

City of Regina



**REGINA**  
*Infinite Horizons*

# **SERVICING AGREEMENTS**

## **Standard Conditions**

### **2011**

**SERVICING AGREEMENT STANDARD CONDITIONS**

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## SERVICING AGREEMENT STANDARD CONDITIONS

The within Standard Conditions are intended for use in conjunction with servicing agreements entered into between the City of Regina and applicants for subdivision approval and development, pursuant to s. 172 of The Planning and Development Act, 2007.

### 1.0 SCHEDULES

1.1. The following schedules shall be annexed to and form part of the Servicing Agreement:

Schedule "A"	Plan of Survey
Schedule "B"	Infrastructure Services Plan
Schedule "C"	Landscape Services Plan

The Payments, Development Charges and Levies, including other costs, Calculations for "Over Size" Rebates and Schedule of Costs for Street Name Signs and Traffic Control Signs and Devices form part of the Servicing Agreement.

1.2. The following Appendix is annexed to and form a part of these Standard Conditions as if fully set forth herein:

Appendix "I"	Municipal Form - Documentary Letter of Credit
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### 2.0 DEFINITIONS

2.1. The words and phrases set forth in this Article 2.1 where capitalized shall for the purposes of the Servicing Agreement and these Standard Conditions have or include the meanings ascribed as follows:

"Alley" means the rear or side lanes shown in Schedule "A" (if any) designed

to provide rear or flankage access to parcels of land shown in Schedule "A";

"Development Area" means the lands to be developed, shown outlined in Schedule "A";

"General Manager" means the General Manager of Planning & Development Division of the City of Regina, or delegate;

"Consulting Engineer" means the professional engineer, duly licensed to practice by the Association of Professional Engineers of Saskatchewan, to be engaged by the Developer hereunder for the purposes of design and project management in relation to the Development Area and for delivery to the City of documents and written statements as to completion as contemplated herein;

"Contract Documents" means the Servicing Agreement and these Standard Conditions and all specifications, designs and drawings approved or to be approved for use for in conjunction herewith;

"Infrastructure Services" means all services to be constructed or installed by the Developer relating to roadways and utilities infrastructure, including grading of roadways and Lots;

"Landscape Consultant" means the consultant engaged by the Developer or the Consulting

Engineer in respect of Landscaping Services, being a member of the Saskatchewan Association of Landscape Architects or otherwise being acceptable to the General Manager, acting reasonably, and includes the Consulting Engineer if that Consulting Engineer is engaged by the Developer for the provision of such services.

"Landscaping Service(s)" means all services to be constructed or installed by the Developer relating to the landscaping of public lands within the Development Area, including grading;

"Lots" means lands within the Development Area for which a certificate of title has or may be issued pursuant to the Plan of Survey and includes lots, blocks, parcels, Municipal Reserves, Environmental Reserves, Buffers, utility areas or parcels, and walkways;

"Service(s)" includes both Infrastructure Services and Landscaping Services;

"Servicing Agreement" means the Servicing Agreement entered into by the City and the Developer in respect of the Development Area;

"Street" means any street designated as a roadway and named as an avenue, circle, crescent, bay, road, drive, place, boulevard, alley, lane, gate or way.

"Work" or "Construct" or "Provide": when used in the context of a covenant, agreement or

undertaking otherwise of the Developer includes all labour, materials or services required, as shown or described in the Contract Documents, to be supplied, installed, planted, laid down, erected or otherwise required of the Developer and the construction or provision of such things or measures shall be effected at no cost to the City unless the contrary is expressly provided in the Contract Documents.

- 2.2. Words or phrases which have well known technical or trade meanings shall be meant to refer to recognized meanings.

### 3.0 SERVICING OF SUBDIVISION

- 3.1. The Developer agrees that it shall for the purposes of Services to be provided hereunder engage a Consulting Engineer and a Landscaping Consultant, who shall be responsible for design and project management in respect of the Infrastructure Services and the Landscaping Services, respectively. Designs, drawings and specifications (excluding standard City designs, drawings and specifications if the same are proposed to be used by the Developer or the Consulting Engineer) in respect of the Services shall be signed by and carry the seal of the Consulting Engineer or the Landscape Consultant, as the case may be.
- 3.2. The Developer agrees to provide the Services to the Development Area by the design (if applicable), supply, placement, installation and construction of the Services shown in the Infrastructure Services Plan and Landscaping Plan, all in accordance with standard City specifications or with plans and specifications otherwise approved by the General Manager in accordance with the provisions of the Contract Documents.

3.3. Provided that the Developer is not in breach of any undertaking, covenant or payment to be performed or remitted hereunder, the City authorizes the Developer to construct the Services.

4.0 APPROVALS

4.1. All designs, drawings, specifications and mix designs for the Services shall be in accordance with prevailing City standards and specifications. Where Services not covered by prevailing City standards and specifications are proposed by the Developer or where differing standards or specifications are proposed, then the prior approval of the General Manager shall be required. Without limiting the foregoing, it is expressly provided that Landscaping Services shall be shown on detailed drawings and shall be subject to the prior approval of the General Manager.

