

**CITY OF YORKTON
SASKATCHEWAN**

BYLAW NO. 43/97

**A BYLAW OF THE CITY OF YORKTON IN THE PROVINCE OF
SASKATCHEWAN TO PROVIDE FOR ENTERING INTO AN
AGREEMENT WITH SAKIMAY BAND NO. 74 FOR SERVICING OF
LAND**

The Council of the City of Yorkton, in the Province of Saskatchewan in Council enacts as follows:

- 1 . It shall be lawful for the City of Yorkton to enter into an agreement with Sakimay Band No. 74, an Indian Band as defined in *The Indian Act*, for the purpose of supplying services to lands owned by the Band situated within the boundaries of the City of Yorkton, such agreement marked as Schedule "A" and attached hereto.
2. The Mayor and City Clerk are hereby authorized and directed agreement on behalf of the City of Yorkton.

MAYOR

CITY CLERK

Introduced and read a first time this 25th day of August, A.D., 1997

Read a second time this 25th day of August, A.D., 1997.

Read and adopted a third time this 25th day of August, A.D., 1997.

MUNICIPAL SERVICES AGREEMENT

THIS AGREEMENT MADE IN DUPLICATE THIS 28th DAY OF March, A.D., 1997.

BETWEEN:

SAKIMAY BAND NO. 74

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 corporate limits of the City, namely:

Firstly:

Lots 22, 23, 24 and 25,
Block 2,
Yorkton, Saskatchewan,
Plan 20767

Secondly:

Lot 9,
Block 2,
Yorkton, Saskatchewan,
Plan 9913

Except: All that portion described as follows:

Commencing at the South West corner of Lot 9; thence Northerly along the Western boundary of the Lot 10 feet; thence Easterly and parallel with the Western boundary to the Southern boundary, thence Westerly along the Southern boundary to the place of commencement.

Thirdly:

Lot 10,
Block 2,
Yorkton, Saskatchewan
Plan 9913

set aside as a Reserve in accordance with The Indian Act, R.S.C. 1985 Chapter I-5, for the use and benefit of the Band pursuant to the Sakimay Band Specific Agreement entered into between Her Majesty The Queen In Right of Canada and the Band dated December 6, 1991;

AND WHEREAS the parties wish to enter into an Agreement outlining the types of services to be provided by the City to the said lands, and define how the Band shall pay for said services;

AND FURTHER, the parties wish to define their relationship one to the other;

ACCORDINGLY, the Band and the City agree as follows:

1. **USE OF THE LANDS**

- 1.01 It is agreed by the Band that the property and improvements shall be used for Gaming, a Lounge, Restaurant and Gift Shop, but shall not include the operation of a Bingo Hall, so long as the casino remains in operation at that location.
- 1.02 Notwithstanding Article 1.0 1, in the event that the lands are no longer to be utilized for gaming purposes, the Band may make application to the City for a zoning change to the lands, and the City and the Band shall commence negotiations to reflect the new usage of the lands by the Band.

- 1.03 The Band agrees with the City that prior to utilizing the lands as a casino, the Lessee (SIGA) shall satisfy the City that ample parking has been provided for the operation of the casino, which may include alternate locations.
- 1.04 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 the said lands.
- 1.05 It is agreed by the Band that any alterations, renovations and/or additions to the improvements (building) 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.

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 pursuant to any other 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 service 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 land, improvements and businesses in the City generally, and all defences available to the City with respect to the provision or interruption of services under the Act shall be available to the City as if incorporated herein.
- 3.03 The Band agrees to pay unto the City, in consideration for the services, 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. The foregoing calculation of the assessed costs for providing the City services to the Band will 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. For purposes of the calculation contemplated by this Article 3.03, the calculation is as follows:

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

- 3.04 In consideration of or 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; and
 - (ii) Business licensing fees, permits and taxes.

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 service 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 Departments, 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.

The City agrees that it shall, upon receipt of a request therefore from the Band, provide the Band with all such assessment information and data as is assembled 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 and shall submit a copy of the proposed law to the City for comment and consultation;
- (b) All such laws shall be compatible with the Bylaws of the City and this Agreement;
- (c) A certified copy of each law upon enactment shall be forthwith provided to the City.

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

(b) Implement any form of additional service which would obligate the Band to pay an additional amount to the City pursuant to Article 3 other than the amount referred to in Articles 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 comment and consultation;

(ii) The City shall not enact a bylaw or implement a new form of service which has the effect of discriminating against the Band or an occupant of the lands;

(iii) A certified copy of each bylaw upon enactment shall be forthwith provided to the Band.

4.03 The Band acknowledges, subject to Section 35 of the Constitution Act 1982, that:

(a) All laws enacted by the Parliament of the Dominion of Canada, except where in conflict with the provisions of the Indian Act; and

(b) 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.

5. **TERM OF AGREEMENT**

- 5.01 This Agreement shall commence on the 28 day of March, 1997, and unless sooner terminated in accordance with the provisions hereof, expires on the 28 day of March, 2006.
- 5.02 Notwithstanding Paragraph 5.01 above, the parties to this agreement agree that the terms and conditions of this Agreement may be extended in increments of five (5) years, unless either party hereto shall have given written notice to the other, received no later than one hundred and eighty (180) calendar days prior to the date of expiry of the then current term, of its intention to terminate or otherwise amend the 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 30 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 thirty (30) 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 such 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, 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.
- 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 Federal Court of Canada.
- 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, c.c. 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:

The Sakimay Indian Band No. 74
P.O. Box 339,
Grenfell, Saskatchewan.
SOG 2BO

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

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 the laws of Saskatchewan and the laws of Canada applicable therein. The Federal Court of Canada shall have jurisdiction in any proceedings regarding the same.

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.

10. **EFFECTIVE DATE**

10.01 Notwithstanding the dates indicated in Article 5 hereof, 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 Sakimay Indian Band No. 74 have on behalf of the Band set their hands and seals as of the day and year first above written.

The Sakimay Indian Band No. 74

Witness

Chief

Witness

Councillor

Witness

Councillor

Witness

Councillor

Witness

Councillor

Witness

Councillor

Witness

Councillor

The City of Yorkton

Mayor

City Clerk