

# **Municipal Services and Compatibility Agreement**

Between:

**Kahkewistahaw First Nation** (“Kahkewistahaw”)

- and -

**The City of Saskatoon** (“the City”)

## **Purpose**

1. The purpose of this Agreement is to establish a long-term relationship of practical cooperation between the parties which recognizes and respects Kahkewistahaw's separate jurisdiction, but which also recognizes the need for ongoing compatibility and coordination between the parties, particularly as to land use, building and fire standards, public health and safety, and business regulation, because of the close proximity of the Land to other land and businesses.

## **Introduction**

2. Under Canada's Additions to Reserve Policy, where a band wishes to have land placed into reserve status, the band is responsible to address third-party interests or concerns, and in the case the land is located within the boundaries of an urban municipality, the band must make all reasonable efforts to address any reasonable concerns raised by the urban municipality.
3. (1) Kahkewistahaw, through its wholly-owned and controlled corporation, 102005035 Saskatchewan Ltd., has acquired the land located at 1215 Claypool Drive, Saskatoon, Saskatchewan, currently described as Surface Parcel No. 161825159, Blk/Par Y, Plan 101902519 Extension 0 (the “Land”).  
  
(2) A subdivision application is underway to address roadway issues, prior to reserve creation, which will result in an amended legal land description. Upon conclusion of the subdivision, the amended legal land description identifying the boundaries of the land owned by Kahkewistahaw through its wholly-owned and controlled corporation, 102005035 Saskatchewan Ltd., will be attached to this Agreement as Schedule “D”.
4. The Land is situated within the boundaries of the City of Saskatoon in the Hampton Village Business Park area. Kahkewistahaw intends to have the Land set apart as a reserve pursuant to Canada’s Additions to Reserve Policy, as a community addition, and to develop the Land for economic development purposes.

5. The City specifically agrees to the Land being set apart as a reserve on the condition that the terms of this Agreement, as amended from time to time, shall apply to the Land so long as it remains reserve land. "Reserve land" shall, for the purposes of this Agreement, mean reserve land as defined by the *Indian Act*, R.S.C. 1985, c. I-5, and shall include designated and land of similar status under any successor legislation replacing the *Indian Act*, including land which Kahkewistahaw controls pursuant to the *First Nations Land Management Act* S.C. 1999, c.24.
6. The purpose of this Agreement is to set out the undertakings which each party has given to the other.

### **Joint Meeting of Councils**

7. Kahkewistahaw and the City agree that their respective Councils, and/or their representatives, will meet together at least once in each calendar year to discuss such matters as may have arisen between them, and to keep open the lines of communication.

### **City Services**

8. (1) The parties agree that the City shall provide all normal resident supported City services to the Land and the occupants of the Land (the "services"). The type and level of services supplied to the Land and the occupants of the Land shall be the same as the City supplies to similarly zoned lands within the City. Specifically, the services supplied to the Land will be those provided to an IL1-General Light Industrial Zoning District, as the services become available dependent upon the stage of development of the Land.
- (2) The services shall also specifically include policing by the Saskatoon Board of Police Commissioners as contained in the Police Services Agreement.
- (3) In providing the services, the City shall comply with applicable federal and provincial enactments and laws respecting the services.

### **Payment for City Services**

9. (1) Kahkewistahaw agrees to pay the City, in consideration for the services, an annual amount equal to one hundred percent (100%) of the municipal and library portion of the property tax levy for any given year that would have been levied on the Land, if the Land were non-reserve land. For greater certainty, the annual cost of services does not include an equivalent amount for the school portion of the property tax levy.
- (2) Kahkewistahaw agrees to annually pay, in addition to the amount required to be paid under subsection (1):
  - (a) any local improvement that would have been charged against the Land in an amount and in a manner as if the Land were non-reserve land;

- (b) any business improvement district levies that would have been charged against the Land in an amount and in a manner as if the Land were non-reserve land; and
  - (c) any special charges or levies that would have been charged against the Land in an amount and in a manner, provided the special charges or levies would have applied to the Land, if the Land were non-reserve land.
- (3) Notwithstanding any other provision of this Agreement, it is understood and agreed that the annual amounts to be paid by Kahkewistahaw under subsection (1) and (2) shall not cover those services which are normally provided by the City in consideration for a direct charge or user fee payable by the party to whom such services are provided. Such services include, but are not limited to:
- (a) the supply of water;
  - (b) the disposal of sewage; and
  - (c) the supply of electricity.

