

Dundurn Rural Water Utility Developer Agreement

BETWEEN

DUNDURN RURAL WATER UTILITY

PO Box 442
Dundurn, SK S0K 1K0
(hereinafter called the "Utility")

AND:

(Developer Name)

(Mailing Address)

(Mailing Address)

(Daytime Phone) (Cell Phone)

(e-mail address)

(Hereinafter called the "Developer")

Description of Location for which water service is required (Hereinafter called the "Development")	
Name of Development:	_____
Legal Land Description:	_____
Number of residential connections:	_____ @ _____ igpm
Number of commercial connections:	_____ @ _____ igpm
Municipal approval?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
Date of approval:	_____
Community Planning approval?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
Date of approval:	_____
Do you have a plan of proposed subdivision?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
<small>(If "yes", a copy of the Plan must be attached to this application as Appendix "A".)</small>	

ARTICLE 1. RECITALS

WHEREAS the Utility owns and operates a water delivery system which supplies water from the Sask Water system at the City of Saskatoon in the Province of Saskatchewan to rural areas in Saskatchewan, and which may include ancillary services for electronic remote metering and other forms of data transmission, (hereinafter the "Delivery System");

AND WHEREAS the Developer desires to obtain water service for the Development, and the Utility wishes to provide water service for the Development provided that the Delivery System will have the capacity to provide the required water service for the Development;

NOW THEREFORE In consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

ARTICLE 2. DEFINITIONS

2.1 Definitions

2.1.1 Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Board – means the Board of Directors of the Utility;

Curb stop – a water service connection to an individual subscriber;

Development – the area of land being developed by the Developer as shown in Schedule “A” to this Agreement;

Delivery System – the water system currently owned and operated by the Utility;

End User - the owner, purchaser or resident of the property to whom water has been or is to be supplied once the land development has been subdivided;

Final Cost – the final cost to the Developer for the construction and extension of the Delivery System to the Development, and installation of the curb stops in the Development, including any adjustments to the cost specified in the Estimate, and any change orders required or requested;

ISC – Information Services Corporation (Land Titles)

Utility – the Dundurn Rural Water Utility;

Work – the work to be done by the Utility under this agreement as defined in Article 5.1.

ARTICLE 3. OFFER TO CONSTRUCT

3.1 The Offer

3.1.1 The Utility hereby offers to construct a Water Service Connection to the Land at a total cost of \$ _____ plus or minus any and all adjustments required or requested;

3.1.2 The Utility shall use reasonable efforts to ensure that the estimated cost specified in para. 3.1.1 is as close as reasonably possible to the Final Cost, provided however that the Utility shall not be liable for any errors or omissions in the Offer, unless any such error or omission is due to the willful negligence of the Utility, or for adjustments that may need to be made for unknown or unforeseen circumstances and factors that may hinder construction, including weather difficulties, unknown or unpredictable soil conditions;

3.2 Cancellation, Breach and Redemption

3.2.1 The Utility has the right to cancel this Agreement at any time:

.1 If the Developer commits a fundamental breach of the terms or conditions of this Agreement, or of any bylaw, policy, regulation, or order of the Board. A fundamental breach shall include, but not be limited to:

i. Bankruptcy of the Developer or any of the principals of the Developer where it is apparent that the Developer may not be able to complete its obligations under this Agreement;

ii. Assignment or transfer of this Agreement or of the Development to any third party without the prior written consent of the Utility;
Any change in the ownership of the Developer that has the effect of assignment or transfer of this Agreement to a third party, without the prior written consent of the Utility;

iii. Any action by the Developer that is contrary to the good faith relationship between the Developer and the Utility and is not capable of being remedied by the Developer;

.2 If the Developer commits any other breach of the terms and conditions of this Agreement, or

of any bylaw, policy, regulation, or order of the Board, that is not a fundamental breach as defined in paragraph 3.2.1.1, provided that the Utility has:

- i. Notified the Developer of the breach;
- ii. Given the Developer a reasonable time to rectify the breach; and
- iii. The Developer has failed to rectify such breach within the time specified by the Utility;

3.2.2 The Developer may rectify a non-fundamental breach as identified in paragraph 3.2.1.2 of this Agreement by correcting the breach and complying with the terms and conditions of this Agreement or of any bylaw, policy, regulation, or order of the Board with which the Developer has failed to comply by:

- .1 Paying any additional costs and expenses incurred by the Utility caused directly or indirectly by the breach;
- .2 Paying any reasonable administration fee imposed by the Utility;
- .3 Paying any interest, charges, levies and other fees, due at the time the Developer wishes to rectify the breach;

