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RM/Village/Town/City of

SERVICING AGREEMENT

Project Title

RM/Village/Town/City of

AND

Developer

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The Municipality of _____

A municipal corporation (hereinafter referred to as "the Municipality")

Also

Developer: _____

A legal entity properly allowed to conduct business in the Province of Saskatchewan,
(hereinafter referred to as "the Developer")

AGREEMENT made this _____ day of _____, 20__

Preface

** This sample is intended for discussion purposes only in relation to servicing agreements authorized by *The Planning and Development Act, 2007* (Act). The Act is available through Publications Saskatchewan and should be consulted for more detail. All agreements should be reviewed in consultation with a municipal solicitor **

WHEREAS:

- A. Section 172 of *The Planning and Development Act, 2007* authorizes the use of a servicing agreement to provide services and facilities that directly or indirectly serve a subdivision of land.
- B. The Developer is or shall become the registered owner of part or all of those lands situated in the Municipality.
- C. The Municipality and the Developer agree that the Developer will complete or contribute to the Municipal Improvements required within the Development Area and the payment of servicing agreement fees in accordance with the requirements of this Agreement, with the Developer bearing the whole expense of the Municipal Improvements.
- D. The Municipality and the Developer have agreed to engage into this Agreement in order to ensure appropriate and timely delivery of needed services inside and adjacent to the Development Area.
- E. The Municipal Improvements that are on or under Public Property shall become the property of the Municipality upon satisfactory completion of construction and installation and adoption by the Municipality.
- F. The Municipality and the Developer have agreed that the construction and installation of the Municipal Improvements, as well as all matters and things incidental thereto and all other matters or things relating to

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the development of the Development Area, will be subject to the terms, conditions, and covenants contained within this Agreement.

- G. THEREFORE, in consideration of the premises and the mutual terms, conditions, and covenants to be respected and performed by each of the Parties hereto, the Municipality and the Developer agree as follows:

INTERPRETATION

1. "Construction Completion Certificate" refers to a Certificate issued by the Municipality certifying the completion of the Municipal Improvements, or a portion thereof, after the Municipal Improvements have been constructed and installed to the satisfaction of the Municipality in accordance with this Agreement.
2. "Commencement of Construction" or "Commence Construction" shall mean the date on which the Developer begins the actual grading of the Development Area for the purposes of servicing the Development Area, or such other date as the Municipality and the Developer may agree upon in writing; provided, however, that commencement of grading shall not include the placement of machinery or equipment within the Development Area, nor any work preparatory to grading, such as the removal of building materials.
3. "Default" shall mean the failure of the Developer to meet any timelines outlined within this agreement.
4. "Developer's Consultant" shall mean the consulting professionals retained by the Developer and shall include, but not be limited to professional engineers, landscape architects, land use planners, and land surveyors licensed to practice in Saskatchewan.
5. "Development Area" shall mean that portion of the lands legally described in Schedule "A", and which are outlined in heavy black or bold, or otherwise delineated, on the map attached to Schedule "A" to this Agreement.
6. "Development and Construction Standards" shall mean the procedures, standards, and specifications specified and set forth by the Municipality as outlined in Schedule "B" of this agreement.
7. "Essential Services" shall mean:
 - a. those Municipal Improvements described in Sections (_____) of this Agreement; and
 - b. natural gas, electrical power and telephone services.
8. "Final Acceptance Certificate" refers to a written acceptance granted by the Municipality for the Municipal Improvements, or a portion thereof, following the completion of any repairs for defects or deficiencies and the expiration of the Warranty Period.
9. "Normal Maintenance" shall mean day-to-day maintenance of municipal services including, but not limited to, street sweeping, snow removal, etc.
10. "Municipality" refers to the municipal corporation executing this Agreement as the development regulator and shall be represented by the Municipality's Chief Administrative Officer or as otherwise appointed by the Municipality.
11. "Plan of Proposed Subdivision" or "Plans of Proposed Subdivision" shall mean the subdivision or subdivisions which subdivide the Development Area into separate lots for further development.

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12. "Plans" shall mean plans and specifications prepared by the Developer's Consultant that cover the design, construction, location, and installation of all Municipal Improvements, as well as a construction management plan that delineates, to the satisfaction of the Municipality, the procedures and actions for the overall implementation and coordination of activities for the construction and installation of the Municipal Improvements.
13. "Public Property" or "Public Properties" shall include all properties within the Development Area to be owned or administered by the Municipality, including roadways, reserve lands, public utility lots, utility rights-of-way or easements, following the registration of the Plan or Plans of Subdivision for the Development Area.
14. "Warranty Period" with respect to the Municipal Improvements, subject to Sections (_____) of this Agreement, shall mean: a period of ____ years for all Municipal Improvements, including Landscaping.

