



Introduction

A servicing agreement is a legal contract that a municipality may require with a subdivision applicant under Section 172 of *The Planning and Development Act, 2007* (the Act). Under an agreement a municipality accepts long term responsibility for maintaining services in a new subdivision in exchange for the developer installing the services needed for the subdivision.

A servicing agreement is meant to terminate when certain construction is done and conditions are met. A servicing agreement cannot be used to make a developer responsible for long term maintenance of municipal infrastructure.

An agreement may provide services and facilities that directly or indirectly serve the subdivision. It ensures that a municipality will not incur all the costs of servicing a new subdivision and that new services are installed to municipal specifications and standards. An agreement should have performance guarantees, construction specifications, and time limits.

A servicing agreement may require the construction of the following on-site services:

- area grading and levelling of the land;
- graded, gravelled or paved roads, streets and lanes in or connecting to the area being subdivided;
- sidewalks, boulevards, curbs, gutters, lighting;
- storm sewers, sanitary sewers, drains, water mains and laterals, service connections, and fire hydrants;
- street name plates and poles;
- landscaping of parks and boulevards;
- public recreation facilities; or
- any other public works that a council may require (e.g. power, gas, telecommunication lines).

An agreement may require the developer to pay fees for providing, altering, expanding or upgrading, in whole or in part, any:

- sewer, water, drainage or other utility system;
- municipal streets and roads; or
- park and recreation space and facilities,

which may be located within or outside, or which directly or indirectly, serve the area being subdivided.

These fees may be called servicing fees or off-site fees.

Off-site fees could be based on the amount a municipality may eventually need for a new sewage lagoon. The total cost is then proportioned among existing and expected development that will use the lagoon. Developers can then be required to pay a corresponding off-site fee for each proposed lot.

A municipality must post off-site fees, and accrued interest, in specific reserve or trust accounts for each construction project. The fees cannot be used as general revenue. The funds may be withdrawn only for the specified construction project.

Interest Registration

A municipality may register an interest on the title to the land involved in a servicing agreement. An interest informs landowners of the commitments made in the agreement. A municipality must discharge the interest once the agreement terms and conditions are met.

Subdivision Approval

Subdivision applicants will not receive a certificate of approval from the approving authority if a servicing agreement is required by the municipality and the agreement has not been executed by all parties.

Negotiation Time Limit

The Act provides for a 90 day negotiation period during which the municipality and subdivision applicant may enter into a servicing agreement. By mutual agreement, the negotiation period may be extended.

Appeals

After a negotiation deadline expires, the subdivision applicant has the right to appeal the need for an agreement, outstanding terms and conditions, or the application of or the calculation of certain fees. An appeal committee decision may be subsequently altered with the mutual consent of the municipality and applicant.

A written notice of appeal and a \$50 filing fee is to be addressed to the:

Planning Appeals Committee
Saskatchewan Municipal Board
2151 Scarth Street
Regina, Saskatchewan S4P 3V7

More Information

Sample servicing agreements can be found on line at www.municipal.gov.sk.ca. The municipal solicitor should draft an agreement and the municipal engineer should provide construction standards and inspection services. An agreement may apportion the costs between the developer and the municipality.

Servicing Agreement Components

A **Preamble** that establishes:

- the identities and addresses of the parties;
- how notice will be given to each party;
- the purpose of the agreement with reference to the area being subdivided; and
- any legal limitations and qualifications such as:
 - the land being correctly zoned which may involve a public hearing and ministerial approval;
 - the developer obtaining other required permits (e.g. development and building permits); and
 - a decision on the subdivision application from the Director of Community Planning.

General Provisions that:

- establish the municipality's construction standards with reference to engineering specifications or drawings (which should be a schedule);
- set out what and when on-site services are to be provided to the area being subdivided;
- allow construction to be phased, if needed;
- provide for municipal inspection of construction and for the timing and cost of the inspections;
- define how construction will be considered complete (which may incorporate Certificates of Completion issued by the municipality or its inspectors);
- prescribe a warranty period against construction defects (usually two years) that must expire before the developer's obligations fully end;
- secure performance of the developer's obligations (by a performance bond, property escrow, or irrevocable standing letter of credit that the municipality may use to complete construction if the developer defaults);
- detail the conditions under which the developer can be found to be in default and the municipality's rights and duties if the developer defaults;
- permit the performance surety to be revised or reduced as construction progresses;
- give the developer the right to enter municipal property in order to complete his obligations;
- specify how the agreement may be cancelled or altered and how disputes are to be resolved (an arbitration process may be put in the agreement);
- clarify if legal action may sever any part of the agreement leaving the remainder in effect; and
- acknowledges that the municipality will register a interest on the title to the affected land.

Developer Responsibilities should be to:

- build or install the required services to the specified standards and times;
- indemnify the municipality or have liability insurance protecting the municipality and maintain the site safety during construction;
- pay the municipality servicing or off-site fees (which may be listed in a schedule) and other fees (e.g. inspection and legal costs) as they become due;
- remove construction garbage when required;
- repair any municipal facilities such as road surfaces and replace any survey markers or other facilities that are damaged or destroyed during construction;
- keep all property taxes current; and
- transfer all ownership and rights to all constructed works on acceptance by the municipality.

Municipal Responsibilities should be to:

- provide information to the developer to allow the developer to connect to existing services;
- arrange for timely construction inspections;
- issue completion letters or development and building permits as requirements are met; and
- accept responsibility for maintaining the services once the agreement conditions are met.

Other Party Provisions that deal with:

- whether the agreement may be transferred;
- the performance assurances given by another party (i.e. a bonding or lending institution); and
- permits or easements as may be required by:
 - SaskPower, SaskTel & SaskEnergy;
 - Saskatchewan Highways and Infrastructure; or
 - the Saskatchewan Watershed Authority or the Ministry of Environment for work on shorelines, and on water, sewer and drainage systems.

Schedules add plans and details to an agreement.

Schedule A - Plan of Proposed Subdivision made by a Saskatchewan Land Surveyor or Community Planner.

Schedule B - Construction Specifications
May be engineering drawings and specifications detailing how roads and other services are to be built.

Schedule C - Off-site Service Fees
May list required off-site services, the respective total costs, and the developer's share.

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| For more information contact: | |
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