of the Scheme Facilities and the Bore, adequate reasonable return on investment and/or market factors, provided that the Fee shall be comparable to the fees charged by other similar water schemes in the Tasman District Council district in the relevant period. When assessing the comparability of the Fee with fees charged for similar water schemes in the Tasman District Council district, the Company may take into account an anticipated increase in the charges for those similar water schemes where the charges have not been approved by the Tasman District Council at the time the Fee is set by the Company. This clause shall be taken to refer to, amongst others, the low pressure rural schemes (Ruby Bay, Mapua, Best Island, Brightwater, Richmond, Hope) operated as an extension of urban schemes operated by the Tasman District Council.
- 4.4 If there is a change to the Fee, the Company shall no less than 30 days prior to the end of the then current Accounting Period, notify the Association of the Fee to apply in the following Accounting Period,
- 4.5 If the Company provides no such notification to the Association, then the Fee for the following Accounting Period shall be the same as the Fee for the then current Accounting Period.
- 4.6 If the Association does not accept an increase in the Fee under clause 4.3, it can terminate the agreement pursuant to clause 9.1.

5. Invoicing and payment

- 5.1 The Company shall submit a valid tax invoice to the Association for the Fee annually in advance for the applicable Accounting Period (or part accounting period, if applicable, in the first and last years of the Term).

- 5.2 The Association shall promptly, and not later than the 20th day of the month following the date of the invoice, pay to the Company the amount in the invoice in full without deduction or set off (subject to clause 5.4).
- 5.3 If for any reason other than the default of the Company, the Association fails to make any payment payable under this agreement on the date it is due and in the manner specified in this agreement, then the Association will pay interest at the Default Interest Rate to the Company on the unpaid amount. This provision does not limit the Company's ability to terminate the agreement pursuant to clause 9.3.
- 5.4 If the Association disputes any portion of any amount appearing as payable on any invoice issued to it by the Company under this agreement, the Association will promptly notify the Company of that dispute. The Association will pay any undisputed portion of each invoice on the due date for payment under this clause 5 but may withhold payment of the disputed portion until the dispute is resolved between the Association and the Company.

6. Water Volume

- 6.1 The Company shall not be obliged to make available to the Association more than the Water Volume of water or such lesser amount pursuant to clause 6.2. This shall be measured by a meter in the supply line, and the parties acknowledge that the Company will be considered to be delivering the Water Volume where it delivers at least 90% of the intended Water Volume (recognising the inherent variation in volume that is to be expected with the use of meters). The meter shall be installed by the Company.
- 6.2 A decision to restrict the Water Volume may be made by the Company, acting reasonably, in anticipation of a water shortage. In these circumstances, the Fee will be reduced on a proportionate basis until full services are restored, unless the restriction results in a reduction of no more than 25% of the Water Volume for no longer than 2 months at any time in which case the parties agree that the impact is not material and that no reduction in Fees is required.

7. Association Responsibilities

- 7.1 The Association acknowledges that the Bore and Scheme Facilities are owned by the Company.
- 7.2 The Association shall not directly or indirectly interfere with or disrupt in any way the proper functioning of the Bore and the Scheme Facilities, including without limitation tampering with connections or meters or any component of the Scheme Facilities.
- 7.3 The Association will ensure that each Lot Owner:-
- 7.3.1 does not interfere with or disrupt in any way the proper functioning of the Bore and Scheme Facilities, including without limitation tampering with connections, meters and any component of the Scheme Facilities.
 - 7.3.2 maintains its own facilities and/or equipment connected to the Scheme Facilities so that the Water Volume is used efficiently and without undue waste.
- 7.4 The Association will monitor the water usage by each Lot Owner and will manage such usage to ensure that the Association does not breach the terms of this agreement or the Consent.
- 7.5 In the event that the Association draws in excess of the Water Volume from the Bore, the Association will pay to the Company any additional charges incurred by the Company and associated with such breach by the Association (including but not limited to any Tasman District Council charges).

