

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

SEWER AND WATER EASEMENT

This Easement made in quadruplicate as of the 17th day of December 2002

December cd.

BETWEEN:

HER MAJESTY THE QUEEN in Right of Canada, represented herein by the Minister of Indian Affairs and Northern Development (herein "Her Majesty")

AND:

THE CITY OF YORKTON, a municipal corporation registered pursuant to the provisions of The Urban Municipality Act 1984, s.s. 1983-1984, Chapter U-11, with offices located in the City of Yorkton, in the Province of Saskatchewan (herein "the City")

THIS DOCUMENT HAS BEEN REGISTERED IN THE INDIAN LANDS REGISTRY AS NUMBER 315487

WHEREAS:

RESERVE

A. The Kahkewistahaw Indian Reserve No. 72A-1 (herein "the Reserve") is a reserve within the meaning of the Indian Act, R.S.C. 1985, c. I-5, as amended (herein "the Act").

BAND

B. The Kahkewistahaw Band (herein "the Band") is a band as defined pursuant to Section 2(1)(a) of the Act.

SETTLEMENT AGREEMENT

C. The Reserve has been set apart for the use and benefit of the Band, pursuant to a Settlement Agreement between Her Majesty and the Band dated March 13, 1992.

PRIOR INTEREST

D. The City had, immediately prior to the creation of the Reserve, an Easement dated July 12, 1968 as amended by Agreement dated May 16, 1975, protected by way of caveat and registered against titles to construct, maintain, reconstruct, re-install, inspect, repair, replace and operate a water main and sewer forming a part to the municipal sewer and water systems of the City of Yorkton (herein "the Prior Interest").

REPLACEMENT INTEREST

E. The City agreed to discharge the Prior Interest in consideration of this Easement with Her Majesty, by and with consent of the Council of the Band (herein "the Band Council").

AUTHORITY

F. Her Majesty has agreed to recommend, pursuant to Section 35(3) of the Act, the issuance of the Governor-in-Council's Order authorizing the grant of an Easement to the City for purposes herein described.

ORDER-IN-COUNCIL

G. Order-in-Council P.C. 2002-1430 dated the 8th day of August, A.D. 2002 as amended by Order-in-Council P.C. 2003-1949 dated the 3rd day of December, A.D. 2003, has authorized the Minister of Indian Affairs and Northern Development to execute this Easement in favour of the City in accordance with the terms and conditions hereinafter set forth.

RELOCATION OF SEWERMAIN LINE

4. If, at any time and at the sole discretion of the City of Yorkton or its agents, it is necessary to abandon the existing location of the sanitary sewermain located under the Lands due to the activities of Her Majesty or the Band or any lessees of Her Majesty, the sewermain shall be re-located around any buildings constructed by the Band or any lessees of Her Majesty, and all costs incurred in re-locating the sewermain shall be the responsibility of the Band, as evidenced by the contractual agreement between the City and the Band dated January 17, 2002 attached hereto as Schedule "B".

INDEMNIFICATION AND EXEMPTION

5. (a) The City shall indemnify and save harmless Her Majesty from and against and be responsible for all actions, claims and demands that may be instituted, brought or made against Her Majesty whether by way of judgement, compromise or settlement by reason of any act or omission by the City with the respect to this Easement.

(b) Her Majesty shall not be liable for any injuries, loss or damages to persons or property which may arise from the granting of this Easement.

SERVICE FOR NOTICE

6. Whenever in this Easement it is required or permitted that notice or demand be given or served by either party to this Easement to or on the other, such notice or demand shall be sufficiently communicated if forwarded by personal service or registered mail, addressed as follows:

To Her Majesty: Director, Lands and Trust Services
Department of Indian Affairs and Northern Development
2221 Cornwall Street
Regina, Saskatchewan
S4P 4M2

To the City: City of Yorkton
P.O. Box 400
Yorkton, Saskatchewan
S3N 2W3
Attention: City Manager

The said address may be changed from time to time by either party serving notice in writing.

COVENANT RUNNING WITH THE LAND

7. This Easement is and shall be of the same force and effect to all intents and purposes as a covenant running with the Land and this Easement, shall extend to, be binding upon and enure to the benefit of the heirs, executors, administrators, successors and assigns to the parties hereto respectively.

DISPUTE RESOLUTION

8. Any dispute or disagreement as to environmental damage arising hereunder, which the parties are unable to resolve by agreement, shall be determined by the Federal Court of Canada or any other court of competent jurisdiction.

NON-ENTITLEMENT

9. No member of the House of Commons shall be entitled to any share or part of the within Easement or to any benefit arising therefrom.