4.2. Where, subsequent to the approval of designs, drawings, mix designs and specifications the Developer or the Consulting Engineer propose to deviate from approved plans and specifications, the change shall be submitted for consideration and approval of the General Manager and no such change shall be implemented without the General Manager's approval.

4.3. The Developer shall in respect of the Services secure such approvals as required by law to be granted by Provincial and Federal authorities, and shall furnish the City with copies of such approvals.



## 5.0 ADDITIONAL WORK AND SERVICES

- 5.1. Without restricting the generality of Article 3 and in addition to the Services expressly set forth therein, the Developer agrees to affect the measures set forth in this Article 5, on a temporary or permanent basis as the case may be.
- 5.2. Where temporary gravelled roads are to be constructed by the Developer or where permanent roads are gravelled as an interim measure to provide access to Lots prior to the construction of permanent paved roads, the Developer shall apply gravel to an initial depth of 80 mm and shall thereafter re-apply gravel from time to time to maintain a suitable surface, as required by the General Manager. Such gravelled roads shall be to standards of elevation, grade and cross-section as approved by the General Manager and the Developer shall provide and maintain adequate drainage.
- 5.3. The Developer shall during the course of constructing the Services cause pooled or standing water to be pumped away or disposed of so as to prevent damage or nuisance to the Development Area or adjoining lands.
- 5.4. The Developer shall make adequate provision, including stockpiling if necessary, for repairing areas of settlement by use of approved backfill and surface materials.
- 5.5. The Developer may create a temporary roadway beyond the Development Area to provide access to the Development Area, upon the prior approval of the General Manager and in accordance with approved designs, drawings and specifications. Such temporary roadway shall not be construed as being Services to be turned over to the City and the City shall

assume no obligation to operate or maintain the temporary roadway upon the issuance of Certificates of completion or acceptance. Temporary roadways beyond the Development Area shall when no longer be required be removed by the Developer and the original surface shall be restored to grade.

- 5.6. The Developer shall arrange with utility companies for the design and installation of gas lines, electrical lines, and telephone/cable lines in accordance with the requirements of the utility companies. Designs and locations of such utilities shall be subject to the approval of the General Manager for conformity with existing and planned locations of City infrastructure prior to the commencement of construction or installation of the Services.
- 5.7. The Developer shall construct Lot grades in accordance with grading plans approved by the General Manager, and the Developer shall preserve the grades until all utilities are installed and certification of grades are submitted to the General Manager.
- 5.8. The Developer shall install service connections to all Lots intended to receive water and sewer service, in each case from the main to the Lot property line, and shall attend if necessary to all breaking and replacement of pavement. When tying into existing City infrastructure, the Developer shall give reasonable advance notice to the General Manager prior to installing such service connections.
- 5.9. Notwithstanding other provisions herein with respect to operation and maintenance of Services, the Developer shall prior to the issuance of a Construction Completion Certificate #1 perform all flushing and cleaning of storm and sanitary sewers, including manholes, catch basins and water valve boxes, and the City shall be responsible for all flushing and cleaning

of storm and sanitary sewers subsequent to the issuance of the said Certificate. Irrespective of which Party is conducting the flushing and cleaning, the Developer shall be responsible for the clearing of obstructions not normally deposited in the sewers, manholes, catch basins and water valve boxes in the course of normal usage, and the City shall be responsible for costs attendant on flushing or cleaning materials or obstructions typically found in the course of normal usage.

- 5.10. The Developer shall in constructing or causing the construction of the Services ensure the protection from damage, normal wear and tear excepted, of all existing City infrastructure, whether within or beyond the boundaries of the Development Area, and shall promptly advise the City of any damage to City infrastructure occasioned in the course of installing the Services hereunder and thereafter at the City's election the Developer shall either repair the damage or reimburse the City for costs of such repairs.

## 6.0 INSPECTION AND TESTING

- 6.1. The City and its servants shall have free access to the places of work and may perform inspections and tests to determine whether any Service is in compliance with City requirements. All inspection and test results shall be available to the Developer upon request.
- 6.2. City inspection and testing shall be supplementary to and not in lieu of inspections and testing as may be conducted or required to be conducted by the Consulting Engineer.

- 6.3. The Developer shall conduct or cause to be conducted material testing in accordance with industry standards for quality control and shall promptly submit or cause to be submitted all test results to the General Manager. Without restricting the generality of the foregoing the General Manager may establish minimum standards, frequencies and timing of testing of materials, mixes, batches, compaction, cores and pavement thickness, as well as testing of underground mains and connections, with respect to Infrastructure Services and Landscape Services, as the case may be. Further, the General Manager may establish requirements relating to the quality of plant materials and to the acceptance of plant stock prior to planting. The Parties acknowledge that the City has developed Guidelines for "Developer's/Engineer's Field Services" in respect of Infrastructure Services and "Developer's/Consultant's Field Services" in respect of Landscape Services, and that Field Services by or on behalf of Developers shall be provided in accordance with Guidelines procedures and standards.
  