8. Easement Instrument 11122520.7

- 8.1 In relation to the Easement Instrument, the Association acknowledges that whilst the Company owns the Scheme Facilities, the Company is an invitee of the Association and as such the Company receives the benefit of the rights and powers of the Grantee pursuant to the Easement Instrument.
- 8.2 The Company hereby indemnifies the Association from any losses, claims, actions, proceedings, liabilities and payments whatsoever arising from the Company's breach of any terms of the Easement Instrument.
- 8.3 The Company may assign or transfer its interest as invitee pursuant to clauses 8.1 and 8.2 without the consent of the Association.

9. Termination

- 9.1 The Association may terminate this agreement by giving 60 days written notice to the Company.
- 9.2 The Company may terminate this agreement immediately by written notice to the Association if the Association is removed from the register of Incorporated Societies.
- 9.3 Either party may terminate this agreement immediately by written notice to the other party if the other party is in default as specified in clause 9.4.
- 9.4 A party shall be in default under this agreement if it:
- 9.4.1 fails to pay an undisputed amount due under this agreement by the due date for payment and fails to remedy such failure within 30 Business Days after receiving written notice from the other party requiring the failure to be remedied;
 - 9.4.2 materially breaches, or fails to properly or promptly perform, any of its obligations (other than payment obligations) under this agreement, including a breach of any term of this agreement, where that party fails to remedy the breach within 10 Business Days after receiving written notice from the other party requiring the failure to be remedied.
- 9.5 Expiry or termination of this agreement:
- 9.5.1 is without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that either party has in respect of a default by the other party; and
 - 9.5.2 shall not affect those provisions of this agreement which are intended to continue after termination.
- 9.6 The Association acknowledges and accepts that following termination or expiry of this agreement the Company may notify the Tasman District Council that it is no longer supplying water to the Association.

10. Liability and indemnity

- 10.1 The Association will take all reasonable care to ensure that the Lot Owners take all reasonable care in using the Water Volume supplied pursuant to this agreement and hereby confirms that the Company will not be responsible for any loss, damage or injury sustained by a Lot Owner(s) or the Association or any Invitee, except (subject to clause 10.3) where such loss, damage or injury arises by reason of or in connection with:
- 10.1.1 any material breach of this agreement by the Company; or
 - 10.1.2 any wilful, unlawful or negligent act or omission of the Company.

- 10.2 Subject to clause 10.3, the Association shall be responsible for loss or damage which is caused by:
- 10.2.1 any material breach of this agreement by the Association or Lot Owners; or
 - 10.2.2 any wilful, unlawful or negligent act or omission of the Association, Lot Owners or any Invitee.
- 10.3 To the extent permitted by law, neither party shall be liable for special, indirect or consequential loss or damage or for any loss of business or profit of the other party, whether or not the possibility of such loss or damage could have been reasonably foreseen. However if the Tasman District Council withdraws or cancels the Consent due to the actions of the Association or a Lot Owner or Lot Owners, Mahana Ridge Limited shall be able to claim any loss of business or profit from the Association.
- 10.4 The Consumer Guarantees Act 1993 ("CGA") will apply unless the Association is acquiring the Water Supply for use in trade or a manufacturing or production process. As a consumer, the Association is entitled to certain guarantees under the CGA. If the Company breaches any of these guarantees, the Association's rights of redress are set out in the CGA. However, where the Association acquires the Water Supply for the purposes of trade, the Association agrees that the warranties and guarantees in the CGA will not apply to the Association (and that the Association will have no right to make a CGA related claim against the Company) in respect of the supply to the Association under this agreement.
- 11. Force majeure**
- 11.1 Neither party (the "Affected Party") will be liable for any delay or for any failure to fulfil its obligations under this agreement as a consequence of a Force Majeure Event.
- 11.2 The Affected Party shall:
- 11.2.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the nature, effects and expected duration of the Force Majeure Event; and
 - 11.2.2 use all reasonable endeavours to continue to perform its obligations as required under the terms of this agreement and to mitigate the effects of the Force Majeure Event on the performance of its obligations under this agreement.
- 11.3 If the Company is the Affected Company under this clause 11, then the Fee will be reduced on a proportionate basis until full services are restored, unless the Force Majeure Event results in a reduction of no more than 25% of the Water Volume at any time in which case the parties agree that the impact is not material and that no reduction in Fees is required.
- 12. Notices**
- 12.1 Any notice given pursuant to this agreement will be deemed to be validly given if either:
- 12.1.1 personally delivered;
 - 12.1.2 posted; or
 - 12.1.3 sent by electronic means (commonly known as email),
- to the address or email address of the party to be notified set forth below or to such other address or email address as the party to be notified may designate by written notice given to all the other parties.