- QUIET POSSESSION 10. The City, performing and observing the covenants and conditions on its part to be performed and observed, shall peaceably hold and enjoy the Easement herein granted without hindrance, molestation or interruption on the part of Her Majesty. *Obs*
- TIME OF ESSENCE 11. Time shall be of the essence (or any person occupying the land.)
- COVENANTS BINDING ON SUCCESSORS AND ASSIGNS 12. This Easement shall be binding upon the heirs, executors, administrators, successors and assigns of Her Majesty and the City.
- SINGULAR/PLURAL REFERENCE 13. In this Easement any words in the singular include the plural and words in the plural include the singular and the masculine includes the feminine and neuter where the context so requires.
- MARGINAL NOTES 14. The parties hereto covenant and agree that the marginal notes are included in this Easement only for convenience and do not form part of the covenants, provisos and agreements herein contained.

IN WITNESS WHEREOF Her Majesty has executed these presents, and the City has affixed its seal attested to by the hands of its duly authorized officers in that behalf, the day, month and year first above written.

SIGNED BY: **KEITH WALLS**
A Director
 Lands and Trust Services

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development

Per: *Keith Walls*
 For and on behalf of the Minister

THE CITY OF YORKTON

Per: *Phil De Vos*
 Phil De Vos, Mayor

Per: *Laurie Anne Rusnak*
 Laurie Anne Rusnak, City Clerk

SCHEDULE "A"

BAND COUNCIL CONSENT

WE, the undersigned, being a quorum of the Band Council, acknowledge and declare that we have at a duly convened band council meeting, held on the 11 day of February 2002 consented to the terms and conditions of this Easement and the issuance thereof pursuant to the provisions of section 35 of the *Indian Act*.

DATED this 21 day of May, 2002.

[Signature] #
Chief #358

[Signature] #652
Councillor

[Signature] #469
Councillor

[Signature] #
Councillor 357

[Signature] #993
Councillor

Councillor

Councillor

Quorum

Plot Showing Kahkewistahaw I.R. 72 A-1
Within the City of Yorkton
SASKATCHEWAN
Scale 1:1500

Exhibit A

Indian Reserve boundary shown thus

Broadway Street

HWY 10

88Y11708

86903 CLSR

72Y07045

86904 CLSR

Sewer

68Y04810

85148 CLSR_B

68Y04659
86902 CLSR

R.O.W.

63
I.R. 72 A-1
O.I.C. #
2002-1429
68Y04659
86902 CLSR
4.151 ha Kahk 03

01Y02763
86905^E CLSR

Dalebrooke Drive

Lakeview

AA5778

Road

Agreement
on
Water Main and Sewer Lines

This Agreement is made this 17 day of September 2007.

Between:

The Chief and Councillors of the Kahkewistahaw
Band of Indians on behalf of the Band
(herein "Kahkewistahaw")

and

The City of Yorkton, a municipal corporation pursuant
to the provisions of *The Urban Municipalities Act*
1984 S.S. 1983-84 c. U-11 in the Province of Saskatchewan
(herein the "City")

Whereas:

A) Kahkewistahaw is the owner of the following lands within the City of Yorkton:

All of Block 63 including parcel "Z" within the City of Yorkton, in the Province of Saskatchewan in the Dominion of Canada as such Block and parcel are shown outlined on a Plan of Record in the Land Titles Office for the Yorkton Land Registration District as No. 68Y04659,
Excepting therefrom a) Parcel "C" Plan 72Y07045
b) portion shown on Plan 88Y11708; and
c) Lot E Plan 01Y02763
(hereinafter referred to as "Block 63")

B) The City of Yorkton pursuant to an Agreement with a previous owner of Block 63 has obtained with respect to Block 63 an easement dated July 12, 1968, as amended by Agreement dated May 16, 1975, to construct, maintain, reconstruct, reinstall, inspect, repair, replace and operate a water main and sewer line forming a part of the municipal sewer and water systems of the City, which agreement is protected by way of caveat registered on the title to Block 63;

(herein the "Prior Interest")

C) To obtain reserve status to Block 63 pursuant to the Band's Specific Claim Settlement Agreement dated March 31, 1992, Kahkewistahaw requires the discharge of the said



easement and caveat from the title to Block 63 and agrees to replace the Prior Interest with this Agreement on the terms hereinafter set out;

D) The City has agreed to relinquish and discharge the City's caveat and the Prior Interest in Block 63 to accommodate Kahkewistahaw in consideration of this Agreement and a replacement Easement issued pursuant to section 35 of the *Indian Act* once Block 63 will have been set apart as a reserve;

E) The parties are desirous of establishing a cooperative and harmonious relationship to the mutual benefit of themselves and their respective interests;

Now therefore, in consideration of mutual covenants and agreements herein contained, the parties agree as follows:

