

# SAMPLE SERVICING AGREEMENT

**For Discussion Purposes Only**

**Revise to suit the situation**

## ROAD CONSTRUCTION AGREEMENT

BETWEEN:

Address: \_\_\_\_\_ (hereinafter "Developer")

and the \_\_\_\_\_ of \_\_\_\_\_ No.

Box \_\_\_\_\_, SK \_\_\_\_\_ (hereinafter the "RM or "Council")

WHEREAS:

- a) Part \_\_\_\_\_ Clause \_\_\_\_\_ of the Zoning Bylaw \_\_\_\_\_ of the RM of \_\_\_\_\_ No. \_\_\_\_\_ states:  
*"A Development Permit shall not be issued unless the site intended to be used, or upon which a building or structure is to be erected, abuts or has frontage on a graded all-weather road, or unless satisfactory arrangements have been made with Council for the improvement or building of a road, where required."*
- b) Whereas the developer has submitted a Development Permit application dated \_\_\_\_\_ to the RM in which the developer proposes the development of a \_\_\_\_\_ on \_\_\_\_\_.
- c) The site of the proposed development does not presently abut or have frontage upon a graded all-weather road, and the construction of a graded all-weather road will be required.
- d) Under *The Municipalities Act*, subsections 16(1) and 16(2) provide as follows:
  - (1) *The council may open a street or road through land or on a road allowance if:*
    - (a) *a person petitions the council for the opening of the street or road; and*
    - (b) *the council is of the opinion that the street or road may be reasonably opened for the convenience and benefit of that person but is not required in the interest of the public generally.*
  - (2) *As a condition for opening a street or road pursuant to subsection (1), the council may require the petitioner to deposit with the administrator any moneys the council considers sufficient to cover the cost of:*
    - (a) *opening the street or road; and*
    - (b) *paying compensation in connection with the opening of the street or road.*
- e) Council is of the opinion that a road may be reasonably opened to the site of the proposed development for the convenience and benefit of the developer but is not required in the interest of the public generally.
- f) It has been estimated that the cost of construction of a graded all-weather road to the site of the proposed development is \$\_\_\_\_\_, calculated at \$\_\_\_\_\_ in outside construction costs (being associated costs beyond the costs of required culverts, required grave and required municipal patrol work), and \$\_\_\_\_\_ in costs to the RM for culverts, gravel, and municipal patrol work.
- g) The parties wish to set out the terms under which Council is prepared to undertake to construct a road to the site, and pursuant to which the developer will repay the RM for a portion of the cost of opening said road, being an amount equal to \$\_\_\_\_\_ as described above.

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NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. The developer hereby petitions the RM for the construction of the subject road, as custom work, in accordance with Section 243 of *The Municipalities Act*.
2. The developer shall within 10 days of the date hereof deposit with the RM on account of the cost of road construction, the amount of \$\_\_\_\_\_ and execute a promissory note in favor of the RM in the sum of \$\_\_\_\_\_ payable on \_\_\_\_\_ in accordance with the document attached hereto as Schedule "A".
3. Upon receipt of the said deposit and promissory note, the RM shall prepare a proposal for construction of a graded all-weather road to the site of the proposed development, and shall forthwith deliver same to the developer.
4. Upon receipt of the plan for construction of the proposed roadway, the developer shall forthwith review same and communicate his approval to the RM;
5. Upon receipt of the developers approval to the construction of the proposed road, the RM shall undertake to proceed with construction of same as is reasonable;
6. When construction of the road has been completed the RM shall forthwith assess the total cost of construction of same. If the total cost, inclusive of outside construction costs and excluding costs to the RM, is found to be less than the estimated cost attribute to the developer (as determined in section g), then the RM shall repay to the developer any excess sum paid to date by the developer; provided that if monies remain payable by the developer, the amount payable shall be reduced by the difference between the estimate and the actual total cost of construction.
7. Notwithstanding any other provisions of this agreement, should the total cost of construction of the road exceed the estimated total cost, the developers contribution to construction costs shall not exceed the estimated attribute costs (as determined in section g), unless agreed in writing by the parties hereto.
8. In the event of non-payment of any sum required to be paid pursuant to this Agreement the remedies of the RM shall include, enforcement in accordance with Section 368 or 405 of *The Municipalities Act*.
9. There shall be no merger of the developer's obligations or the remedies available to the RM under the terms of this Agreement, the Promissory Note, and *The Municipalities Act*.
10. In this agreement, the singular includes the plural and the masculine includes the feminine and neuter and visa versa, unless the context otherwise requires.
11. The Agreement may not be assigned without the consent in writing of the other parties first had and obtained, which consent may be unreasonably withheld.
12. This Agreement shall be binding upon and shall endure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

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13. This Agreement contains the entire agreement made between the parties and replaces any previous agreement entered into between the parties.