The charges for these services shall be paid by Kahkewistahaw or by the occupant of the Land to whom the service is supplied, in the same manner as any other party to whom such services are provided. Such payment will include, if required by law, any tax imposed by Federal legislation, Provincial legislation or Kahkewistahaw law in relation to the provision of such services.

### **Invoicing**

10. (1) The City shall invoice Kahkewistahaw for the payment for the services mentioned in subsection 9(1) and (2), at the same time that the City sends out tax notices in each year. This invoice shall be paid in full on or before June 30 in each year.
- (2) The invoice mentioned in subsection (1) shall include a detailed calculation for the specific year, which shall include the following:
- (a) the assessed value for any of the Land that remains vacant;
  - (b) the assessed value for each improvement or building located on the Land;
  - (c) the City's mill rate for the municipal and library portion of the property tax levy for any given year to be applied to the assessed values; and
  - (d) a separate calculation shall be provided for any vacant land and for each improvement or building situated on the First Nation lands, with a total amount due.

### **Discounts and Penalties**

11. (1) If the invoice for the services is not paid in full by June 30, any unpaid amount shall be subject to the same additional percentage charges that the City imposes on unpaid property taxes and arrears of property taxes.
- (2) Kahkewistahaw shall have the right in any year to prepay all or a part of the cost of the services. The same discount rates allowed by the City for prepayment of property taxes shall apply to any prepayment made by Kahkewistahaw.

### **Supplemental Invoice**

12. If, before December 1 in any year, a sum representing an increase in value of any improvement on the Land is added to the assessment roll, the City may send a supplemental invoice to Kahkewistahaw to reflect the resulting change. Any supplemental invoice shall provide the detailed calculation for the resulting change. A supplemental invoice sent to Kahkewistahaw under this section must be paid by Kahkewistahaw before December 31 in that year. If any portion of a supplemental invoice remains unpaid after December 31, it shall be subject to the same additional percentage charges that the City imposes on arrears of property taxes.

### **Remedies for Non-Payment**

13. If any invoice for services has not been paid in full by December 31 of the year in which it was issued, the City may, upon 30 days' notice, suspend or withdraw any or all of the services which it provides to the Land and/or the occupants of the Land, other than emergency response services by police and fire, until the invoice plus penalties has been paid in full. The City's right to suspend or withdraw services shall be without prejudice to any other remedy which may be available to the City.

### **Assessment Information**

14. (1) If Kahkewistahaw enacts and has not repealed its own property assessment and taxation laws then Kahkewistahaw shall be responsible to have the Lands, improvements and buildings assessed, in accordance with such laws, to be used to prepare the invoice(s) as set out in sections 10 and 12. The parties agree that the following process shall be followed:
  - (a) the assessments, which shall be calculated by the City's Assessors for Kahkewistahaw under a contract, shall be consistent with the assessment models used for similar non-reserve land in the City;
  - (b) upon completing the assessments for the Land, improvements and buildings, Kahkewistahaw shall provide the City with a copy of the assessments;