3.2.3 Where this Agreement is cancelled after acceptance of the Offer by the Developer or due to breach of the Developer, the Developer shall be liable for all costs and expenses incurred by the Utility up to the date of cancellation, as well as for any costs and expenses incurred by the Utility after the date of cancellation including, but not necessarily limited to:

- .1 Expenses to conclude any work in progress to fill in trenches, excavations etc.
- .2 Mobilization or De-mobilization costs of any contractors or utility workers;
- .3 Any other costs or expenses suffered by the Utility arising directly or indirectly out of the cancellation of this Agreement, including, but not limited to, engineering fees and expenses, administration costs, legal costs, ISC fees, liability of the Utility under any contracts for termination, or breach;

3.2.4 Where this Agreement is cancelled by the Developer or due to a breach by the Developer, the Utility shall be entitled to collect its legal fees and expenses on a solicitor and client basis, before as well as after commencement of formal legal action against the Developer or any guarantor, incurred to enforce or protect its rights under this Agreement and/or to collect any amount owing by the Developer or any guarantor;

3.2.5 The Utility reserves the right, at any time, to discontinue its service and remove the Utility facilities from the Developer's lands in any case where, in the Utility's opinion, the operations of the Developer contravene any federal, provincial, or municipal law relating to the pollution of the environment, whether violation involves the pollution of air, soil or water or constitutes any other nuisance. In the event the Utility should elect to discontinue the supply of water hereunder as hereinbefore provided, then the termination of supply shall occur without further formality effective as of the date indicated by the Utility in a written notice to the Developer to that effect;

3.2.6 The Developer expressly acknowledges that the Utility may discontinue the water service in the event that the Developer is in breach of any of the terms of this Agreement and that breach has not been rectified within the time specified in a notice given to the Developer to rectify the breach.

ARTICLE 4. PAYMENTS AND INTEREST

4.1 Payments

- 4.1.1 Upon acceptance of the Offer, the price specified in the Offer shall be paid as follows:
- .1 Initial Payment - Forty percent (40%) of the price in the Offer is payable upon acceptance of the Offer by the Developer;
 - .2 Progress Payment – An additional Forty percent (40%) of the price in the Offer is payable by invoice issued by the Utility a minimum of 30 days prior to the start of construction of the water service to the Development;
 - .3 Final Payment - The balance of price in the Offer, less deposits and installments, plus or minus adjustments, will be billed to the Developer upon completion of the construction or when the water service is available to the curbstops, whichever is later;

4.2 Interest on Overdue Payments

- 4.2.1 Any payment not received by the Utility when due shall be subject to interest at the Bank of Canada prime rate +9%, calculated daily.

ARTICLE 5. UTILITY TO CONSTRUCT WATER LINE

5.1 Water Service

- 5.1.1 Subject to the Utility's right of cancellation, the Utility shall provide water service to the Development, to be constructed in accordance with the specifications contained in the Offer which, unless otherwise specified in the Offer, shall include:
- .1 Extending the Delivery System to supply the Development with sufficient capacity to provide each lot in the Development with a Curb Stop and flow rate as specified in this Agreement;
 - .2 Installation of distribution lines within the Development to provide a water supply to each lot in the Development after the Developer has constructed the roads and installed survey pins for each lot in the Development;
 - .3 Supply and install a Curb Stop valve at or near the property line for each lot in the Development;
 - .4 To obtain all necessary government and regulatory permits and clearances necessary for installing the water line from the Delivery System to the Development;
 - .5 To perform all necessary testing, flushing and obtaining such permits and approvals as are necessary to commission the water service line to and within the Development. This does not include any permits for the Development itself which are the sole responsibility of the Developer;
- 5.1.2 All work performed by the Utility under this Agreement shall be done in accordance with the following limitations and standards:
- .1 All work will be done in a professional and workmanlike manner, and in compliance with all applicable laws, rules, codes and regulations;
 - .2 The Utility shall use best efforts to minimize disturbance and disruption of the Land and to restore the Land as close as reasonably possible to its prior state before the work started;
- 5.1.3 The Utility does not guarantee to the Developer the:
- (a) quantity;
 - (b) uninterrupted supply;
 - (c) pressure; or
 - (d) quality
- of the water supplied and the Developer specifically agrees that there shall be no representations made to any End User or potential End User relating thereto.

5.1.4 The supply of water and pressure shall be subject to service requirements, operating and maintenance requirements that are, or may be, established by the Utility. The Developer and End Users may be subject to disruptions of service and agree to conform to restrictions of water supply or rationing at the direction of the Utility.

