

MUNICIPAL SERVICES AGREEMENT

THIS AGREEMENT MADE IN DUPLICATE 5th day of Jan
_____, 2000

BETWEEN:

KAHKEWISTAHAW FIRST NATION NO. 72,
An Indian Band as defined in The Indian Act
(the "Band")

AND

THE CITY OF YORKTON,
A Municipal Corporation located in
The Province of Saskatchewan. Pursuant
To the provisions of The Urban Municipality Act,
1984 S.S. 1983-84, Chapter U-11
(the "City")

WHEREAS the Band seeks to have certain lands situated within the boundaries of
the City set aside as an Urban Reserve, namely:

Block 63
And all of Parcel "Z"
Yorkton, Saskatchewan
Plan 68Y04659

Except: All those portions on Plans 72Y07045 and 88Y11708 and Parcel
"E" as outlined in proposed plan of subdivision dated November 9, 2000

MINES AND MINERALS EXCEPTED

(the "Lands")

In accordance with The Indian Act R.S.C. 1985, Chapter I-5 for the use and benefit of the
Band pursuant to a Settlement Agreement as entered into between Her Majesty the Queen
in the Right of Canada and the Band dated March 13, 1992.

AND WHEREAS the parties wish to enter into an agreement outlining the types
of services to be provided by the City to the Lands and the compensation to be paid
therefore by the Band.

NOW THEREFORE IN WITNESSETH that in consideration of the mutual covenants, promises and conditions herein contained the parties hereto agree as follows:

1. **USE OF THE LANDS**

- 1.01 It is agreed by the Band and the City that any property constructed or utilized on the Lands shall be used for the establishment of a gaming, lounge, casino, restaurant, gift shop, service station, commercial ~~land~~ *MALL 9B* complex together with any other uses permitted in a C-1 Central Business District, however, shall not include the operation of a bingo hall. *ST*
- 1.02 It is agreed by the City that for the purposes of calculating the amount to be paid by the Band to the City for municipal services, the Lands shall be zoned C1 Commercial to reflect the use of said Lands. *ST*
- 1.03 It is agreed by the Band that any alterations, renovations and/or additions to the improvements (building) shall be in accordance with the National Building Code and Regulations, and the Uniform Building and Accessibility Standards Act, and shall immediately be reported to the City and the Band shall allow the City Assessor, or any agency acting on behalf of the City in accordance with Section 3.06, access to the property to re-assess the valuations for purposes of payment to the City as contemplated by this Agreement, which may, if deemed by the City, result in a supplemental invoice.
- 1.04 It is agreed by the Band that all illuminated signage on the building housing the Casino shall be on the north side of the building or the east side of the building and that no illuminated signage will be on the south side of the building.

2. **TAXATION OF THE LANDS**

- 2.01 It is acknowledged by the City that the Band is the sole Taxing Authority in respect of the Lands. The City shall not tax the Lands or any portion of the Lands, any improvements on the Lands, or any occupants of the Lands, pursuant to The Urban Municipality Act, 1984 of the Province of Saskatchewan as amended from time to time or pursuant to any other applicable tax legislation.

3. SERVICES

- 3.01 The City shall provide and the Band shall accept in respect of the Lands, municipal services to the same extent and at the same level of services as the City would normally provide to similarly zoned lands within the City boundaries (the "City Services") provided, however, that services shall specifically exclude those services provided by other levels of government, including without limitation, the Public and Separate School Boards.
- 3.02 The City shall have no greater liability or obligation with respect to the supply of services pursuant to the provisions of this Agreement than it has to owners and occupiers of lands, improvements and businesses in the City generally, and all defenses available to the City with respect to the provision or interruption of services under the Urban Municipality Act, 1984 shall be available to the City as if incorporated herein.
- 3.03 The Band agrees to pay to the City, in consideration for the provision of municipal services to the Lands, an annual amount which equals the Band's share of the costs in providing the services with respect to the Lands in any given year. Such share of the costs for the services shall be based upon the assessed value of the Lands from time to time, having regard to improvements thereto, and its occupants, including any and all discounts, abatements or other similar reductions as may be applicable to any other similar properties located within the City of Yorkton. The foregoing calculation of the assessed costs for providing the City services to the Band shall exclude assessments on behalf of any Public or Separate School Board, but shall include all levies that are specific to the provision of Municipal services, where applicable. For purposes of the calculation contemplated by this Article 3.03, the calculation shall be as follows:

The assessed value times the municipal mill rate equals the amount.