- (c) the City shall, within thirty (30) days of receiving the assessments, advise Kahkewistahaw whether it has any concerns with the assessments or whether the assessments are acceptable;
  - (d) if the City has any concerns with the assessments then it shall initiate discussions with Kahkewistahaw to resolve any concerns; and
  - (e) if the City finds the assessments acceptable then the assessments shall be used for the calculation for that year's invoice, in accordance with sections 10 and 12.
- (2) If Kahkewistahaw has not enacted or has repealed its own property assessment and taxation laws, then the City shall be responsible to have the Lands, improvements and buildings assessed, in accordance with its usual practises, to be used to prepare the invoice(s) as set out in sections 10 and 12. The parties agree that the following process shall be followed:
- (a) Kahkewistahaw shall allow the City, upon providing reasonable notice to Kahkewistahaw, to have access to the Land 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 reassess, the Land and the improvements thereon, in the same manner as if the City were assessing and levying tax on the Land or any portion thereof, the improvements thereto, its occupants, or on the owners of businesses conducted thereon;
  - (b) the City agrees to provide Kahkewistahaw, upon request, with a copy of the assessment information and data collected; and
  - (c) the City agrees that Kahkewistahaw, or anyone who has an interest in property affected by the valuation or classification of the property, may appeal the assessment of the Land and improvements in a process and manner afforded to all other property owners of land in the City.

### **Liability for Disruption of Services**

15. (1) In the event that services are disrupted for reasons other than suspension or withdrawal pursuant to paragraphs 13 and 16 of this Agreement, the City shall have no greater liability for such disruption than it has to the owners and occupants of other lands within the City. All defences available to the City under *The Cities Act* shall be available to the City as if incorporated in this Agreement.
- (2) The City shall have no liability for a suspension or withdrawal of services pursuant to paragraphs 13 and 16 of this Agreement.

**Land Use**

16. (1) Kahkewistahaw agrees that it will take all steps and do all things as may be necessary, including passing and enforcing compatible bylaws, as acts of Kahkewistahaw governance, to ensure that, at all times, the occupation, use, development and improvement of the Land is essentially the same as the occupation, use, development and improvement of the Land which would be allowed if the Land were non-reserve land. Specifically, Kahkewistahaw agrees to ensure such compatibility in regard to land use, building and fire standards, public health and safety, and business regulation.
- (2) If, at any time the occupation, use, development and/or improvement of the Land is not essentially the same as the occupation, use, development and/or improvement of the Land which would be allowed if the Land were non-reserve land, and such condition of breach continues for a period of 30 days following written notification by the City to Kahkewistahaw of such breach, the City may, at its option, and without prejudice to any other remedy which may be available, suspend or withdraw any or all of the services which it provides to the Land, and/or the occupants of the Land, other than emergency response services by police and fire, until the condition of breach has been remedied.

**Development of Land**

17. (1) It is acknowledged by the parties that the Land is currently in a raw and un-serviced state. A separate servicing agreement shall be entered into between Kahkewistahaw and the City prior to any development proceeding on the Land, which agreement may include payment to the City for all offsite and/or redevelopment levies and services then in effect for similarly zoned and developed non-reserve land in the Hampton Village Business Park area.
- (2) Levies are calculated based on a standard means and timeline of installing services by the City, should Kahkewistahaw wish to employ a method that varies from the standard, this may result in additional costs to Kahkewistahaw and may not be covered under the levies then in effect, unless the parties agree otherwise. Variations, should they exist, will be identified in the servicing agreement.
- (3) Kahkewistahaw agrees that the Land will be developed or redeveloped in accordance with the City development standards then in effect for similarly zoned IL1 - General Light Industrial Zoning Districts, non-reserve land in the City.
- (4) Kahkewistahaw agrees that all buildings or improvements will be constructed on the Land in accordance with City building standards then in effect for non-reserve land in the City. This will include a process for the issuance of the required building and development permits and payment of the corresponding

- fees then in effect for non-reserve land in the City which fees include, but are not limited to, services such as plan examination and site inspections.
- (5) Kahkewistahaw agrees to allow City inspectors onto the Land during any construction for the purpose of inspecting the buildings or improvements in accordance with the City's standard inspections then in effect for similar buildings or improvements on non-reserve land. Kahkewistahaw agrees to ensure that any defects or safety hazards noted by City inspectors are remedied in the same time frame and manner as would be in effect on non-reserve land.
  - (6) Kahkewistahaw agrees that the City is not required to provide connections to the Land or to begin supplying City services to the Land, unless servicing agreements are complete and any related payments owing have been received.
  - (7) Nothing in this section shall be construed so as to diminish, derogate from or prejudice the constitutional, treaty or other rights of either party.

