

Resort Village of Bird's Point

Box 1019
Whitewood, SK S0G 5C0

Phone: 306-793-4552
Fax: 306-793-1817
Email: rvbirdspoint@sasktel.net

BYLAW NO. 03-23

Resort Village of Bird's Point

A BYLAW TO PROVIDE FOR ENTERING INTO AN AGREEMENT TO OUTLINE the types of services to be provided by the Resort Village of Bird's Point to the Lands and the compensation to be paid in relation thereto by the First Nation

The Council of the Resort Village of Bird's Point in the Province of Saskatchewan enacts as follows:

- 1. The Resort Village of Bird's Point is hereby authorized to enter into the agreement attached hereto forming part of this Bylaw, and identified as "Attachment A", with Kahkewistahaw First Nation No. 72 for the purpose stated within the agreement.
- 2. The Mayor and the Administrator of the Resort Village of Bird's Point are hereby authorized to sign and execute the attached agreement identified as "Attachment A".
- 3. This agreement will come into effect and come into force on the date on which such Lands are set aside as reserve land pursuant to the provisions of the *Indian Act*, and the First Nation agrees to provide notice in writing to The Resort Village of Birds Point when the Lands are set aside as Reserve Land

{SEAL}

Mayor

Administrator

Subsection 8(1)(b) of *The Municipalities Act*

Read a third time and adopted
This 11th day of April, 2023.

Administrator

ATTACHMENT "A"
(see Municipal Service Agreement)

MUNICIPAL SERVICES AGREEMENT

THIS AGREEMENT MADE EFFECTIVE THIS 11th day of April, 2023.

BETWEEN:

KAHKEWISTAHAW FIRST NATION NO. 72,
an represented by its Chief and Councillors
(hereinafter referred to as the "First Nation")

AND

THE RESORT VILLAGE OF BIRD'S POINT,
a Municipal Corporation under *The Municipalities Act,*
1984 S.S.S. 2005, C.m-36.1
located in the Province of Saskatchewan.
(hereinafter referred to as the "Village")

WHEREAS

1. The First Nation through its holding corporation, Kahkewistahaw Specific Claim Holdings Inc., has acquired the following lands situated within the boundaries of the Village and legally described as follows:

- (a) Lot 1 Block F Plan No 69R00742, Extension 0
As described on Certificate of Title 93R44151
(Surface Parcel 110270427)
- (b) Lot 2 Block F Plan No 69R00742, Extension 0
As described on Certificate of Title 93R44151
(Surface Parcel 110270438)
- (c) Lot 3 Block F Plan No 69R00742, Extension 0
As described on Certificate of Title 93R44151
(Surface Parcel 110536781)
- (d) Lot F Block A Plan No 69R00742, Extension 0
As described on Certificate of Title 99SE33575
(Surface Parcel 110270180)
- (e) Blk/Par B Plan No 102280946, Extension 0
(Surface Parcel 203450228)

(hereinafter referred to as the "Lands")

2. The First Nation seeks to have the Lands set apart as reserve lands pursuant to the provisions of the *Indian Act R.S.C. 1985, c. I-5* for the use and benefit of the First Nation pursuant to the provisions of the Chief Kahkewistahaw Settlement Agreement as entered into between the First Nation and Her Majesty the Queen in the Right of Canada dated September 22, 2002.
3. The parties wish to enter into an agreement outlining the types of services to be provided by the Village to the Lands and the compensation to be paid in relation thereto by the First Nation.
4. The parties further wish to establish a long-term relationship of practical co-operation which respects the First Nation's jurisdiction, but which also recognizes the need for ongoing compatibility and coordination between the parties.

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

1. TAXATION OF THE LANDS

- 1.01 It is acknowledged by the Village that upon reserve creation the First Nation shall be the sole taxing authority in respect of the Lands and any improvements, occupants and businesses located on the Lands. The Village shall not seek to impose any form of assessment on the Lands or any portion of the Lands, any improvements on the Lands, or any occupants of the Lands, pursuant to *The Municipalities Act*, as amended from time to time, or pursuant to any other applicable tax legislation.