- 3.04 In consideration the provision of Municipal Services, the Band shall tender payment to the City as follows:
- a) Such sums as referred to in Article 3.03 including, without restricting the generality of the foregoing:
 - i) Off-site levies and local improvements as assessed against the Lands, if applicable

The City shall invoice the Band no later than the 31st day of May in each year. Such invoice shall set out the amount of the costs assessed and levied by the City against the Lands, the improvements on the

Lands, the occupants of the Lands in respect of the current calendar year. Such invoices shall be paid in full to the City by the 31st day of August in each year.

- b) The Band shall pay to the City water and sewer and any other direct service charges from time to time charged by the City, calculated on the same basis as other consumers of such services within the City boundaries and the City shall invoice the Band accordingly.
- c) Notwithstanding any other provision of this Agreement, it is understood and agreed that the amount to be paid by the Band to the City for services shall not cover those services which are normally provided by the City, or by other contractors, in consideration for a direct charge payable by the party to whom such services are provided including, without limitation, sewer and water charges and waste management charges. Such services shall be paid for by the Band or by the occupant to whom such services are provided in the same manner as any other party to whom such services are provided, including, where required by law, the remittance of any and all taxes imposed by Federal or Provincial legislation in relation to the provisions of such services.
- d) The City shall extend to the Band identical prepayment discounts in respect of the matters referred to in Article 3.04 above as it normally extends to owners, occupants and businesses of or upon similarly zoned lands within the City boundaries, from time to time.
- e) The Band shall, in the case of late payment of any sums contemplated in Article 3.04 above, be obliged to pay the City such sums as are equivalent to the interest penalties which would be payable by owners, occupants and businesses of or upon similarly zoned lands within the City boundaries, from time to time.

3.05 Should there be a default in payment of any of the sums referred to in Articles 3.03 and 3.04 above, the City reserves the right to suspend provision of any and all municipal services in respect of the Lands until such payments are made. The City, however, shall not suspend such services without having provided thirty (30) days written notice to the Band.

3.06 The Band shall allow personnel from the City Assessor's Office, or other City Department, upon providing reasonable notice to the Band, to have access to the Lands and the improvements thereon, and shall supply such information to the City as may reasonably be required from time to time, in order to allow the City to assess, or re-assess, the Lands and the

improvements thereon, to permit the City to calculate the Band's share of the costs of providing the City services to the Lands.

- 3.07 The City agrees that it shall, upon receipt of a request therefore from the Band, provide the Band with:
- a) all such assessment information and data as assembled by the City with respect to the Lands; and
 - b) if available, any other information regarding the cost of the provision of municipal services provided to the Lands by the City.

4. **BAND LAWS AND CITY BYLAWS**

4.01 It is acknowledged by the City that the Band has exclusive jurisdiction to enact laws pertaining to the Lands. Should the Band wish to exercise any of its powers under The Indian Act to pass laws or amend laws from time to time which in any way affect the Lands or the occupation, use, development or improvement of the Lands, the Band shall exercise those powers in the following manner:

- (a) The Band shall notify the City of its intention to pass or amend the law and shall submit a copy of the proposed law to the City for their review and comment no less than sixty (60) days prior to the date of its proposed adoption;
- (b) The Band shall ensure that laws adopted or amended are, to the extent possible, compatible with the Bylaws of the City in existence at the time of provision of the notice described in Article 4.01 (a) above and this Agreement;
- (c) Upon adoption, a certified copy of each law shall be provided to the City for their records.

4.02 Should the City:

- (a) Wish to exercise any of its powers to pass bylaws or amend bylaws which in any way affect the Lands or the occupation, use, development or improvement of the Lands or any property adjoining the Lands; or
- (b) Implement any form of additional services which would obligate the Band to pay an additional amount to the City pursuant to Article 3.03 and 3.04;

The City shall exercise those powers in the following manner:

- (i) The City shall notify the Band of its intention and shall submit a copy of the proposed bylaw or description of any new service to the Band for review and comment no less than sixty (60) days prior to the date of the proposed adoption ;
 - (ii) The City shall:
 - A. not enact a bylaw or implement a new form of service which has the effect of discriminating against the Band or any occupant of the Lands; and
 - B. attempt to ensure, in the case of bylaws, that all such bylaws or amendments are, to the extent possible, compatible with any Band laws having application to the Lands which may be in existence at the time of the provision of the notice referred to in paragraph (i) above;
 - (iii) Upon enactment, a certified copy of each bylaw shall be provided to the Band for their records.
- 4.03 (a) The Band acknowledges, subject to Section 35 of the Constitution Act, 1982, that:
- (i) All laws enacted by the Parliament of the Dominion of Canada, except where in conflict with the provisions of the Indian Act; and
 - (ii) All laws enacted by the Legislature of the Province of Saskatchewan, or by the Council of the City of Yorkton thereunder, and being of general application and not in conflict with the provisions of the Indian Act, or any Band law validly enacted thereunder;
- Shall be enforced upon the lands and prosecuted according to law, to the same extent and in the same manner as such laws are enforced and prosecuted in the City of Yorkton and the Province of Saskatchewan generally.
- (b) In the event of a dispute between the parties as to whether a provincial law or municipal bylaw is a law of general application which applies to the Land and may be enforced as such on the Lands, the parties agree to meet to try to develop a practical solution which respects the Band's jurisdiction and the City's need for compatibility of occupation, use, development and improvement.

- (c) If the parties fail to reach a practical solution which is satisfactory to both parties and legal proceedings are commenced by either party to determine the question of applicability of provincial laws and municipal bylaws, then nothing in this section shall be construed to diminish, derogate from or prejudice the constitutional treaty or other rights of either party nor affect their legal position in the matter.

5. TERM OF AGREEMENT AND AMENDMENT

- 5.01 The Band and the City agree that the term of this Agreement shall be for the same duration as the Lands remain Reserve land under the provisions of the Indian Act. This Agreement shall commence immediately upon the Lands receiving Reserve status.
- 5.02 If at any time during the term of this Agreement the parties shall deem it necessary and expedient to make any alteration or addition to this Agreement they may do so by means of a written agreement between them which shall be supplemental and form part of this Agreement.
- 5.03 Should the Band be in breach of any of its covenants or undertakings hereunder, which condition of breach continues unrectified for a period of ninety (90) days following written notification by the City of such breach, the City may, at its option, and without prejudice to any other remedy which may be available forthwith terminate this Agreement, or otherwise suspend or withdraw any service being provided pursuant to the provisions hereof.
- 5.04 Should the City be in breach of any of its covenants or undertakings hereunder which condition of breach continues unrectified for a period of ninety (90) days following written notification by the Band of such breach, the Band, may at its option, without prejudice to any other remedy which may be available, forthwith terminate this Agreement, or otherwise suspend or withdraw payment for any service being provided by the City to the Band pursuant to the provisions hereof.

6. JOINT MEETINGS

- 6.01 The City and the Band acknowledge and agree that in order to successfully fulfil their respective mandates, it is essential that they work together in a spirit of co-operation, and maintain an open and ongoing dialogue with respect to their various inter-relationships. Towards this end, the City and the Band hereby agree that their respective Councils may hold a joint meeting as soon as is practicable in each year during the currency of this Agreement, and so often thereafter in each year as may seem necessary or

desirable, with a view to ensuring the harmonious operation of this Agreement, and the resolution of such issues as may arise hereunder

7. ARBITRATION

- 7.01 In the case of any dispute between the parties as to the application, interpretation or administration of this Agreement, or as to any amount payable by the Band for the provision of municipal services provided for hereunder, the parties may jointly elect to refer the dispute to binding arbitration by means of jointly submitting the matter in dispute to a single arbitrator to be selected by the parties. Should the arbitration involve a dispute regarding the payment of any amounts payable by the Band for the provision of municipal services hereunder, the parties acknowledge and agree that the Band shall tender to the City payment of the amounts stated in the invoices submitted to the Band pursuant to the provisions of Article 3.04 hereof. Further, in determining any dispute involving the amount payable by the Band for the provision of municipal services provided for hereunder, the parties acknowledge and agree that without in any way restricting the ability of the Band to raise arguments in response to any arbitration hearing, the Band shall have the right to raise in response to any arbitration conducted be it in relation to the calculation of the assessed value of the lands as determined in accordance with Article 3.03 hereof or otherwise, any permitted ground of appeal that would otherwise have been available to the Band under the provisions of The Urban Municipality Act, 1984, The Planning and Development Act together with any other applicable piece of provincial legislation as may exist from time to time had the lands not formally attained Reserve status. Further the parties also acknowledge and agree that should the arbitrator hearing the matter make an award in favour of the Band the arbitrator shall in addition to any other remedies which they may award, order the City to pay to the Band interest on such award as calculated at the rate of 1% per month (or 12% per annum) from the date of the initial payment of the invoice by the Band pursuant to the provisions hereunder.
- 7.02 In the event the parties should be unable to agree to the appointment of an arbitrator within thirty (30) days of agreeing to refer the matter in dispute to arbitration, then an arbitrator may, upon the application of one of the parties, be appointed by a Judge of the Court of Queen's Bench.
- 7.03 The parties covenant with each other that the jurisdiction of the arbitrator so appointed shall be limited to deciding upon the issue set forth in the joint submission for arbitration, unless the parties agree to extend the jurisdiction of the arbitrator to include deciding upon such other issues as the parties consent to. The decision of the arbitrator so appointed shall be final and binding upon the parties, who further covenant with each other