### **Phasing of Development**

18. (1) Phasing of development of the Land is permitted with the first phase of development restricted to a service station and a carwash, unless the parties mutually agree to additional land uses. Development of the first phase shall be substantially in accordance with the site plan attached as Schedule "C" to this Agreement. Development shall occur in accordance with paragraph 17.
- (2) Development shall not proceed beyond the first phase unless a concept plan for the remaining portions of the Land has been agreed upon by the parties.
- (3) The concept plan shall provide details on the proposed land uses, transportation network, services and any other relevant information required to evaluate the proposal. The concept plan shall include:
  - (a) detailed information on proposed development area (planning and technical rationale for the development);
  - (b) necessary diagrams and maps to demonstrate proposed development;
  - (c) technical reports prepared by a professional engineer licensed to practice in the province of Saskatchewan including, but not limited to, transportation impact assessment, sanitary sewer and storm water management;
  - (d) a method for addressing the provision of public roads, buffer strips, utility parcels and recreation space;

- (e) comments from appropriate utility agencies;
- (f) comments from Transport Canada, the Saskatoon Airport Authority, NavCanada and such other agencies as may be appropriate; and
- (g) any other technical document necessary to determine appropriate use and development of the site.

### **Fire Services**

19. (1) Kahkewistahaw agrees that where, in the opinion of the Fire Chief of the City, a condition exists on the Land which is an imminent danger to the public safety, the Fire Chief and/or his agents may enter upon the Land and take any reasonable emergency action to eliminate the danger in a manner and process that is essentially the same for non-reserve land. The Fire Chief shall, whenever it is reasonably possible to do so, notify Kahkewistahaw and occupiers of the Land of any actions in advance.
- (2) Kahkewistahaw agrees that the Fire Chief and/or his agents may enter upon the Land to conduct annual fire inspections in the same manner as would occur on non-reserve land. Kahkewistahaw and occupiers of the Land will be advised of such inspection in advance of the inspection date.
- (3) In order to provide the notice as referenced in this section, Kahkewistahaw shall provide the City with contact information for the occupiers of the Land upon request.

### **Authority to Tax**

20. The City and Kahkewistahaw agree that, as between the parties, Kahkewistahaw shall be the sole taxing authority for the Land and the improvements, occupants and businesses located on the Land; provided however, and it is understood and agreed, that by entering into this Agreement, Kahkewistahaw is not acknowledging that the City does have the power to be a taxing authority on the Land, and the City is not acknowledging that it does not have the power to be a taxing authority on the Land.

### **Compatible Amount of Taxation**

21. (1) Kahkewistahaw agrees that any property assessment and taxation laws or grant in lieu of taxes agreements which it may enact or enter into regarding the Land and/or the improvements, businesses and occupants of the Land, shall impose an amount of property taxation or payment in lieu on the Land and the improvements, business and occupants of the Land, which is not less than the amount of property taxation which the City would have levied against the Land, improvements, businesses and occupants if the Land was non-reserve land. Such equivalent amount of taxation shall include that portion of taxes levied by

the City on behalf of the Saskatoon Public Library Board, the Board of Education of the Saskatoon School Division No. 13, or the Board of Education for Saskatoon Catholic Schools.

- (2) The City agrees that Kahkewistahaw has the same right as the City to grant individual exemptions, abatements, forgiveness, grants or rebates of taxes in furtherance of Kahkewistahaw's government policies. The exemptions, abatements, forgiveness, grants or rebates of taxes must fall within the City's standards, and any such exemptions abatements, forgiveness, grants or rebates of taxes shall be taken into account in calculating the invoice under sections 10 and 12, provided that the amount was approved by City Council in accordance with *The Cities Act* and applicable City policies.