2. SERVICES

- 2.01 The Village shall provide to the First Nation all municipal services to the Lands to the same extent and at the same level of service as the Village provides to its residents generally (the "Municipal Services"). For greater certainty, the Village is not obliged to provide the Municipal Services to a greater degree or level than the services the Village supplies to similarly zoned lands within the Village and the immediate surrounding area adjacent to the Lands. The Municipal Services shall not include services provided by any public or separate board of education located or operating within the Village.
 - 2.02 The Village makes no representation or warranty that the level or degree of Municipal Services provided under this Agreement will be maintained or continued to any particular standard, other than as stated expressly herein. The First Nation acknowledges and agrees that there may be from time to time temporary interruptions or reductions in the level of Municipal Services, and that the Village will not be held liable for any losses, costs, damages, claims or expenses arising from or connected with any temporary interruption or reduction in the level of the Municipal Services provided under this Agreement.
 - 2.03 The Village shall use its best efforts to ensure that any planned temporary service interruptions associated with the Municipal Services shall not interfere with the business operations undertaken on the Lands and will work with the First Nation in that regard.
 - 2.04 The First Nation agrees to pay to the Village, in consideration for the provision of the Municipal Services, an annual amount which equals the municipal portion of the property
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tax levy for any given year that would have been levied on the Lands, if the Lands were not reserve land. The school portion of the property tax levy shall be excluded from the annual cost of the Municipal Services.

- 2.05 The calculation of the municipal taxes referred to in section 2.04 above shall specifically exclude any assessments made on behalf of any local school division or other related authorities.
- 2.06 The Village shall invoice the First Nation for the payment referred to in section 2.04 at the same time that the Village sends out tax notices each year. The invoice for the Municipal Services shall be payable in full on or before December 31st in each year or such other date as the Village may specify by bylaw or general application.
- 2.07 If the invoice for the Municipal Services is not paid in full upon the applicable due date, any unpaid amount shall be subject to the same additional percentage charges that the Village imposes on unpaid current property taxes.

3. FIRST NATION LAWS AND VILLAGE BYLAWS

- 3.01 It is acknowledged by the Village that upon reserve creation the First Nation will have exclusive jurisdiction to enact laws pertaining to the Lands. Should the First Nation wish to exercise any of its powers under the *Indian Act* or any other applicable legislation having application to the First Nation, to pass laws or bylaws or amend laws or bylaws from time to time which in any way affect the Lands or the occupation, use, development or improvement of the Lands, the First Nation shall exercise those powers in the following manner:
 - (a) the First Nation shall notify the Village of its intention to pass or amend the law or bylaw and shall submit a copy of the proposed law or bylaw to the Village for their review and comment no less than sixty (60) days prior to the date of its proposed adoption;
 - (b) without abrogating or derogating from the First Nation's jurisdiction to enact laws or bylaws as they relate to the Lands, the First Nation shall use its best efforts to ensure that laws or bylaws adopted or amended are, to the extent possible, compatible with the bylaws of the Village in existence at the time of the provision of the notice described in subsection 3.01(a) above; and upon adoption, a certified copy of each law or bylaw shall be provided to the Village for their records.

- 3.02 Should the Village wish to exercise any of its powers to pass bylaws or amend bylaws which in any way affect the Lands, or any property adjoining the Lands, the Village shall exercise those powers in the following manner:
- (a) the Village shall notify the First Nation of its intention to do so and shall submit a copy of the proposed bylaw to the First Nation for their review and comment no less than sixty (60) days prior to the date of the proposed adoption of the bylaw;
 - (b) without abrogating or derogating from the Village's jurisdiction to enact bylaws, the Village shall attempt to ensure, in the case of bylaws, that all such bylaws or amendments are, to the extent possible, compatible with any First Nation laws or bylaws having application to the Land which may be in existence at the time of the provision of the notice referred to in subsection 3.02(a) above; and
 - (c) upon enactment, a certified copy of each bylaw shall be provided to the First Nation for their records.

4. APPLICABILITY OF LAWS

- 4.01 The parties acknowledge and agree that, subject to Section 35 of *The Constitution Act* 1992, and any First Nation law, code, bylaw or regulation passed pursuant to First Nation or federal legislation, all applicable provincial laws of general application, which are not in conflict with the provisions of the *Indian Act* or any First Nation law or bylaw enacted thereunder, or any other laws or legislation enacted by the First Nation shall, where applicable, apply to the Lands and may be enforced on the Lands.
- 4.02 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 Lands and may be enforced as such on the Lands, the parties agree to meet to try to develop a practical solution which respects the jurisdiction of both parties.
- 4.03 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, then nothing in this Article shall be construed so as to diminish, derogate from or prejudice the constitutional, aboriginal, treaty or other rights of either party nor affect their legal position in the matter.

5. TERM OF AGREEMENT AND AMENDMENT

- 5.01 The parties acknowledge and 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 obtaining reserve status. The First Nation agrees to provide notice in writing to the Village of the date when the Lands are set aside as reserve land.
- 5.02 If at any time during the term of this Agreement the parties shall deem it necessary and expedient to make any amendments to this Agreement, they may do so by means of a written agreement as executed between them which shall be supplemental to and form part of this Agreement.

