

SAMPLE SERVICING AGREEMENT

For Discussion Purposes Only

Revise to suit situation

ROAD CONSTRUCTION AGREEMENT

THIS AGREEMENT made in duplicate this ____ day of _____, 20____,
Between:

the _____ of _____,

Address: _____, Saskatchewan, S_____,
a corporate municipality in the Province of Saskatchewan (hereinafter called the **Municipality**)
OF THE FIRST PART,

And

_____ of _____,

Address: _____, Saskatchewan, S_____,
(hereinafter called the **Developer**) OF THE SECOND PART.

WHEREAS at the time of making this agreement:

a) The Developer has applied to subdivide the following land (hereinafter called the Land)

{Add title or parcel number and Legal Land Description}
a true copy of which is annexed to this Agreement as Schedule "A";

b) The Developer proposes to subdivide the Land as shown in the annexed Schedule "B"
(hereinafter called the Plan) {Add Concept Plan or Plan of Proposed Subdivision} and

c) The Municipality considers it appropriate that the subdivision application be approved subject to
the Developer entering into an agreement with the Municipality under Section 172 of *The
Planning and Development Act, 2007*, concerning the supply, installation and construction of
roadways and related materials and works (hereinafter called Improvements and specified in the
annexed Schedule "C") required by the subdivision,

NOW THEREFORE, in consideration of the covenants and promises contained in this Agreement
and the Municipality's consent to the subdivision, the Parties agree as follows.

1. General Provisions

1.1 Any notice to the other Party shall be sufficiently served if sent by prepaid registered mail to
the aforesaid address of the other Party.

1.2 Municipality shall mean any person authorized to act on behalf of the Municipality including
any person hired or employed by the Municipality.

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- 1.3 Roadway means that part of a public highway as defined under *The Highways and Transportation Act, 1987 c.H-3.10*, designed or intended for use by vehicular traffic.
- 1.4 The terms of this Agreement including all covenants, provisions and annexed schedules, shall run with the Land, and shall be binding upon both Parties and their subsequent heirs, successors, administrators, assigns or transferees.
- 1.5 Upon the subdivision being approved by the Director of Community Planning, the Municipality shall, under Section 175 of *The Planning and Development, 2007*, register an interest on the title to the Land to inform potential future landowners of this Agreement.
- 1.6 This Agreement may be altered or added to with the mutual written consent of the Parties or their respective heirs, executors, administrators, successors and assignees and any alterations or additions shall be executed with the same formality as this Agreement and subsequently form part of this Agreement.
- 1.7 If any provision of this Agreement is found to be invalid, it is the intention of the Parties that the remainder of the agreement shall remain in full force.
- 1.8 Each Party shall be responsible for paying their respective costs or fees for legal and engineering services required to bring effect to this Agreement.

2 Performance Provisions

- 2.1 Within 10 days of the subdivision Plan being approved by the Director of Community Planning, the Developer shall deposit with the Municipality, to cover the faithful performance or payment of all obligations arising herein, a sum of money to be held in trust by the Municipality or an irrevocable Performance Bond or Standby Letter of Credit acceptable to the Municipality's solicitor, (in any case hereinafter called the Surety) amounting to _____ Dollars (\$ _____) which is hereby agreed by the Parties to be the total estimated cost of all Improvements required to be done by the Developer under this Agreement.
- 2.2 If the Surety is not provided as required under clause 2.1, the Municipality may ask the Director to revoke the approval of the subdivision Plan and may undertake or commence any other action it deems fit and proper in the circumstances.
- 2.3 After the Developer has supplied the Municipality with a Statutory Declaration sworn before a Commissioner of Oaths attesting that
 - a) all current accounts for supplied materials and completed work for the Improvements have been paid except for normal holdbacks, and
 - b) there are no outstanding claims or liens in connection with any completed Improvements; and after the Municipality is satisfied that
 - a) there are no outstanding claims or liens concerning the Improvements, and
 - b) the Developer has completed all Improvements required under this Agreement,

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the Municipality shall supply the Developer with a dated letter (to be called a Certificate of Completion) worded to the effect that

- a) the Improvements have been completed to the satisfaction of the Municipality; and
- b) the amount of the Surety is reduced to twenty percent (20%) of the amount agreed to in clause 2.1 allowing, as the case may be, the corresponding refund of any money held in trust or the reduction of the amount required in any Letter of Credit or Performance Bond.

The Municipality shall retain the remaining Surety for a period of one (1) year from the date the Certificate of Completion is issued to be called the warranty period. Upon application by the Developer after the warranty period expires and if the Municipality is still satisfied with the completed Improvements, the Municipality shall

- a) assume all rights and responsibilities for the completed Improvements;
- b) refund or cancel the requirement for the remaining Surety; and
- c) discharge any caveat or notice registered pursuant to clause 1.5.