### **Applicability of Laws**

22. (1) The parties both acknowledge that, subject to section 35 of the *Constitution Act 1982*, and any Kahkewistahaw Law, Code, Bylaw or Regulation passed pursuant to Kahkewistahaw or Federal legislation, all applicable provincial laws of general application, including municipal bylaws, which are not in conflict with the provisions of the *Indian Act*, the *First Nations Fiscal Management Act*, or any Kahkewistahaw law or bylaw enacted thereunder may apply to the Land and may be enforced on the Land as recognized and in accordance with the terms in this Agreement, and thereafter any other Laws with the permission and consent of Kahkewistahaw, which permission and consent will not be unreasonably denied.
- (2) The parties agree to appoint representatives to meet at least once per year to discuss practical solutions to enforcement issues which may be of interest to both parties, particularly in the area of public safety.
- (3) In the event that legal proceedings are commenced by either party to determine whether a provincial law or municipal bylaw is a law of general application which applies to the Land and may be enforced by the City on the Land, the parties agree that nothing in this Agreement 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.

### **Term of Agreement**

23. (1) Kahkewistahaw and the City agree that the term of this Agreement shall be for the same duration as the Land remains reserve land as defined in section 5 hereof.
- (2) This Agreement shall commence upon the Land becoming a reserve.

## Amendments

24. If, at any time during the continuance of this Agreement, the parties shall deem it necessary or 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.

## Arbitration

25. (1) In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the matter may, with the consent of both parties, be referred to binding arbitration. The arbitration shall be held in the City of Saskatoon, in the Province of Saskatchewan. The panel shall consist of one representative appointed by Kahkewistahaw, one representative appointed by the City and a Chair mutually agreed to by the two representatives. In the event that the two representatives cannot reach agreement on a Chair, the Chair shall be appointed by the Dean of Law, University of Saskatchewan.
- (2) The arbitration shall be conducted in accordance with *The Arbitration Act, 1992*, Ch. A-24.1, S.S. and the laws of the Province of Saskatchewan. Each party shall bear its own legal costs, the cost of its own representative and its proportionate share of the cost of the Chair and the proceedings. The arbitration panel's decision shall be final and binding and have the same force and effect as a final judgment in a court of competent jurisdiction. If either party fails to abide by the decision or award of the arbitrator, then the opposing party shall have the right to apply to the appropriate court or courts to obtain an order compelling the enforcement of the decision or award of the arbitrator.

## Notices

26. 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**

P.O. Box 609  
Broadview SK S0G 0K0

Attention: Chief and Council

**The City of Saskatoon**

222 Third Avenue North  
Saskatoon SK S7K 0J5

Attention: City Clerk

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.

**Council Authorizations**

- 27. The Kahkewistahaw First Nation Council has approved this Agreement. It did so by a Band Council resolution passed at a meeting of the Council held September 24, 2019. A certificate of the resolution is attached to this Agreement as Schedule "A".
- 28. Saskatoon City Council has approved this Agreement. It did so at its meeting held on September 30, 2019. A copy of the City Council resolution is attached to this Agreement as Schedule "B".

**Non-Performance**

- 29. The failure on the part of either party to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

**Invalidity of Particular Provision**

- 30. 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, voidable or unenforceable for any reason whatsoever, then the particular provision or provisions or part of the provision shall be deemed severed from the remainder of this Agreement and all other provisions shall remain in full force.

**Reasonable Assurances**

- 31. The parties hereto shall at all times and upon every reasonable request provide all further assurances and do such further things as are necessary for the purpose of giving full effect to the covenants and provisions contained in this Agreement.

Signed by Kahkewistahaw First Nation this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**Kahkewistahaw First Nation**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Councillor

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Witness

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Councillor

Signed by The City of Saskatoon this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**The City of Saskatoon**

\_\_\_\_\_  
Mayor

*c/s*

\_\_\_\_\_  
City Clerk

## **Schedule “A”**

[Kahkewistahaw First Nation Band Council Resolution]

## **Schedule “B”**

[Saskatoon City Council Resolution]

## **Schedule “C”**

[Site Plan]

## **Schedule “D”**

[Legal land description identifying the boundaries of the land owned by  
Kahkewistahaw First Nation]