PLAN OF PROPOSED SUBDIVISION

1. The Developer covenants and agrees that it shall comply fully with all conditions of any subdivision approval which may be imposed by the subdivision authority (or if the subdivision authority's decision is appealed, the final decision upon appeal).
2. The Developer agrees that it shall register in the Land Titles Office the Plan of Proposed Subdivision within 24 months of the date of the Certificate of Approval. If the development does not register the Plan within the valid period of the Certificate of Approval, the Municipality may terminate this Agreement.
3. The termination of this Agreement in whole or in part shall be effective upon the Municipality servicing written notice of termination on the Developer.

PLANS

1. The Plans herein attached as Schedule "B" shall be approved by the Municipality's Engineer prior to execution of this agreement.
2. The Plans for the construction and installation of the Municipal Improvements for the Development Area shall conform strictly to the Plans outlined in Schedule "B".
3. Subject to the terms of this Agreement, it is understood and agreed between the Municipality and the Developer that the Developer shall be entitled to construct the Municipal Improvements in accordance with the Plans as outlined in Schedule "B".

INSTALLATION OF MUNICIPAL SERVICES

1. Except as otherwise specified in the construction timetable, the Developer shall Commence Construction and commence installation of the Municipal Improvements within ____ months of endorsement of this Development Agreement and shall complete the construction and installation of the Municipal Improvements, at the Developer's own cost and expense, within ____ months of endorsement of this Development Agreement.

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2. The Developer warrants to the Municipality that all Municipal Improvements will be built and installed in a good and workmanlike manner, in strict accordance with the Plans and proper and accepted engineering and construction practices, in accordance with the terms of this Agreement, in accordance with the Development and Construction Standards, and in accordance with all applicable legal requirements.
3. Prior to the issuance of Construction Completion Certificates for the Municipal Improvements, the Developer's Consultant shall submit to the Municipality a statement under their professional seal certifying that the Developer's Consultant provided adequate periodic inspection services during the course of the work and that the Developer's Consultant is satisfied that the work was completed in a good and workmanlike manner.
4. The Developer acknowledges, understands, and agrees that the Developer shall be fully responsible to the Municipality for the performance of all of the Developer's obligations as set forth in this Agreement;

INSTALLATION OF OTHER UTILITIES

1. The Developer should provide for and ensure the installation of electric electricity and natural gas to the Development Area and within the streets bordering the lots to be established in the Development Area at no expense to the Municipality. The Developer shall indemnify and hold harmless the Municipality from and against any and all losses, costs, claims, suits, or demands of any kind (including all legal costs and disbursements on a solicitor and client basis) that may arise as a result of the installation or non-installation of such services.

COMPLIANCE WITH PLANS AND SPECIFICATIONS

1. The Developer shall comply fully with all terms, conditions, provisions, covenants, and details as may be set out in the Plans, as approved by the Municipality, and such terms and conditions as may otherwise be required pursuant to this Agreement or be agreed upon in writing between the Municipality and the Developer at all times during the construction and installation of the Municipal Improvements.
2. The provisions of this Agreement shall be additional to and not in substitution for any law, whether Federal, Provincial or Municipal, prescribing requirements relating to construction standards and the granting of development, building and occupancy permits.

ACCEPTANCE OF MUNICIPAL IMPROVEMENTS

1. For purposes of this Agreement, the Municipality and the Developer agree that no Municipal Improvement shall be considered complete unless and until:
 - a. the Municipal Improvement has been fully constructed and installed in accordance with the approved Plans;
 - b. the Municipal Improvement has been constructed and installed in accordance with the Development and Construction Standards and accepted engineering and constructed practices;
 - c. all Public Properties which have been disturbed or damaged have been fully restored by the Developer;