- 6.4. The General Manager may, in addition to any other requirement or direction authorized in the Contract Documents require the Developer to cause the temporary stoppage of Work in the event the General Manager has cause to believe that Services are not being constructed in accordance with requirements of the Contract Documents or in a fashion which fails to comply with any law. In such event the General Manager or his designate shall forthwith apprise the Consulting Engineer or the Landscape Consultant of the stoppage and arrange for the immediate inspection of the work or inquiry into the compliance with laws, in conjunction with the Consulting Engineer or Landscape Consultant.

7.0 OWNERSHIP OF SERVICES

- 7.1. Services constructed by the Developer pursuant to this Agreement shall be the property of

the City as soon as constructed, but shall remain subject to the Developer's obligations to repair and maintain as are set forth herein.

## 8.0 CERTIFICATES

### PART I - INFRASTRUCTURE SERVICES

#### Construction Completion Certificate #1

- 8.1. When the Developer is of the opinion that Infrastructure Services have been completed in accordance with the requirements of this Agreement, the Developer shall apply in writing for the issuance of Construction Completion Certificate No. 1. Upon receipt of such application the General Manager shall arrange for an inspection of the Services, to be conducted within 3 weeks of the General Manager's receipt of the application and to be carried out jointly with the Consulting Engineer. In the event the Services appear to be completed in accordance with approved plans and specifications and otherwise to have been effected in a good and workmanlike manner, the General Manager shall issue Construction Completion Certificate #1.
- 8.2. The General Manager shall not be obliged to issue Construction Completion Certificate #1 until the Developer has submitted the following:
  - a) a written statement as to completion by the Consulting Engineer, in the form set forth in the Developer's/Consulting Engineer's Field Services Guidelines;

- b) as-built rear-of-lot grades, conforming to the approved grading plan; and
- c) copies of all required easements and other agreements as may have been required as a condition of subdivision approval, which have not at the time of construction completion been prepared and executed by the Developer or registered owner of the affected lands, as the case may be; and
- d) all test results and field reports which have not been previously provided to the General Manager.
- e) a complete set of as-built plans and records relating to Infrastructure Services with their application for Construction Completion Certificate #1 (CCC #1). The Developer expressly acknowledges and agrees that the General Manager may without liability to the Developer withhold or revoke Construction Completion Certificate #1 in the event as-builts and records are not submitted, and shall not be required to issue a new Certificate until the as-built and records have been furnished, and the new Construction Completion Certificate shall be dated to coincide with such late receipt.

#### Warranty Period

- 8.3. Upon the issuance Construction Completion Certificate #1, the warranty period for Infrastructure Services shall commence. Unless expressly stated to the contrary in the Contract Documents, the warranty period shall be 1 year.

- 8.4. If during the warranty period any defects or deficiencies attributable to faulty workmanship, substandard materials or the failure otherwise to construct the Services in accordance with approved plans and specifications become apparent in any of the Services and the General Manager requires repairs or replacement (herein referred to as "warranty work") to be done, the Developer shall, within 30 days after the delivery of a notice in writing to the Developer or within such other period of time as is reasonable having regard to seasonal conditions or as the Parties may otherwise agree, cause the repairs or replacements to be done. If, in the sole opinion of the General Manager any emergency arises the City may perform the warranty work without notice to the Developer and the Developer shall reimburse the City for all reasonable costs of the warranty work, having regard to the exigent circumstances.
- 8.5. Warranty work is a continuing obligation which must be carried out until the date of issuance of the Final Acceptance Certificate for each and every Service addressed therein. Subject only to Article 8.7 warranty work may be required by the General Manager only where the work is attributable to substandard work, faulty materials, or the Developer's failure otherwise to adhere to approved standards and specifications for construction. Work required as a result of normal wear and tear, vandalism, storms, motor vehicle accidents, damage by snow removal operations, and such other risks as are normally incurred in municipal operations of the Infrastructure shall not be subject to warranty work requirements.
- 8.6. Damage occasioned to Services by construction activity on individual Lots, whether or not the Developer controls such construction activity, shall during the warranty period be subject to warranty work requirements.

## Final Acceptance Certificate #1

8.7. Eight weeks prior to the expiration of the warranty period, the Developer may apply for Final Acceptance Certificate #1. The General Manager shall arrange for an inspection of the Infrastructure Services within 3 weeks of receipt of such application, which inspection shall be carried out jointly with the Consulting Engineer. Where following inspection of the Infrastructure Services it appears that the Developer has maintained, repaired and/or replaced all such Services in accordance with approved plans and specifications, the General Manager shall issue Final Acceptance Certificate #1, whereupon subject only to express provisions herein to the contrary the City shall accept, and assume maintenance and operational responsibilities with respect to those Services covered by the Final Acceptance Certificate. In the event that any Infrastructure Service requires repair or replacement, the General Manager shall cause a list of required repairs and replacements to be delivered to the Developer and issuance of the Final Acceptance Certificate shall be withheld until the Developer remedies such outstanding items.