ARTICLE 6. DEVELOPER'S COVENANTS

6.1 Developer's Obligations

6.1.1 The Developer shall:

- .1 Ensure that roads are constructed and survey pins installed in the Development when required to facilitate installation of water lines in the Development;
- .2 Ensure that all builders, purchasers or owners performing any construction in the Development are aware of the requirements and limitations of the water service;

.3 Ensure that no other Utility install their line(s) prior to the water line being installed. If any other utility lines are installed, the Developer shall be responsible to the Dundurn Rural Water Utility for any and all additional costs incurred. _____
Developer Initials

6.1.2 The Developer agrees and covenants with the Utility:

- .1 To provide the Utility and its agents, servants, workmen, and contractors, unhindered access and right of ingress/egress to each lot in the Development for the purpose of construction, installation, maintenance, testing and operation of the water service, and/or connecting each dwelling to the water service;
- .2 To execute such further agreements and documents as may be required to give effect to these presents;
- .3 **To notify the Utility when and as each lot in the Development is sold and to provide contact information for new owners as the lots in the Development are sold;**
- .4 **To notify the Purchaser that they will be billed from Dundurn Rural Water Utility from date of purchase.**
- .5 To notify the Purchaser of the following policy of Dundurn Rural Water Utility:
Tracer wire must be included in the installation of the water pipeline between the curbstop and the water meter. A water meter WILL NOT be installed if tracer wire is not included in the installation and the curb stop will be locked.

Developer Initials: _____

6.1.3 The Developer further agrees:

- .1 To be bound by the Bylaw creating the Utility, the Utility Bylaws, Regulations and/or all Board Resolutions made by the Utility;
- .2 The Developer certifies it is the legal and beneficial owner of the Land and agrees that the Utility may register a caveat against the Land in respect of this Agreement, and any unpaid amount under this Agreement may be added to form part of the taxes of the Land with payment enforced by the local taxing authority as unpaid property taxes;
- .3 That all disputes between the Utility and the Developer shall be resolved within the Complaint Procedure established by the Utility and the decision reached by such process shall be final and binding upon the parties;

6.1.4 The Developer shall not hold itself out as agent of the Utility;

6.1.5 The Utility has the right to request a Performance Bond up to 15%.

6.1.6 In the event that the Developer is a Corporation, the Developer certifies that it is a duly registered and validly subsisting Corporation entitled to enter into this Agreement and carry on business in the

Province of Saskatchewan; the undersigned as the proper Officer and Principal of the Developer does hereby acknowledge and agree that he/she shall remain personally liable for any and all amounts owed to the Utility from time to time until paid in full.

- 6.1.7 The Developer agrees that the water supplied by the Utility shall be used only for the domestic use of the End Users, unless expressly approved by the Utility. Any intended industrial or commercial uses of the water must be reviewed and approved by the Utility in advance.
- 6.1.8 The Developer expressly agrees and promises not to allow any other access other than that contemplated hereunder whatsoever to the water supplied hereunder, and that no connections or modifications to the service line or water main shall be made without the prior written consent of the Utility.
- 6.1.9 The Developer agrees not to consent to or permit a direct or cross connection of the Utility's water supply to any other water system.
- 6.1.10 The Developer shall sign an Acknowledgement of Responsibility on the form annexed hereto as Schedule "C" once the installation of water service is complete. Thereafter, any damage done to any part of the delivery system shall be the responsibility of the Developer and shall be repaired forthwith at the Developer's sole expense.

<p>6.1.11 Once water service is available to the Development, the Developer shall pay to the Utility the cost of flushing the lines as needed in such amounts as set by the Utility from time to time. _____ Developer Initials</p>

ARTICLE 7. ADDITIONAL TERMS AND CONDITIONS

7.1 Construction Terms

- 7.1.1 The actual location of the water service pipeline and curb stops installed in the Development may differ from the location shown on Schedule "A" and will be determined in consultation with the Developer at the time the water service is installed, if required;
- 7.1.2 The Service Connection installed pursuant to this agreement, whether installed by the Utility or the Developer, or any agent or subcontractor, and including the meter assembly, and all fittings, manifolds, valves and connections upstream from the Point of Delivery, shall be and remain the property of the Utility;

ARTICLE 8. SERVICE CHARGES AND WATER USAGE

8.1 Interim Service Agreement

- 8.1.1 Once the water supply is available, the Developer agrees to pay the Service Charges, and all applicable fees and levies (herein referred to as "charges"), including interest on overdue charges, in respect of each curb stop, until a Water Service Agreement is entered into between the Utility and the End User for each curb stop in the development.
- 8.1.2 These charges shall be set by the Utility and payment is to be made by the date established under the Utility's Bylaws, after which date interest shall be charged at a rate and in the manner set out in the Utility's bylaws;
- 8.1.3 The Developer must notify each purchaser of any lot (s) in the Development that such purchaser shall be required to enter into a Water Service Agreement with the Utility for water service to be made available to that property.