6. JOINT MEETINGS

- 6.01 The parties acknowledge and agree that in order to successfully fulfill their respective mandates, it is essential that they work together in a spirit of co-operation and maintain an open and ongoing dialogue with one another. In this regard, the parties hereby agree that their respective Councils or their representatives may hold a joint meeting as soon as is practicable in each year during the currency of this Agreement, and so often thereafter as the parties may decide, with a view to discussing any issues of interest or concern as may arise between the parties with respect to the implementation of this Agreement.

7. DISPUTE RESOLUTION AND ARBITRATION

- 7.01 In the event of any dispute arising with regard to the interpretation or enforcement of this Agreement, the following provisions shall apply:
- (a) any party may upon fifteen (15) days written notice to the other request a joint meeting of representatives on behalf of the parties to discuss the matters in dispute and seek to resolve the matters in dispute or develop a mutually agreed upon process to resolve the matters in dispute; and
 - (b) if no resolution is reached following the meeting or any mutually agreed upon process referenced in subsection 7.01(a), any party may upon thirty (30) days written notice to the others refer the dispute to binding arbitration in accordance with the provisions of section 7.02.
- 7.02 If notice to arbitrate is served by any party and the dispute is referred to arbitration, the following provisions shall apply:

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- (a) unless the parties otherwise agree, the issue shall be determined by a panel of three arbitrators (the "arbitration board"), with one arbitrator appointed by the Village and one arbitrator appointed by the First Nation. Each party shall, within fifteen (15) days following the giving of notice for arbitration, advise the other in writing of the name, address and calling of their arbitrator selected. The two arbitrators as selected shall, within a period of time, but not exceeding a period of thirty (30) days, jointly appoint a third arbitrator, who shall act as chair of the arbitration board. In the event the two arbitrators selected by the parties fail to appoint a third arbitrator within the said thirty (30) days, then either the Village or the First Nation at any time thereafter may apply upon notice to the other to a judge of the Court of Queen's Bench for Saskatchewan or the Federal Court of Canada for an order appointing the third arbitrator to act as chair of the arbitration board;
- (b) all arbitrations shall be conducted in accordance with the Commercial Arbitration Code, being a schedule to the *Commercial Arbitration Act*, R.S.C. 1985, cc. 17 (2nd Supp.) and all regulation made and, from time to time, in force under that Act;
- (c) the jurisdiction of the arbitration board shall be limited to determining those issues set forth by the parties with regard to the interpretation or enforcement of this Agreement;
- (d) all questions and issues relating to the conduct of and in relation to the arbitration shall be determined by the arbitration board; and
- (e) each party shall bear its own legal costs, the cost of its own representative and its proportionate share of the cost of the chair of the arbitration board and the proceedings. The arbitration board'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 arbitration board, 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 of the arbitration board.

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 Resort Village of Bird's Point
P.O. Box 1019
Whitewood, Saskatchewan
S0G 5C0

Attention: Village Administrator

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. EFFECTIVE DATE

- 9.01 This Agreement shall become valid and effectual in respect of the Lands as and when such Lands are set aside as reserve land pursuant to the provisions of the *Indian Act*, and the First Nation agrees to provide notice in writing to the Village of the date when the Lands are set aside as reserve land.

10. MISCELLANEOUS PROVISIONS

- 10.01 The application, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the Kahkewistahaw First Nation, Province of Saskatchewan and Dominion of Canada and the First Nation as applicable herein. Further, the parties covenant and agree to attorn to the jurisdiction of the Court of Queen's Bench or Federal Court of Canada in relation to any actions or proceedings as taken in relation hereto.
- 10.02 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.
- 10.03 References herein to any enactment shall be deemed to include reference to such enactment as re-enacted, amended or extended from time to time and to any successor enactment relating thereto.

- 10.04 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.
- 10.05 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors, administrators and assigns.
- 10.06 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.
- 10.07 No waiver of the terms, conditions, warranties, covenants, and agreements set out herein shall be of any force and effect unless the same is reduced to writing and executed by all parties hereto and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

IN WITNESS WHEREOF the parties have executed this Agreement effective the day and year first above written as attested to by hands of its proper signing authorities on their behalf.



THE RESORT VILLAGE OF BIRD'S POINT

Per: Alai Davis / Administrator
 Title: Mayor Administrator

KAHKEWISTAHAW FIRST NATION NO. 72 as executed by a quorum of the Council of the Kahkewistahaw First Nation

SIGNED on behalf of the Kahkewistahaw)
 First Nation by at least a quorum of the)
 Council of the Kahkewistahaw)
 First Nation in the presence of:)
 Signature: D. Petae)
 Name of Witness: Denise Petae)
 Address: Box 97)
Whitewood, SK S0G5C0)
)
 (as to all signatures unless otherwise)
 indicated))

Per: L. Tappin
 Chief
 Per: [Signature]
 Councillor
 Per: [Signature]
 Councillor
 Per: William Kaywaywayemat
 Councillor
 Per: [Signature]
 Councillor