2.4 At any time during the term of this Agreement including the aforesaid warranty period, the Municipality may decide that it is not satisfied the Developer has met or will meet any of the Developer's obligations under this Agreement, and consider the Developer in default if the Developer

- a) fails to construct, supply or install any Improvements as, when and to the standards required under this Agreement; or
- b) is not supplying material or undertaking construction or installations in a manner required by this Agreement; or
- c) having commenced work, fails or neglects to proceed with reasonable speed.

The Municipality may declare the Developer in default upon giving seven (7) days written notice by prepaid registered mail to the Developer after which the Municipality may proceed to supply all materials and to do all necessary work, including the repair or reconstruction of faulty work and the replacement of materials not in accordance with the specifications in this Agreement, and to charge the cost thereof, together with an engineering fee of ten percent (10%) of the cost of such materials and works to the Developer who shall forthwith pay same upon demand. If the Developer fails to pay the Municipality within thirty (30) days of the date on the bill, the Municipality may obtain the payment from any funds held in trust or from the institution which has issued a Letter of Credit or Performance Bond. It is understood and agreed between the parties hereto, that such entry upon the Land shall be as agent for the Developer and shall not be deemed for any purpose whatsoever, as an acceptance or assumption of any Improvements by the Municipality.

The Municipality, as it sees fit, may undertake other additional remedies to bring effect to this clause including to refuse to issue development or building permits until such services are completely installed in accordance with the requirements of the Municipality. The provisions of this clause shall not apply where failure to complete any Improvements results from labour disputes, acts of God, or any cause of any kind that is beyond the control of the Developer.

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3. Arbitration Provisions

- 3.1 In the case of a dispute between the Parties hereto concerning any aspect of this Agreement including whether Improvements have been satisfactorily completed, either Party shall be entitled to give the other notice of such dispute and demand arbitration thereof. Within fourteen (14) days after such notice and demand have been given, each Party shall appoint an Arbitrator who shall jointly select a third. The Parties agree that the decision of any two of the Arbitrators shall be final and binding upon the Parties. *The Arbitration Act* of the Province of Saskatchewan shall apply to any arbitration hereunder and the costs of arbitration shall be apportioned equally between the Parties.
- 3.2 If the two Arbitrators appointed by the Parties do not agree upon a third, or a Party who has been notified of a dispute fails to appoint an Arbitrator, then the third Arbitrator, or an Arbitrator to represent the Party who failed to appoint an Arbitrator, may be appointed by a Judge of the Court of Queen's Bench upon application by either Party.

4. Developer Responsibilities

The Developer agrees to undertake the following provisions wholly at the expense of the Developer.

- 4.1 Within two (2) years of the execution of this agreement, to have a plan of survey based on the Plan filed in the Land Surveys Directory and to have titles to all parcels shown on the Plan raised in the Saskatchewan Land Registry thereby vesting or dedicating any public highways or other public lands shown on the Plan along with all existing vegetation, trees and improvements thereon.
- 4.2 To not assign or transfer this Agreement or any part of this Agreement to any individual or corporation without obtaining the prior written consent of the Municipality.
- 4.3 Within one year of the date of this Agreement, to supply or construct all Improvements to at least the minimum standards specified in Schedule "C" annexed to this Agreement.
- 4.4 To obtain all necessary approvals or permits required for any Improvement and to deposit the original copy of such permits with the Municipality.
- 4.5 To erect, place and maintain such barricades, lights or other protection of persons or property as will adequately protect any person in the area during construction.
- 4.6 While this Agreement is in effect, to keep in good repair and maintain all constructed Improvements on the understanding that maintenance is a continuous operation which must be carried out for each and every kind of work, and no release from liability of any kind will be given until all repairs or replacements required by the Municipality have been done and until the Municipality has made its final inspection.

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- 4.7 To advise the Municipality in writing when any Improvements have been completed and to allow the Municipality unrestricted access to inspect the Improvements at any time.
- 4.8 To advise the Municipality in writing once any noted defects or deficiencies found during an inspection by the Municipality have been corrected and request re-inspection and approval thereof.
- 4.9 Once all Improvements are constructed, to have a Saskatchewan Land Surveyor replace all survey markers destroyed or removed during construction and have the Surveyor confirm in writing to the Municipality that all lost survey markers were re-established.
- 4.10 To indemnify and save harmless the Municipality with respect to any action commenced against the Municipality resulting from any activity or occurrence within the Land or Plan, other than with respect to those activities being conducted by the Municipality.
- 4.11 To be responsible for providing or arranging for the installation or relocation of all telecommunications, electrical, natural gas, cable and pipe lines including the provision of all easements as may be required for such lines.

5. Municipal Responsibilities

The Municipality agrees to the following provisions.