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- d. the Municipal Improvement is suitable for the purpose intended.
2. When the Municipal Improvements for the Development Area have been constructed and installed in accordance with the requirements of this Agreement, then the Developer shall give notice in writing of such completion to the Municipality.
3. Upon receipt of the developer's notice of completion, the municipality shall conduct an inspection. If the inspection is deemed satisfactory, the municipality shall issue the Construction Completion Certificate.
 - a. Upon issuance of the Construction Completion Certificate, the municipality may reduce the performance bond to XX%.
4. In the event that any inspection reveals any deficiencies in relation to a particular Municipal Improvement, the Municipality may refuse to issue a Construction Completion Certificate for the Municipal Improvement and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request a further inspection and issuance of a Construction Completion Certificate.
5. In the event that there are any deficiencies in relation to a particular Municipal Improvement the Municipality shall refuse to issue the Final Acceptance Certificate of the Municipal Improvements and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request that a further inspection and issuance of a Final Acceptance Certificate.
6. The Developer hereby acknowledges that upon the Municipality's issuance of a Construction Completion Certificate for the Municipal Improvements, all right, title, and interest in the Municipal Improvements (excluding facilities owned by private utility companies) located on or under Public Properties (including utility rights-of-way and easement areas) vests in the Municipality at no cost or expense to the Municipality, and the Municipal Improvements.
7. Notwithstanding anything contained in this Agreement to the contrary, the Developer acknowledges and agrees that the Warranty Period for the Municipal Improvements shall not expire before the issuance of a Final Acceptance Certificate for the Municipal Improvements by the Municipality to the Developer; PROVIDED, that in the event that either party refers to arbitration the Developer's right to the issuance of a Final Acceptance Certificate for the Municipal Improvement, the arbitrator shall, in accordance with the terms of this Agreement, determine the date upon which any such Final Acceptance Certificate is to be effective.

MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER

1. The Warranty Period in respect to any of the Municipal Improvements shall commence with the Municipality's written Construction Completion Certificate for any such Municipal Improvements in good condition and repair, and the Developer repair or replace the whole or any portion thereof during such Warranty Period where such repair or replacement is required, as determined by the Municipality, as a result of any cause other than the neglect by the Municipality, its servants, agents or contractors in the use and operation thereof.
2. The Developer covenants that it shall fully comply with the Plans and accepted engineering and construction practices, in undertaking and completing the repair or replacement of any of the Municipal Improvements pursuant to the requirements of this Section.

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3. The Developer agrees that during the Warranty Period that the Developer shall perform the normal maintenance requirements of the Municipality for all Municipal Improvements.
4. The Developer covenants and agrees that if the Municipality believes that any repair or replacement required during the Warranty Period is of a major nature, the Municipality shall be entitled, in its discretion, to require a further full Warranty Period for the particular Municipal Improvement, or portion thereof, and such further Warranty Period shall begin upon the Municipality issuing a Construction Completion Certificate for the reconstructed Municipal Improvement.
5. The Developer shall be responsible, at his or her own expense, for keeping the Developer's lands and all Public Properties within the Development Area in such condition as may be reasonably required by the Municipality, including mowing grass and removing weeds, refuse, litter, and undesirable vegetation.
6. The Developer covenants and agrees to be responsible for the cleanup and removal of all construction debris, foreign material, dirt, excessive weeds, and undesirable vegetation from all Public Properties, including roadways, within and adjacent to the Development Area, at the Developer's own cost and expense, subject to the following conditions:
 - a. it shall be the responsibility of the Developer to monitor the condition of Public Properties and take immediate action as necessary to comply with the provisions of this Section;
7. If the Municipality believes that any cleanup or removal of construction debris, foreign material, dirt, excessive weeds, or undesirable vegetation is required, the Developer must take all necessary action within forty-eight (48) hours of receiving notice from the Municipality, failing which the Municipality may take action and charge back all costs and expenses to the Developer.

UTILITY EASEMENTS

1. The Developer agrees to register the following easements prior to the issuance of construction completion certificate:
 - a. ----

SERVICING AGREEMENT FEES

1. The Developer covenants and agrees to pay off-site levies to the Municipality as established in Schedule "D".
2. The Developer and the Municipality agree the amount specified above may be paid by installments in the following manner:
 - a. 34% due and payable prior to execution of this agreement
 - b. 33% due and payable one year following execution of this agreement
 - c. 33% due and payable two years following execution of this agreement
3. Installment payments at all times shall be secured by a letter of credit

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ARBITRATION

1. Subject to any other provisions of this Agreement to the contrary, if any dispute or difference between the Parties shall arise under this Agreement following execution, either party may give to the other notice of such dispute or difference and refer such dispute or difference to arbitration in accordance with the provisions of this Agreement.
2. Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the Municipality and the Developer, and their decision shall be final and binding

