

**SAMPLE SERVICING AGREEMENT**  
**FOR DISCUSSION PURPOSES ONLY** **REVISE TO SUIT SITUATION**

**SERVICING 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** \_\_\_\_\_,  
Address: Box \_\_\_\_\_, \_\_\_\_\_, Saskatchewan, S\_\_\_\_ \_\_\_\_,  
(hereinafter called the "Developers") OF THE SECOND PART.

**WHEREAS** at the time of making this agreement:

- a) The Developers own, as evidenced by Title No. \_\_\_\_\_ on record in the Saskatchewan Land Registry, the following land (hereinafter called the "Land"):  
\_\_\_\_\_  
\_\_\_\_\_  
{ADD LEGAL LAND DESCRIPTION OF LAND BEING SUBDIVIDED i.e. the land before subdivision occurs}
- b) The Developers have applied to subdivide the "Land" according to a Plan of Proposed Subdivision dated \_\_\_\_\_, 20\_\_\_\_, and signed by \_\_\_\_\_, Saskatchewan Land Surveyor, (hereinafter called the "Plan"), a true copy of which is annexed to this agreement as Schedule "A"; and
- c) The Municipality considers it appropriate that the "Land" be subdivided in accordance with the "Plan" subject to the Developers entering into an agreement with the Municipality under Section 175 of *The Planning and Development Act, 2007*, concerning the supply, installation or construction of certain materials and works (hereinafter called "Improvements").

**NOW THEREFORE**, in consideration of the covenants and promises contained in this Agreement and the Municipality's consent to the "Plan" 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 by the Municipality.
- 1.3 The terms of this Agreement, covenants, provisions and schedules shall run with the "Land" and shall be binding upon both Parties and their subsequent heirs, successors, administrators, assigns or transferees, as the case may be, unless specifically stated otherwise herein.

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- 1.4 The Municipality shall at its cost, upon the "Plan" being approved by the Director of Community Planning, register a caveat on the title to the "Land" to advise potential landowners of this Agreement and to protect the municipality's interests.
- 1.5 This agreement may be altered or added to with the mutual written consent of the Parties and 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 unless specified otherwise herein.
- 1.6 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.
- 1.7 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 For purposes of clauses 2.2 to 2.4, inclusive:
  - a) the Municipality shall issue letters to the Developers or any other party that the Developers want informed, as the case may require; and
  - b) the Developers shall supply the Municipality with Statutory Declarations sworn before a Commissioner of Oaths that all current accounts for supplied materials and completed work or other Improvements have been paid except for normal holdbacks, and that there are no out-standing claims or liens in connection with any completed Improvements.
- 2.2 Within 30 days of the "Plan" being approved by the Director of Community Planning, the Developers shall deposit with the Municipality, to cover the faithful performance or payment of all obligations arising herein, an irrevocable Standby Letter of Credit acceptable to the Municipality's solicitor which amounts to fifty percent (50%) of the total estimated cost of all Improvements required to be done by the Developers under this Agreement. The irrevocable Standby Letter of Credit shall:
  - a) be from a recognized financial institution;
  - b) be kept valid by the Developers until the Municipality is satisfied that the Developers have met all their obligations under this Agreement;
  - c) be in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) which both Parties hereby agree equals fifty percent (50%) of the total cost of all the Improvements.

NOTE: This sample agreement refers to a letter of credit. Alternatives to such a letter include:

- a cash deposit from the developer held in trust by the municipality or a lawyer;
- a performance bond from a recognized surety company acceptable to the municipal solicitor;
- a first mortgage on the land or new lots held by the municipality; or
- a property escrow agreement where some of the new lots are temporarily held in trust.

- 2.3 If the irrevocable Standby Letter of Credit is not deposited with the Administrator within 30 days of the "Plan" being approved by the Director, the Municipality may ask the Director to revoke approval of the "Plan".