The Company

Address: 6 Brooks View Heights, Upper Moutere 7173
Email: carsten@mahanaridge.nz
Phone 027 971 4560
Attention: Carsten Buschkuehle

Association

Address: 6 Brooks View Heights, Upper Moutere 7173
Email: carsten@mahanaridge.nz
Phone(s) 027 971 4560

- 12.2 Any notice given pursuant to this agreement will be deemed to be validly given:
- 12.2.1 in the case of delivery, when received;
 - 12.2.2 in the case of posting, on the second day following the date of posting;
 - 12.2.3 in the case of electronic transmission by email, at the time specified in the email transmission which was not returned as undeliverable or as containing any error.

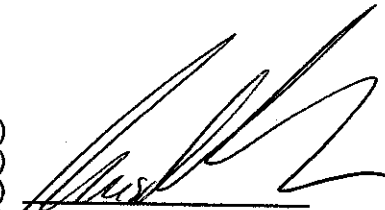
- 12.3 If the delivery or transmission of any notice given under this agreement is on a day which is not a Business Day, or occurs after 5.00 p.m. (local time) on any Business Day, the notice will be deemed to be received on the next following day which is a Business Day.

13. General

- 13.1 The Company may assign or subcontract the provision of all or any part of the water supply of the Water Volume under this agreement upon giving at least 60 days written notice to the Association. If the Association does not accept the assignment or subcontracting under this clause 13.1, it can terminate the agreement pursuant to clause 9.1.
- 13.2 Except as otherwise specified in this agreement and as required by the Company to comply with any relevant law or any resource consent, this agreement may only be amended in writing executed by both parties.
- 13.3 Any failure by a party to enforce any clause of this agreement, or any forbearance, delay or indulgence granted by that party to any other party will not be construed as a waiver of the first party's rights under this agreement.
- 13.4 The parties agree to execute all such documents and do all such acts or things as may reasonably be required in order to give effect to the terms of this agreement.
- 13.5 This agreement will be governed by, and construed in accordance with, the laws of New Zealand. The parties irrevocably submit to the exclusive jurisdiction of the Courts of New Zealand with respect to any legal action, suit or proceeding or any other matter arising out of or in connection with this agreement.
- 13.6 This agreement may be executed and exchanged in any number of counterparts (including copies, facsimile copies and scanned email copies) each of which is to be deemed an original, but all of which together are to constitute a binding and enforceable agreement between the parties.

SIGNATURES

SIGNED by
Mahana Ridge Limited
In the presence of:-

)
)
) 
) Director

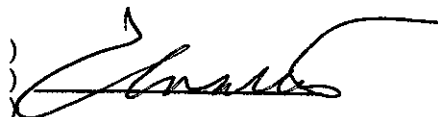
Witness signature: 

Witness Name: Nick Bennett

Witness Occupation: Engineer

Witness Address: 27 A Higgs Rd

SIGNED by
Mahana Ridge Residents'
Association Incorporated
In the presence of:-

)
) 
)

Witness signature: 

Witness Name: HILARY GOODWIN

Witness Occupation: DIRECTOR

Witness Address: 5 MAHANA RIDGE, UPPER MOUTERE

Mahana Ridge Limited
C/- 6 Brooks View Heights
Upper Moutere

Mahana Ridge Residents' Association Incorporated
6 Brooks View Heights
Upper Moutere

Re: Estimate of Water Supply Fee

12 Month Period Commencing 1 April 2020

Estimate of annual Fee pursuant to Water Supply Agreement including:-

Pump and Tanks	3,000.00
Carrying out weekly meter readings and providing details to Tasman District Council	2,000.00
Tasman District Council administration fee	255.00
NOTE: Maintenance of infrastructure as and when required to be charged at actual cost incurred by Mahana Ridge Limited	

Estimate costs	5,255.00
GST @ 15%	788.25
Total estimate per annum	\$6,043.25