that such dispute, upon being referred to arbitration shall be decided by arbitration alone and not by recourse at law.

- 7.04 Each party shall assume its own costs of the arbitration and shall share equally in the fee of the arbitrator and any other general expenses of the arbitration.
- 7.05 Subject to the terms of this Agreement, or unless otherwise agreed by the parties, each arbitration pursuant to this Agreement shall be governed by and conducted pursuant to the Commercial Arbitration Code, being a schedule to The Commercial Arbitration Act, R.S.C. 1985, cc. 17 (2nd Supp.) and all regulations made and, from time to time, in force under that Act.
- 7.06 Except as otherwise provided herein, the Arbitrator shall determine his own procedure and all questions relating to the conduct of the arbitration.

8. NOTICES

- 8.01 Any notice given or required to be given under this Agreement shall be in writing and shall be deemed to have been given when mailed by registered mail, postage prepaid to the other party at the address stated below or at the latest changed address given by the party to be notified as hereinafter specified:

Kahkewistahaw First Nation # 72
P.O. Box 609
Broadview, Saskatchewan
S0G 0K0

Attention: Chief and Council

The City of Yorkton
P.O. Box 400
Yorkton, Saskatchewan
S3N 2W3

Attention: City Manager

Either party may, at any time, change its address for the above purpose by mailing, as aforesaid, a notice stating the change and setting forth a new address.

9. MISCELLANEOUS PROVISIONS

- 9.01 The application, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the laws of Canada as applicable herein. Further the parties covenant and agree to attorn to the jurisdiction of the Court of Queens Bench in relation to any actions or proceedings as taken in relation hereto.
- 9.02 The parties shall co-operate in exchanging and providing all information necessary to carry out in good faith the terms and conditions of this Agreement. The parties shall at any time and from time to time execute and deliver any such document or documents and take such step or steps as shall be necessary to give effect to the terms of this Agreement.
- 9.03 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors, administrators and assigns.
- 9.04 This Agreement shall become valid and effectual in respect of the Lands as and when such lands are set aside as a Reserve pursuant to the provisions of the Indian Act.
- 9.05 The parties represent and warrant to each other that they possess the requisite authority required under law to enter into the within Agreement and that prior to the execution of this Agreement each has passed the appropriate motions, resolutions and/or supporting documentation necessary in order to give effect to the terms of this Agreement.

10. EFFECTIVE DATE

- 10.01 The parties acknowledge and agree that the effective date for calculation of charges for services as contemplated in Article 3 hereof, shall be the date that the Lands receive official Reserve status and the Band agrees to provide notice in writing accompanied by the appropriate notice from Her Majesty that the Lands have been so set aside for the use and benefit of the Band.

IN WITNESS WHEREOF the City has hereunto affixed its corporate seal duly attested by the hands of its proper officers in that behalf, and the undersigned Chief and Councillors of the Kahkewistahaw First Nation No. 72 have on behalf of the Band set their hands and seals as of the day and year first above written.

The Kahkewistahaw First Nation No. 72

<u>[Signature]</u> Witness	<u>[Signature] #252</u> Chief
<u>[Signature]</u> Witness	<u>[Signature] #469</u> Councillor
<u>[Signature]</u> Witness	<u>[Signature] #328</u> Councillor
<u>[Signature]</u> Witness	<u>[Signature] #652</u> Councillor
<u>[Signature]</u> Witness	<u>[Signature] #401</u> Councillor

The City of Yorkton

Witness

[Signature]
Mayor

Witness

[Signature]
City Clerk