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- 2.4 If both parties mutually agree that at least fifty percent (50%) of the Improvements required to be done by the Developers under this Agreement are completed to the satisfaction of the Municipality, the Developer may apply to the Municipality and the Municipality may agree to reduce the amount specified in part c) of clause 2.2 at a rate of twenty percent (20%) of the amount for every ten percent (10%) over fifty percent (50%) of the completed Improvements to a maximum reduction of ninety percent (90%) of the total estimated cost of the Improvements.
- 2.5 When the Municipality is satisfied that the Developers have completed all the Improvements required to be done by the Developers under this Agreement, and it is satisfied there are no outstanding claims or liens concerning any of the Improvements, the Municipality shall supply the Developers with a letter worded to that effect (*Certificate of Completion*), and the Municipality shall reduce the amount specified in part c) of clause 2.2 to ninety percent (90%) of the total estimated cost of all the Improvements. The Municipality shall retain the remaining surety for a period of one (1) year from the date of the letter which shall be called a warranty period. Upon application by the Developers after the warranty period expires and if the Municipality is still satisfied with the completed Improvements, the Municipality shall assume all rights and responsibilities for the completed Improvements and, by letter, cancel the requirement for, or return, the remaining surety, and discharge the caveat registered pursuant to clause 1.7.
- 2.6 The Municipality may decide it is not satisfied that the Developers have met or will meet any of their obligations under this Agreement, and consider the Developers in default if the Developers:
- a) fail to supply and install any Improvements as, when and to the standards required under this Agreement; or
  - b) having commenced work, fail or neglect to proceed with reasonable speed; or
  - c) are not supplying material or undertaking construction or installations in a manner required by this Agreement.

The Municipality may declare a default upon giving seven (7) days written notice by prepaid registered mail to the Developers after which the Municipality may enter upon the "Land" and proceed to supply all materials and to do all the necessary works, including 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 money owing may be obtained from the financial institution who has issued the letter of credit. 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

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to complete any Improvements results from labour disputes, strikes, lockouts, acts of God, or any cause of any kind that is beyond the control of the Developers.

**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 fails to appoint an Arbitrator, may be appointed by a Judge of the Court of Queen's Bench at the Judicial Centre of \_\_\_\_\_ upon application by either Party.

**4 Municipal Responsibilities**

The Municipality agrees to the following provisions.

- 4.1 To inspect any completed Improvements within fourteen (14) days of a request to do so from the Developers and where there are no defects or deficiencies apparent at that time, the Municipality shall issue a letter to the Developers within seven (7) days of the next regular council meeting either:
- a) certifying that the inspected Improvements have been completed to the satisfaction of the Municipality; or
  - b) advising of any defects or deficiencies that require correction or remedial action.
- 4.2 To allow the Developers to enter onto any land owned or administered by the Municipality within the bounds of the "Land" or "Plan" so that the Developers may undertake and complete any Improvements or maintenance as needed.
- 4.3 To provide material, equipment and equipment operators that the Developers may request when mutually agreed to by both Parties.

**5 Developers Responsibilities:**

Within one (1) year of the making of this agreement unless specified otherwise herein, the Developers agree to the following provisions at their expense.

- 5.1 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

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- highways or other public lands shown on the Plan along with all existing vegetation, trees and improvements thereon.
- 5.2 To not assign or transfer this Agreement or any part of this Agreement to any individual or corporation party without obtaining the prior written consent of the Municipality.
- 5.3 To clear, construct and grade all roads, streets and lanes shown on the Plan to the minimum standards specified in Schedule "B" annexed to this Agreement.
- 5.4 To design, supply, install, place, construct or improve to at least the minimum standards indicated, drainage ditches or channels and galvanized steel culverts as indicted on attached Schedule "C" which forms part of this Agreement.
- 5.5 To clear, grade and pave all walkways shown on the Plan and to install two (2) 20 centimetre (8 inch) diameter galvanized steel posts filled with cement at all street and lane intersections in order to exclude automobile traffic from the walkways.
- 5.6 To supply and install acceptable street and traffic signs where and as indicated on Schedule "D" annexed to this Agreement.
- 5.7 To design, supply and install the water and sewer lines, and manholes, specified in Schedule "E" annexed to this Agreement.
- 5.8 To pay the Municipality off-site service fees totalling \_\_\_\_\_ Dollars (\$\_\_\_\_) which the Municipality shall use, at its discretion, to make improvements to the municipal [e.g. water treatment, sewage landfill facilities] since the improvements are required by the development of the lots shown on the Plan.
- 5.9 Pursuant to section 2 hereof, to advise the Municipality in writing when Improvements have been completed and to allow the Municipality unrestricted access to the area, at any time, to inspect the Improvements.
- 5.10 To erect and place such barricades, lights or other protection of persons or property as will adequately protect the public or any person in the area, and will maintain the precautions during any construction.
- 5.11 To advise the Municipality in writing once any noted defects or deficiencies found during an inspection by the Municipality have been corrected and request reinspection and approval thereof.
- 5.12 To keep in good repair and maintain all Improvements constructed while this Agreement is in effect 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 given until all repairs or replacements required by the Municipality in its final inspection is made.