## PART II - LANDSCAPING SERVICES

### Construction Completion Certificate #2

8.8. Applications for Construction Completion Certificate #2, which shall relate to Landscaping Services, shall be made and such Certificate shall be issued in accordance with the



provisions of Article 8.1, with such changes only as the context requires. The issuance of Construction Completion Certificate #2 shall be subject to adherence to standards of the Community Services - Parks and Recreation Department, including without restriction standards for the establishment of seeding, sod and other plant materials and project close-out documents in the nature of as-built drawings and Operation and Maintenance Manuals.

- 8.9. The General Manager shall not be required to issue Construction Completion Certificate #2 until the Developer has submitted a written statement by the Landscape Consultant stating that to the best of the consultant's information and belief all Landscape Services have been constructed and completed in accordance with approved plans and specifications.
- 8.10. The provisions of Article 8.3 apply, mutatis mutandis, to project close-out documents relating to Landscaping Services.

#### Warranty and Maintenance

- 8.11. For the purposes of Part II of this Article 8:

"Warranty Work" means the correction of defects or deficiencies in Landscaping Services arising during the warranty period, attributable to poor workmanship, substandard materials or failure otherwise to construct the Landscaping Services in accordance with approved standards or specifications, and includes the required replacement of Landscaping Services within the period warranted by the supplier thereof in accordance with the requirements of the Contract Documents; and

"Maintenance" means the periodic mowing, weeding and husbandry of plant materials required for the proper growth and sustenance of those materials.

8.12. Upon the issuance of Construction Completion Certificate #2, the warranty period for the Landscaping Services shall commence. Unless expressly stated to the contrary in the Contract Documents, the warranty period shall be 1 year.

8.13. Upon issuance of Construction Completion Certificate #2, the Developer shall be required to perform Maintenance for a period of one month. Thereafter Maintenance shall be assumed by the City during and subsequent to the warranty period. Notwithstanding Maintenance by the City, the Developer's obligations to correct or remedy defects or deficiencies shall continue unabated for the warranty period, it being provided that the City shall keep records of Maintenance conducted with respect to the Landscaping Services and in the event the Developer asserts that warranty work is attributable to a failure on the part of the City to properly perform Maintenance, the Developer shall perform the warranty work and the costs thereof may be referred to arbitration. It is a condition of this Article that where the Developer asserts that the City is improperly performing Maintenance, the Developer shall notify the City forthwith and specify full particulars of the matter(s) of complaint.

Notwithstanding anything contained in this Article 8.14, where Construction Completion Certificate #2 is issued after October 15 in any year, the City shall not assume Maintenance responsibilities until May 15 of the subsequent year, and Maintenance to that date shall be the responsibility of the Developer.

8.14. Warranty work is a continuing obligation which must be carried out until the issuance of Final Acceptance Certificate #2 for each and every Landscaping Service. Subject to Articles 8.14 and 8.16 warranty work may be required by the General Manager where:

- a) the warranty work is attributable to substandard workmanship, faulty materials of the Developer's failure otherwise to construct the Landscaping Services in accordance with approved standards and specifications for construction; or
- b) Landscaping Services do not perform or survive for the period guaranteed by the supplier thereof, as such period may be specified in the Contract Documents.

Work required as a result of normal wear and tear, vandalism, storms and such other risks as are normally incurred in municipal operations of the Landscaping Services shall not be subject to warranty work requirements.

8.15. Damage occasioned to Landscaping Services by construction activity on Lots, whether or not the Developer controls such construction activity, shall during the warranty period be subject to warranty work requirements.

#### Final Acceptance Certificate #2

8.16. The provisions of Article 8.8 apply, with such changes only as the context requires, to the application for and issuance of Final Acceptance Certificate #2 relating to Landscaping Services.

## 9.0 EFFECT OF FINAL ACCEPTANCE CERTIFICATES

- 9.1. Upon issuance of Final Acceptance Certificates #1 and #2, as the case may be, the Services to which each certificate relates shall be dedicated to public use and shall be maintained, operated and repaired or replaced, as the case may be, by the City; EXCEPTING HOWEVER that neither the issuance of any certificates nor the expiration of warranty periods shall relieve the Developer of its obligation to execute the work according to approved plans and specifications and such liability of the Developer to the City shall be subject only to relevant laws in force from time to time in the Province of Saskatchewan for the limitation of actions.