INDEMNITY AND SECURITY

1. The Developer agrees to indemnify and hold harmless the Municipality from any and all losses, expenses, damages, actions, causes of action, judgments, claims, and demands arising from anything done or omitted to be done by the Developer in accordance with or purportedly in accordance with this Agreement.
2. The Developer covenants and agrees that it shall carry comprehensive liability insurance and that the following provisions shall apply to such insurance:
 - a. The Municipality shall be an additional insured in all public liability policies;
 - b. All policies shall provide that an event of default on the part of the Developer, its servants or agents, shall not be an event of default on the part of the Municipality;
 - c. Copies of all policies of insurance shall immediately be provided to the Municipality upon execution of this Agreement; and
 - d. The insurance policies shall have the following minimum limits of coverage of not less than Two Million (\$2,000,000) dollars per occurrence for such period as the Developer has any rights or obligations hereunder with respect to the Development Area, and a comprehensive liability policy, including extended coverage and malicious damage endorsement, as per industry standard, insuring the full value of the work undertaken by the Developer pursuant to this Agreement.
3. Prior to execution of this Agreement, the Developer shall deposit with the Municipality a letter of credit or performance bond in the amount of ____ (representing ____% of the cost of improvements) percent of the estimated costs of constructing and installing all Municipal Improvements, including Landscaping, required for the Development Area.
4. For the purposes of this Agreement, the estimated cost for the Municipal Improvements shall be XXX as identified in Schedule "E".
5. The security referred to above shall consist of:
 - a. An "Irrevocable Letter of Credit" issued by a "Chartered Bank", approved by the municipality;
 - b. A performance bond.
6. Any Irrevocable Letter of Credit provided as security by the Developer shall contain provisions for either:

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- a. A covenant by the issuer that if the issuer has not received a release from the Municipality Thirty (30) days prior to the expiry date of the security, then the security shall automatically be renewed, upon the same terms and conditions, for a further period of one (1) year; or
 - b. A right on the part of the Municipality to draw upon the full amount of the Irrevocable Letter of Credit, or any portion thereof, in the event that the Municipality has not received a replacement letter, or confirmation of an extension or renewal of the existing letter, at least Sixty (60) days prior to the expiry of the security.
7. Any performance bond provided as security by the Developer shall be in a form deemed acceptable by the Municipality.
8. The amount of security and insurance to be provided by the Developer to the Municipality may, in the sole and absolute discretion of the Municipality, be reduced on application by the Developer upon the Developer having received a Construction Completion Certificate or Final Acceptance Certificate for the Municipal Improvements, or any of them, so completed;

COMPLIANCE WITH LAW

1. The Developer shall at all times comply with all legislation, regulations and municipal bylaws and resolutions relating to the development of the Development Area by the Developer. This includes compliance with The Planning and Development Act, 2007 and all associated regulations, municipal bylaws, and any other legislation or requirements applicable to the project.
2. This Agreement does not constitute subdivision approval and does not constitute a development permit, building permit, or other permit granted by the Municipality, and it is understood and agreed that the Developer shall obtain all approvals and permits required by the Municipality or any governmental authority.
3. If anything provided for herein cannot be done lawfully without the approval or permission of any authority, person, or board, the rights or obligations to do so do not come into force until such approval or permission is obtained.
4. If any provision hereof is contrary to law, the same shall be severed and the remainder of this Agreement shall be of full force and effect.

GENERAL

1. The validity and interpretation of this Agreement and of each part hereof shall be governed by the laws of the Province of Saskatchewan.
2. The Parties to this Agreement shall execute and deliver all further documents and assurances necessary to give effect to this Agreement and to discharge the respective obligations of the Parties.
3. A waiver by either party hereto of the other party's strict performance of any covenant or provision of this Agreement does not constitute a waiver of any future violation of such covenant or provision or any other covenant or provision of this Agreement.

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4. When each party is obligated to provide the other a notice, demand, or request under the terms of this Agreement, such notice, demand, or request may be given in person or by registered mail to the Parties' respective addresses, which are as follows:

THE MUNICIPALITY OF
Address

Phone:

Fax:

Attention: Director, Planning & Development

AND

Developers Name.

Address.

City, Prov, PCode.

Phone: Phone Number.

Attention: Attention.

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EXECUTION OF AGREEMENT

The Developer hereby acknowledges that it is executing this Agreement after having been given full opportunity to review it and seek proper and independent legal advice, that the Developer is executing this Agreement freely, voluntarily, and of its own accord, and that the Developer is fully aware of the terms, conditions, and covenants contained herein and their legal consequences.

IN WITNESS WHEREOF the Parties hereto have affixed their corporate seals, duly attested by the hands of their respective proper officers in that behalf, as of the day and year first above written.

THE RM/VILLAGE/TOWN/CITY OF:

Per: _____ c/s
Mayor/Reeve

Per: _____
Chief Administrative Officer

DEVELOPER:

Per: _____ c/s

Per: _____

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Schedule "A"

Development Area (Plan of Proposed Subdivision)

Schedule "B"

Approved Development Plans

Schedule "C"

Servicing Agreement Fees

Schedule "D"

Background Studies

Schedule "E"

Estimated Costs of Municipal Improvements

SAMPLE