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- 5.13 Once all Improvements are completed, to have a Saskatchewan Land Surveyor replace all survey markers, posts or pins destroyed or removed during construction of the Improvements after which the Surveyor shall confirm, in writing, that all lost survey monuments have been re-established.
  
- 5.14 To indemnify and save harmless the Municipality and the subdivision approving authority with respect to any action commenced against the Municipality or the approving authority resulting from any activity or occurrence within the "Land" or "Plan", other than with respect to those activities being conducted by the Municipality or approving authority.
  
- 5.15 To deposit with the Municipality an insurance policy from an insurer satisfactory to the Municipality and its Solicitor that shall insure the Municipality and the Developers against any liability that may arise out of the construction or installation of any work required pursuant to this Agreement. The insurance policy shall remain in force until one (1) year after acceptance of the Improvements by the Municipality. The Municipality shall specify the limits of liability of the insurer, which shall not be less than Two Million Dollars (\$2,000,000.00) inclusive, for public liability and property damage. The insurance policy shall include the name of the Municipality as one of the insured. The Developers shall pay the premium or premiums as required, and shall from time-to-time during the duration of this agreement, furnish the Municipality with satisfactory evidence that such insurance is in full force and effect, and that the premiums are paid.
  
- 5.16 To be responsible for providing or for arranging for the installation of all telecommunications, electrical, natural gas, and cable services including the provision of all utility, construction or other easements as may be required to provide the works.

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

S E A L

\_\_\_\_\_  
Mayor/Reeve

\_\_\_\_\_  
Administrator

\_\_\_\_\_  
Developer

\_\_\_\_\_  
Witness or Company Seal  
{A Witness must complete  
a Witness Affidavit – see page 9}

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**Schedule "B" - Road, Street and Lane Construction Standards**

The Developer shall be responsible for the following:

- a) to remove or cause to be removed from within the limits of all the roads, streets and lanes on the "Plan" any privately owned structures, trees, bush or brush, and to properly dispose of any resulting refuse in order that no waste material is left on the Land;
- b) to design, improve or grade all driving surfaces so that all the driving surfaces within the roads or streets on the "Plan" have a driving surface with a minimum width of 7 metres (23 feet) and the driving surfaces within lanes have a minimum width 5 metres (16.5 feet);
- c) to design, improve or grade all driving surfaces so that all surfaces have a 15.24 centimetre (6 inch) high crown evenly sloped to the outside edge of the driving surface where the Developer shall provide surface water run-off channels or ditches as may be required by the topography;
- d) to grade all ditch side and back slopes at to a horizontal to vertical ratio of 3:1;
- e) to remove all rocks and other debris from all slopes and ditches and to revegetate all slopes and ditches by seeding grass;
- f) to have at least 5% clay (binder) in the top 15.24 centimetres (6 inches) under all driving surfaces;
- h) to supply, install, place, spread or grade on all driving surfaces 2.5 centimetre (1 inch) or smaller diameter gravel at rate of 153 cubic metres per 1.6 kilometres (200 cubic yards per mile), and within two (2) years of the making of this agreement, 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) to all driving surfaces; and
- i) to supply and install galvanized steel culverts at such sizes and locations given in Schedule "C" annexed to the Agreement.

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 will be needed in industrial areas. Additional standards may include pavement, curbs, storm sewers, sidewalks and street lights. The municipal engineer should provide standards suitable for the terrain and proposed development.

Before building a highway approach or any 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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**Schedule "C" - Drainage Improvements and Culvert Locations**

This schedule may be a copy of the plan of proposed subdivision on which are sketched: arrows representing drainage pattern flows, ditch dimensions and routes, and culvert types, sizes and locations. The municipal engineer should supply details.

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**Schedule "D" - Street and Traffic Signs Locations**

This may be a copy of the plan of proposed subdivision on which are sketched the required sign types and locations.

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**Schedule "E" - Water and Sewer Requirements**

These standards are unique to each community or system being used. The municipal engineer must supply the standards suitable for each case.

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Additional schedules may be attached as needed. Other schedules might list off-site services and the fees for each service.



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**Witness Affidavit**

I, \_\_\_\_\_, of \_\_\_\_\_, Saskatchewan, make oath and say  
{Print name and address of Witness}

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\_\_.

\_\_\_\_\_  
Signature of Witness

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