## 10.0 EASEMENTS AND CAVEATS

- 10.1. The Developer shall provide, prepare, cause to be executed and register all easements required by the City for the installation, operation, maintenance and repair of any City utility or service within the Development Area, and shall further provide and see to the registration of easements required by utility companies.
- 10.2. All Agreements pertaining to restrictive access to or from Lots or to access easements and or rights-of-way or other covenants of a restrictive nature with respect to use of the Lots, as contemplated in conditions of subdivision approval and in so far as they pertain to the Development Area, shall be prepared, provided and executed by the Developer or otherwise by the Owner of the Development Area, and shall be registered by and at the cost of the

Developer, as a first charge if required by the City, within the Saskatchewan Land Titles Registry maintained by Information Services Corporation.

- 10.3. The easements and agreements described above shall be registered prior to the transfer to third parties of any lands for which certificates of title will be raised upon registration of the Plan of Survey. In the event properties are transferred free and clear of the encumbrances described in this Article 10 the Developer shall continue to be liable for the provision of easements and agreements and upon failure to provide same the City may at any time acquire by agreement or expropriate same at the cost of the Developer and the Developer shall upon receipt of a demand for payment by the City reimburse the City for costs both compensatory and legal.
- 10.4. The Developer and the City shall co-operate for the purposes of identifying, documenting and registering easements and caveated agreements in a timely and cost-effective manner.

#### 11.0 COMPLETION

- 11.1. The Developer agrees that all Services shall be constructed in a logical and sequential fashion and as promptly as possible. Without restricting the generality of the foregoing and subject only to Article 24.7 (Unavoidable Delay) and to warranty periods established hereunder, the Developer covenants and agrees that all Services, covenants, agreements or undertakings otherwise of the Developer to be kept or observed hereunder shall be completed and discharged on or before the date for completion specified in the Servicing Agreement.

11.2. The Developer may by notice in writing request an extension of time within which to complete the Services. No extension of time shall be allowed unless such written request is made by the Developer and approved by the General Manager. Approval of the General Manager may be made subject to conditions with regard to the extension or renewal of Letters of Credit.

## 12.0 INSURANCE REQUIREMENTS AND INDEMNIFICATION OF CITY

12.1. The Developer shall during the Term of this Agreement secure and maintain, from an insurer allowed by law to issue insurance policies in Saskatchewan, the following policies of insurance covering the Developer in respect of obligations to construct or install Services hereunder:

- a) a comprehensive general liability insurance policy for bodily injury (including death) and property damage having limits of not less than \$2,000,000 inclusive per occurrence, which policy shall provide for:
  - i. a waiver of subrogation against named insureds;
  - ii. cross-liability;
  - iii. broad form contractual liability;
  - iv. a non-owned automobile liability extension;
  - v. an extension for unlicensed vehicles and operation of attached machinery;and
  
- b) an automobile third party liability insurance policy (owner's form) for bodily injury (including death) and property damage having limits of not less than \$2,000,000 per

occurrence, covering all vehicles used in the performance of this Agreement and such insurance shall include passenger liability extension.

- 12.2. The insurance policies mentioned in this Article 12 shall include provision for the City to be given not less than 30 days notice prior to cancellation or any material change in coverage, and in either event the Developer shall secure and maintain alternate or replacement insurance prior to the effective date of cancellation or material change providing such insurance is commercially available.
- 12.3. The Developer shall provide the City, upon demand, certified copies of such policies of insurance or, upon permission of the City, certificates of such insurance issued by the Insurer.
- 12.4. In the event the insurance policies are secured and maintained by a third Party such as the construction contractor, such policies shall be acceptable to the City in lieu of the insurance described in Article 12.1, provided the Developer is named as an Insured Party.
- 12.5. If the Developer fails to secure or to maintain policies of insurance required in this Article 12, or to prove the existence of such policies in accordance with same, the City may purchase on behalf of and at the expense of the Developer the required insurance coverage.
- 12.6. Nothing contained in this clause or in any policy of insurance provided hereunder shall in any way limit the liability of the Developer under this Agreement or otherwise in law.
- 12.7. The Developer shall, from the commencement of any activity of the Developer authorized by

this Agreement whether or not the within Agreement is executed at the time of such commencement, and whether or not the activity is within or beyond the Development Area, indemnify, defend and hold harmless the City from and against any and all claims, costs, losses, demands, damages, actions or causes of action (hereinafter called "costs" in this Article 12.7) which may be brought against or incurred by the City at the instance of any person(s) by reason of any act or omission of the Developer, its officers, servants or agents or any person engaged by the Developer in pursuance of the Work, or anything done otherwise pursuant to this Agreement; it being provided that the indemnity granted herein shall not extend to any costs or portion of such costs as are attributable to the negligence of the City.

- 12.8. The covenant of indemnity described in Article 12.7 shall survive the termination or expiration of this Agreement and the completion of the Services, as the case may be.

### 13.0 DEVELOPER'S COSTS

- 13.1. The Developer shall in observing and discharging its works, covenants, agreements and undertakings herein, do so at no cost to the City. Without restricting the generality of the foregoing the Developer's covenants to construct Services and perform covenants herein shall be deemed to include the provision at the Developer's cost of all necessary labour, materials, equipment, supervision, administration, professional fees, overhead and other costs attendant thereon.