1. The City shall discharge the Caveat and Easement in favour of the City from Block 63 and relinquish the Prior Interest and will provide an executed and registerable discharge of Caveat and Easement, to the office of the Federal Department of Justice at 101-22nd Street East, Saskatoon, Saskatchewan, S7K 0E1, in trust to be used only upon Block 63 having been set apart as a reserve for Kahkewistahaw.
2. Kahkewistahaw agrees to provide Band Council's consent, under section 35 of the *Indian Act* to be evidenced by a duly executed Band Council Resolution (BCR) sent to the Regional Office of the Department of Indian and Northern Development, 2221 Cornwall Street, Regina, Saskatchewan, S4P 4M2, to the issuance of an Easement the terms and conditions of which will mirror as closely as possible the terms of the Prior Interest, such Easement to be issued in favour of the City, at no cost to the City, once Block 63 will have been set apart as a reserve on terms of the proposed replacement Easement annexed hereto as Appendix "A".
3. Kahkewistahaw following issuance of the BCR referred to in paragraph 2, hereby agrees to request the Minister of Indian Affairs and Northern Development to execute and deliver a replacement Easement in the form of Appendix "A" hereto, to the City as soon as Block 63 will have been set apart as a reserve.
4. The parties recognize and acknowledge that:
 - a) The former business and improvements on Block 63 are no longer in existence and that new construction may occur on Block 63 which may necessitate moving the City's water main and sewer lines from their present location;
 - b) Should the water main and sewer lines require removal to accommodate the parties' interests, the City agrees, taking into account the nature of Kahkewistahaw's proposed operations on Block 63, to a negotiated location more acceptable to the parties;
 - c) Kahkewistahaw recognizes and acknowledges that the City does not accept building over the water and sewer lines, and agrees not to build within or over the Easement

hereby authorized. If any plans and designs require construction or erection of any building or structure over the Easement, which, requires that the water main and sewer lines be moved, such plans or designs shall be deemed to be Kahkewistahaw's request to the City to move the lines;

- d) In the move of the water main and sewer lines pursuant to subparagraph c), if the City, in its sole discretion, deems it advantageous to have the lines removed from all or part of Block 63 such removal shall be made at the City's expense except for the costs of the lines on Block 63 which costs shall be paid by Kahkewistahaw. Any plans of survey required to relocate the said water and sewer lines, whether on Block 63 or elsewhere should be wholly at the expense of the City.
5. The parties understand that Kahkewistahaw will be erecting a building or buildings on Block 63, but that Kahkewistahaw has not, as of the date of this Agreement, determined exactly where the footprint of the building or buildings will be situated on Block 63, so as to permit making a decision as to a possible relocation of the water main and sewer lines of the City crossing Block 63.
6. The location of the proposed construction on Block 63, having been decided and a relocation of the water and sewer lines found to be required, the City agrees to proceed forthwith upon the request of Kahkewistahaw therefor, to commence the relocation work and to complete the same in an expeditious and efficient manner so as not to delay Kahkewistahaw's proposed construction.
7. In doing the relocation work for the water main and sewer lines, the City agrees that it will abide by and be subject to all Federal, Provincial and municipal laws relative to the environment, and health and safety measures will be fully applied to such work.
8. Upon the City or the City's contractor commencing water main and sewer lines relocation work at the request of Kahkewistahaw, Kahkewistahaw agrees to pay to the City within 30 days of presentation to Kahkewistahaw by the City of the vouchers and accounts with respect to such relocation work, the full cost of such relocation work.
9. It is understood between the parties that this Agreement may be terminated at any time by written agreement of the Parties or will expire or come to an end when the City no longer requires the use of Block 63 for purposes of its water main and sewer lines installation.
10. It is agreed by the parties that the City may enter upon Block 63 with or without equipment for any purpose relative to the water main and sewer lines providing that such entry will be in such manner as to cause a minimum of interference or inconvenience to Kahkewistahaw, or Kahkewistahaw's assigns.
11. The City agrees to indemnify and hold harmless Kahkewistahaw from any action or cause of action by any person, firm or corporation arising out of the entry or work upon Block 63 by the City or the City contractors and agents for any of the purposes referred to in Recital B above.

12. The parties agree that if any dispute arises as between them relative to the said water main and sewer lines whether as to relocation thereof, repair, entry on Block 63 or for any other purposes relative thereto, such dispute shall be dealt with, where possible, through the progression of consultation, negotiation, mediation, arbitration and litigation.

13. For purposes of consultation, referred to in paragraph 12, the parties may establish regular meetings, the date and time of which will be set as between them.

14. The parties hereto acknowledge and agree that the intent and purpose of this agreement is to provide a satisfactory accommodation as between the City and Kahkewistahaw relative to the water main and sewer lines on Block 63 for the establishment of a cooperative and harmonious relationship between them to the benefit of their respective interests.

This Agreement and its benefits will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

KAHKEWISTAHAW INDIAN BAND

Per: L. Lewis [Signature]
Chief

Per: [Signature]
Councillor

Per: [Signature] #469
Councillor

Per: [Signature] #357
Councillor

Per: [Signature] #393
Councillor

THE CITY OF YORKTON

Per: [Signature]
affix Per:
corporate seal

Per: [Signature]
Signing officer must designate
their official capacity