- 5.1 To allow the Developer to enter onto any land owned or administered by the Municipality within or adjacent to the bounds of the Land so that the Developer may undertake and complete any Improvements or maintenance as needed.
- 5.2 To inspect any completed Improvements within fourteen (14) days of a request to do so from the Developer and where there are no defects or deficiencies apparent at that time, the Municipality shall issue a letter to the Developer within seven (7) days after the next regular council meeting:
 - a) certifying that the Improvements inspected by the Municipality have been completed to the satisfaction of the Municipality;
 - b) advising of any apparent defects or deficiencies that require correction or remedial action;
or
 - c) if all Improvements have been completed, issue the Certificate of Completion pursuant to clause 2.3 in which case this Agreement shall terminate upon expiry of the warranty period specified in clause 2.3.

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IN WITNESS WHEREOF the Parties hereto have executed this agreement the day and year first above written.

For the _____ of _____ No. _____

MUNICIPAL
S E A L

Mayor/Reeve

Administrator

Developer

Witness {must complete Affidavit}

Witness Affidavit

I, _____, of _____, Saskatchewan, make oath and say

1. That I was personally present and did see _____, the Developer named above, who is personally known to me to be the person named herein, duly sign and execute the said agreement for the purposes named therein;
2. That the said agreement was executed in the _____ of _____ in the Province of Saskatchewan and that I am the subscribing witness thereto; and
3. That I know the said _____ who is, in my belief, at least eighteen years of age or more.

Sworn before me at the _____ of _____
in the Province of Saskatchewan,
this ___ day of _____, 20__.

Witness

A Commissioner for Oaths in and for
the Province of Saskatchewan
My commission expires _____.

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Notes regarding schedules

Schedule "A" Add copy of the title to the land being subdivided

Schedule "B" Add a copy of the plan of proposed subdivision or engineering drawings showing where improvements are to be constructed or installed

Schedule "C" **See next page for an example.** It has minimum road construction standards. Wider and stronger driving surfaces are needed in commercial or industrial areas.

Note: Permits are required from the Ministry of Highways and Infrastructure to construct highway approaches or other development within 90 metres of the limits of a provincial highway.

Note: A permit is required from Sask Water to alter a drainage system.

Schedule "?" Additional schedules can be added as needed. For example, another schedule might list off-site services required from the developer.

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Schedule "C" – Road Construction Specifications

The Developer is responsible for completing the following Improvements at the Developer's cost.

- a) To remove from within the limits of the public highways marked on the Plan any privately owned structures, trees, bush or brush, and to properly dispose of all resulting refuse so that no waste material is left on the Land or public highways.
- b) To design, improve or build roadways and approaches within the limits of the public highways so that all driving surfaces have a minimum width of 7.4 metres (24 feet) centred within the limits and so that adequate surface water run-off channels or ditches are provided on either side of the roadways, as required to suit the topography.
- c) To locate approaches as marked on the Plan so that drivers on an approach are able to see other vehicles on the intersecting road that are 160 metres (525 feet) or less from the intersection, and vice versa.
- d) To construct all roadway and approach driving surfaces with
 - a stabilized top layer (clay cap) at least 15 centimetres (6 inches) thick;
 - a maximum gradient of 9%; and
 - a 15 centimetre (6 inch) high crown evenly sloped to the outside edge of the surface.
- e) To construct all ditch side and back slopes so that the slopes do not exceed a rise over run (vertical to horizontal) ratio of 1:3 and to grade all ditches to eliminate ponding in the ditches.
- f) To supply and install galvanized steel or cement culverts where and to at least the minimum dimensions marked on the Plan.
- g) After construction is done, to remove all exposed rocks and other debris from the construction area and to seed grass on all exposed slopes.
- h) To supply, spread and grade on all roadways 2.5 centimetre (1 inch) or smaller diameter gravel at rate of 153 cubic metres per 1.6 kilometres (200 cubic yards per mile) when a roadway is constructed and, within one (1) year of the roadway being constructed, to supply, spread and grade additional 2.5 centimetre (1 inch) or smaller diameter gravel at rate of 76.5 cubic metres per 1.6 kilometres (100 cubic yards per mile) over all roadways.
- i) To supply and install traffic signs where and of the type marked on the Plan.

The foregoing standards are only examples. Wider rights-of-way will be needed for ditch slopes when building roads through hills or across gullies. Wider driving surfaces capable of carrying more weight are needed in industrial areas. Additional standards may include pavement, curbs, storm sewers, sidewalks and street lights. The municipal engineer must provide standards suitable for the terrain and proposed development.

Before building a highway approach or road beside a highway consult a Roadside Development Manager with the Ministry of Highways and Infrastructure. Consult SaskPower, SaskTel and SaskEnergy engineers for their requirements.

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