- 13.2. Article 13.1 shall apply to all covenants, agreements and undertakings of the Developer unless the contrary intention with respect to a given cost is expressly stated.



#### 14.0 CITY SERVICES

14.1. The City shall provide the following services to or with respect to the Development Area:

- a) Street Signage, Traffic Signage and Intersection Signalization (subject to payments by the Developer in accordance with the Servicing Agreement); and
- b) Issuance of approvals and certificates where warranted pursuant to the terms of this Agreement.

The provision of services by the City and the administration of all requests for approvals and certificates shall be provided with reasonable dispatch by the City, having regard to the availability of assigned resources in the Infrastructure Development Branch and the Comprehensive Planning Branch of the Planning & Development Division.

#### 15.0 PAYMENTS, ASSESSMENTS AND LEVIES

15.1. The Developer shall tender payments to the City as specified in the Servicing Agreement, in accordance with the levies and development charges adopted by the Council of the City. (Subject to the rebates set forth in the Servicing Agreement).

#### 16.0 TIMING OF PAYMENTS OR INSTALMENTS

16.1. Sums payable pursuant to the Contract Documents, including instalment payments, as the

case may be, shall be remitted by the Developer in accordance with the provisions of the Servicing Agreement.

## 17.0 INTEREST

- 17.1. Interest shall be payable to the City on any sum or portion thereof due and payable to the City pursuant to any provision of the Contract Documents and not remitted to the City on the date for payment or within the time periods specified therein, such interest to be calculated from the due date until the date of remittance at the rate of 9.5% per annum.

## 18.0 SECURITY FOR PERFORMANCE

- 18.1. In order to secure the construction of all Services herein and to guarantee the observance of financial obligations of the Developer, Letters of Credit in amounts and having expiration dates set forth in the Servicing Agreement shall be submitted to the City upon the execution of the Servicing Agreement, such Letters of Credit to be issued by a financial institution acceptable to the City in its discretion.
- 18.2. The Letter(s) of Credit to be furnished by the Developer shall be substantially in the form set forth in Appendix "I", and shall in any case of departure from the scheduled form be subject to the approval of the City, which approval may be withheld in the City's discretion and which approval may be subject to conditions.
- 18.3. Where any letter of credit furnished pursuant to this Agreement is set to expire within 30

days and the obligation or payment to which the letter relates has not been performed or made, the General Manager may in his discretion and upon a written request by the Developer to such effect accept a replacement or renewal letter of credit in lieu of the original.

- 18.4. It is a condition hereof that where any letter of credit is due to expire within 14 days and the Developer has failed to satisfy the obligation or payment secured by the said letter(s) of credit and further has failed or neglected to furnish the City with replacement or renewal letter(s) of credit in the approved form, the Developer shall be deemed to be in breach of this Agreement and the City may present letter(s) of credit to which the obligation or payment pertains for payment in whole or in part and shall not be liable to the Developer therefor; IT BEING PROVIDED that where the letter(s) of credit relate to financial obligations the payment secured by the letter of credit presented for payment shall, to the extent the financial obligation is satisfied by payment under the letter of credit, be deemed to have been remitted to the City, and that where the letter(s) of credit relate to construction or installation of Services the proceeds of the letter(s) of credit shall be:
- a) remitted to the Developer, without interest, in the event the construction or installation of Services to which the letter(s) relate are permitted to be performed by the Developer; or
  - b) applied by the City toward the construction or installation of the Services to which the letter(s) relate; it being provided that in the event proceeds of the letter(s) of credit are insufficient to effect or complete the construction or installation of Services the Developer shall remain liable under this Agreement for the balance of costs to effect or complete the construction or installation of Services.

18.5. Notwithstanding anything to the contrary herein contained, the Developer may furnish security for its obligations to construct Services by means of a bond, the maximum amount of which shall be calculated upon the estimated cost of the Services, or a percentage thereof, as set forth in the Servicing Agreement. The Surety issuing the bond and the form and content of the bond shall be subject to the approval of the City.

## 19.0 DEFAULT

19.1. The following shall be events of default by the Developer:

- a) failure or refusal to complete the Services within the time specified herein;
- b) (b) abandonment of the work or the failure otherwise to continue with construction for a period of 30 consecutive days, seasonal conditions permitting;
- c) failure to make any payment when due and payable or to secure or keep secured such payment by Letters of Credit in accordance with Article 18;
- d) bankruptcy, insolvency, the making of an assignment for the benefit of creditors, having a receiver, manager or trustee appointed by any means in respect of substantial operations or assets of the Developer or the taking of the benefit of any legislation enacted for the benefit of insolvent or bankrupt creditors; and
- e) failure or refusal to repair or replace defective or deficient Services in accordance with the requirements of the Contract Documents.