IN WITNESS WHEREOF the said developer have hereunto set his hand and Seals

This \_\_\_\_\_ day of \_\_\_\_\_, 20 .

SIGNED, SEALED and DELIVERED)  
In the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Developer

{Witness must complete  
AFFIDAVIT OF EXECUTION  
on last page}

IN WITNESS WHEREOF, the said RM has hereunto affixed its corporate name and seal, attested to by the signatures of its duly authorized officers in that behalf, this \_\_\_\_\_day of \_\_\_\_\_, 20 .

Per. \_\_\_\_\_  
Reeve

Per. \_\_\_\_\_  
Administrator

S E A L

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**SCHEDULE "A"  
PROMISSORY NOTE**

\$ \_\_\_\_\_

**FOR VALUE RECEIVED**, \_\_\_\_\_ severally promise to pay to the  
of \_\_\_\_\_ No. \_\_\_\_\_ the principal sum of  
(\$ \_\_\_\_\_ ) Dollars, which is payable on \_\_\_\_\_, 20 \_\_\_\_\_ .

**IF THE PROMISOR** fails to pay the said sum when due, then in that event interest shall be payable on the said sum or on so much thereof as shall remain from time to time unpaid, at the rate of (10%) per centum per annum, calculated and payable monthly, not in advance.

**PRIOR** to default, interest shall not be payable on the said principal sum or on so much thereof as may remain from time to time unpaid.

**EXTENSION** of time for payment of all or any part of the amount owing hereon at any time or times shall not release the Promisor or any endorser or guarantor hereof.

**ALL PAYMENTS** on this note shall be made at P.O. Box \_\_\_\_\_, SK S----- or such other reasonable place as the holder may designate in writing from time to time.

**ALL PAYMENTS** on this note shall be applied first to accrued interest and then to the principal.

**IF THERE IS DEFAULT** in making any payment on this note, the undersigned also promises to pay the RM of \_\_\_\_\_ No. \_\_\_\_\_ on demand all reasonably incurred costs of enforcing payment on the note including but not limited to legal costs.

**EXCEPT** as expressly provided herein the Promisors and any endorser or Guarantors hereof each severally waive presentment, demand, notice of dishonour and protest or further notice of any kind and agree that they shall each remain liable in respect to this note as if presentment, demand, notice of dishonour and protest had been made or given.

Dated and Delivered at the \_\_\_\_\_ of \_\_\_\_\_, in the Province of  
Saskatchewan, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Witness  
{Witness must complete  
AFFIDAVIT OF EXECUTION  
on last page}

\_\_\_\_\_  
Developer

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**AFFIDAVIT OF EXECUTION FOR WITNESS**

CANADA )  
PROVINCE OF SASKATCHEWAN )  
TO WIT )

I, \_\_\_\_\_, of \_\_\_\_\_

**MAKE OATH AND SAY:**

1. THAT I was personally present and did see \_\_\_\_\_, [a representative of \_\_\_\_\_ named in the within instrument], who is personally known to me [to be a representative of the Corporation named therein], duly sign and execute the same for the purpose named therein.
2. That the same was executed at postal district of the \_\_\_\_\_ of \_\_\_\_\_, in the Province of Saskatchewan and that I am the subscribing witness thereto.
3. That I know the said \_\_\_\_\_ and she/he is in my belief of the full age of eighteen years.

SWORN BEFORE ME at the postal district of \_\_\_\_\_ of \_\_\_\_\_ in the Province of Saskatchewan this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Saskatchewan. My commission expires:

-or-

A Notary Public for Saskatchewan.  
My commission expires:

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