## 20.0 REMEDIES

20.1. Without restricting the generality of Article 19, the City shall have the following remedies in the event of an event of default by the Developer:

- a) entering the Development Area and constructing the Services, at the cost of the Developer;
- b) terminating the Developer's rights to continue to construct the Services;
- c) presenting any Letter of Credit for payment in whole or part;
- d) commencing legal action(s) for damages or for the enforcement of the covenants of the Developer.

## 21.0 PHASED DEVELOPMENT

21.1. The General Manager may approve the phased development of an approved plan of subdivision. Where any Servicing Agreement pertains to a portion only of a plan of subdivision approved by the Council, the General Manager shall require the payment of charges, assessments and levies in respect of the approved subdivision area to be apportioned as between servicing agreements and shall further require the construction of Services to be apportioned as between servicing agreements so as to ensure the payment of assessments and

levies and the provision of Services in a timely and sequential fashion.

## 22.0 MANUFACTURERS' WARRANTIES

- 22.1. The Developer shall where manufacturers' warranties are provided for goods incorporated into the Services furnish the City with original copies of the warranties, issued or executed in favour of the City. Where original warranties in the City's name cannot be provided then the Parties agree that the City may enforce the warranty in the name of the Developer.

## 23.0 DISPUTES AND ARBITRATION

- 23.1. Where in this Agreement the General Manager requires the Developer to perform, repair, maintain or replace any Work or Services and the Developer disputes its obligation to perform such work or repair, maintain or replace such Work, including warranty work, the Developer shall perform the measures required hereunder promptly notwithstanding its objection to or dispute with the direction. The Developer shall however be entitled by written notice to the General Manager to dispute its obligation to perform such Work and its liability for costs attendant thereon, in which event any Work performed by the Developer shall be effected without prejudice to the Developer's dispute and the costs attendant upon such work shall be subject to a referral to arbitration pursuant to The Arbitration Act for Saskatchewan, at the instance of either party.
- 23.2. Where any Work including warranty work is performed by the City the Developer's liability for costs thereof shall also be referred to arbitration if the Developer disputes its liability for

cost of the work or the calculation of such costs.

- 23.3. In the event of arbitration each Party shall on a timely basis and in any event not less than 14 days prior to the date set for the arbitration hearing provide to the other Party full particulars of the provisions of the Contract Documents upon which that party relies together with a disclosure of any tests, reports, field sheets, or inspection results as may be relevant to the disposition of the arbitration whether or not such Party intends to rely upon such materials.

#### 24.0 GENERAL PROVISIONS

- 24.1. The captions, section numbers, article numbers and Table of Contents (if any) appearing in the Contract Documents are inserted as a matter of convenience only and in no way define, limit, construe or describe the scope or intent of such clauses or articles and such captions, section numbers, article numbers and Table of Contents shall not in any way other than for reference purposes affect the interpretation or construction of the Contract Documents.
- 24.2. The Contract Documents shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and, without restricting the ability of the City to commence and prosecute proceedings in other jurisdictions; the Developer shall attorney to the jurisdiction of the Courts of Saskatchewan.
- 24.3. The Contract Documents may not be modified or amended except by an instrument in writing signed by the Parties or by their successors or assigns.
- 24.4. The words "hereof", "herein" and "hereunder" and similar expressions used in any section or

subsection of the Contract Documents relate to the whole of the Contract Documents and not to that section or subsection only unless otherwise expressly provided. The use of the neuter singular pronoun to refer to the Developer or the City is and is deemed a proper reference even though the Developer or the City is an individual, partnership, corporation or a group of two or more individuals, partnerships or corporations. The necessary and grammatical changes required to make the provisions of the Contract Documents apply in the plural sense where there is more than one Developer and to either corporations, associations, partnerships, or individuals, males or females shall in all instances be assumed as though in each case fully expressed. Unless the contrary intention appears the words "Developer" and "City" shall mean respectively "the Developer, its successors and/or permitted assignees" and "the City, its successors and/or permitted assigns".

- 24.5. If for any reason any term, covenant or condition of the Contract Documents, or the application thereof to any person or any circumstance, is to any extent held or rendered unenforceable or illegal then such term, covenant or condition:
- a) is and is deemed to be independent of the remainder of the Contract Documents and to be severable and divisible therefrom and its unenforceability or illegality does not affect, impair or invalidate the remainder of the Contract Documents or any part thereof; and
  - b) continues to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstance other than those to whom it has been held or rendered unenforceable or illegal.

Neither party is obliged to enforce any term, covenant or condition in the Contract



Documents against any person, if, or to the extent by doing so, such party is caused to be in breach of any laws, regulations or enactments from time to time in force.

- 24.6. No waiver shall be inferred or implied by any forbearance by a party hereto or anything done or omitted to be done by a party with respect to a default, breach or nonobservance save only an express waiver in writing and then only to the extent expressly stipulated and necessary to give effect to such express waiver. A waiver by a party of any breach of any term, covenant or condition herein contained shall not be and shall be deemed not to be a waiver of any continuing or subsequent breach of such term, covenant or condition (except as specifically expressed in writing to be so) or of a party's rights hereunder or of any other term, covenant or condition herein contained. Without limiting the generality of the foregoing the subsequent acceptance of payment by a party is not and is deemed not to be a waiver of any preceding breach or continuing breach by the other party of any term, covenant or condition, regardless of knowledge of any such preceding breach at the time of acceptance of such payment.
- 24.7. Notwithstanding anything to the contrary contained in the Contract Documents, if either the Developer or the City is bona fide delayed or hindered in or prevented from performance of any term, covenant or act required, by reason of strikes, lockouts, labour trouble, inability to procure materials, government intervention or other casualty or contingency beyond the reasonable control of the party who is by reason thereof delayed in the performance of such party's covenants and obligations under this Agreement in circumstances where it is not within the reasonable control of such party to avoid such delay, excluding any insolvency, lack of funds or other financial cause of delay (hereinafter referred to as "Unavoidable Delay"), such performance shall be excused for the period of Unavoidable Delay and the

period within which performance is to be effected shall be extended by the period of Unavoidable Delay.

- 24.8. Any notice or demand required or permitted to be given to the City by the Developer shall be in writing and may be delivered to the following address:

General Manager of Planning and Development  
City of Regina  
P.O. Box 1790  
Regina, Saskatchewan  
S4P 3C8

and notices to be given to the Developer by the City shall be delivered to the address set forth in the Servicing Agreement or to such alternate address within Saskatchewan as the Developer may by notice in writing advise.

Any such notice, demand, request or consent is conclusively deemed to have been given or made on the day upon which such notice, demand, request or consent is delivered, or, if mailed, then forty-eight (48) hours following the date of mailing, as the case may be, and any time period referred to therein commences to run from the time of delivery or forty-eight (48) hours following the date of mailing, as the case may be. If postal service is interrupted or substantially delayed, any notice, demand, request or other instrument shall be delivered, if to, only in person, and if to the City, only by delivery of the same to the City in an envelope addressed to the City at the above address.

- 24.9. Mention in the Contract Documents of any particular remedy or remedies of a party in respect of any default shall not preclude the use by such party of any other remedy in respect

thereof whether available in law or in equity or by statute or expressly provided for herein. No remedies shall be exclusive or dependent upon any other remedy and a party may from time to time exercise any one or more of the remedies referred to herein and at law independently or in combination, such remedies being cumulative and alternative.

24.10. Time is of the essence.

24.11. No assignment hereof may be made by the Developer in whole or part without the prior written approval of the General Manager.

**END OF SERVICING AGREEMENT STANDARD CONDITIONS**

**APPENDIX I**

**SHOWING MUNICIPAL FORM  
DOCUMENTARY STANDBY LETTER OF CREDIT**

Financial Institution: \_\_\_\_\_ Date Issued: \_\_\_\_\_

Letter of Credit No. \_\_\_\_\_ Amount: \_\_\_\_\_

Issued subject to the uniform customs and practices for Documentary Credits  
being ICC – U.C.P. 500

To: The City of Regina

Address: P.O. Box 1790

Regina, Saskatchewan

S4P 3C8

WE HEREBY AUTHORIZE YOU TO DRAW ON THE \_\_\_\_\_

\_\_\_\_\_, for the account of \_\_\_\_\_

[Developer]

UP TO AN AGGREGATE AMOUNT OF \_\_\_\_\_

(\$ , .00) available upon demand.

AT THE REQUEST OF OUR CUSTOMER we hereby establish and give you an Irrevocable Letter of Credit in your favour in the above amount which may be drawn upon by you at any time and from time to time upon written demand for payment made upon us by you which demand we shall honour without inquiring whether you have the right as between yourself and the said customer to make such demand, and without recognizing any claim of our said

customer, or objection by that customer to payment by us.

DEMAND shall be made by letter signed by the Clerk of the municipality, under corporate seal, attached to which shall be the original executed copy hereof. Presentation shall be made to us at \_\_\_\_\_

[designate Saskatchewan Branch and Address]

THIS LETTER OF CREDIT we understand relates to the municipal services and financial obligations set out in an Agreement between the customer and the municipality and referred to as THE DEVELOPMENT LEVY AGREEMENT

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[STATE SUBDIVISION NAME, PHASE, STAGE]

THE AMOUNT OF THIS LETTER OF CREDIT may be reduced from time to time as advised by notice in writing to us by the Clerk of the City.

THIS LETTER OF CREDIT will continue in force for a period of \_\_\_\_\_ but shall be subject to the condition hereinafter set forth.

IT IS A CONDITION of this Letter of Credit that it shall be deemed to be automatically extended without amendment for one year terms from the present or any future expiration date hereof, unless at least 30 days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for any additional period.

DATED at \_\_\_\_\_, Saskatchewan, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

[Signed/countersigned in  
accordance with practice of  
Financial Institution]