ARTICLE 9. GRANT OF EASEMENT AND ACCESS TO PROPERTY

9.1 Grant of Easement

9.1.1 The Developer grants to the Utility a Public Utility Easement and Right of Way which shall be registered against and which shall run with the Land in perpetuity, in the form as attached to this Agreement as Schedule "B";

ARTICLE 10. GENERAL

10.1 Assignment

10.1.1 The Developer may, by instrument in writing and with the consent of the Utility, transfer its interest under this Agreement to a subsequent Developer, provided that the Developer shall notify the Utility of the change in ownership of the Land, and the Subscriber shall remain liable for all charges incurred for water service to the Land by reason of the Subscriber’s failure to notify the Utility of the change in ownership;

10.2 Further Terms

10.2.1 This Agreement constitutes the entire agreement between the parties and may only be amended by agreement in writing between the parties;

10.2.2 Notice:

Notice to the Utility shall be made to: Dundurn Rural Water Utility
PO Box 442
Dundurn, SK S0K 1K0

Notice to the Developer shall be made to:

10.2.3 This Agreement is binding upon the parties hereto, their heirs, executors, administrators, successors and permitted assigns as the case may be. The parties agree that a caveat may be filed by the Utility on the lands affected to protect this Agreement;

10.2.4 Time shall be of the essence of this Agreement;

Signed Sealed and delivered by the Utility at the _____ of _____ in the Province of Saskatchewan this _____ day of _____, 20____.

DUNDURN RURAL WATER UTILITY

Seal or Witness

Per: _____
Authorized Signature

Seal or Witness

Per: _____
Authorized Signature

Signed Sealed and delivered by the Developer at the _____ of _____ in the Province of Saskatchewan this _____ day of _____, 20____,

Name of Development

Seal or Witness

Per: _____
Authorized Signature

Name: _____

**AFFIDAVIT VERIFYING CORPORATE
SIGNING AUTHORITY (if no corporate seal)**

C A N A D A)
PROVINCE OF)
_____)
TO WIT)

MAKE OATH AND SAY:

1. I am the _____ of _____
(Position) (Name of Corporation)

named in this document. I am authorized by the corporation to execute the document without affixing a corporate seal.

Sworn before me at the _____ of _____)
in the Province of _____)
this _____ day)
of _____, 20____)
)
)

Signature

A Notary Public/Commissioner for Oaths in and
for the Province of _____
My appointment/commission
expires: _____
OR Being a Solicitor

(NOTE: If document is signed outside of Saskatchewan it must be sworn by a Notary not a Commissioner)

SCHEDULE "A" – Plan of Survey for the Development

(to be provided by the Developer)

**Schedule "B" – Grant of Easement
Grant of Easement
(UTILITY EASEMENT & RIGHT OF WAY)
Made in favor of DUNDURN RURAL WATER UTILITY**

KNOW ALL MEN BY THESE PRESENTS THAT

Effective on the _____ day of _____, A.D. 20_____

I / We, _____
(Name(s) must appear identical as on title of the land)

the undersigned (hereinafter called "the Grantor"), being registered owner (s) or having a legal and beneficial interest or ownership in the land herein having the legal description of:

(hereinafter the "Land") in consideration of the sum of \$1.00, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged;

GRANT OF EASEMENT

DO HEREBY create, grant and convey to DUNDURN RURAL WATER UTILITY (hereinafter the "Grantee"), its employees, agents, contractors, subcontractors, nominees, successors and assigns a perpetual non-exclusive easement and right-of-way, for a water pipeline and ancillary services for electronic remote metering and other forms of data transmission, together with all necessary structures, apparatus, appurtenances and equipment (hereinafter referred to as "Utility Services"), for the Permitted Uses, upon, over, under, through, in and across the land as generally depicted and described on Schedule "A" hereto, (hereinafter the "Easement Area");

1. The Easement Area shall include an area 15 feet measured perpendicular to, and on either side of the actual location of the installed Utility Services whether the location is depicted on Schedule "A" hereto or not;
2. The Easement granted in respect of the Easement Area herein is a perpetual Easement and shall run with the land in perpetuity until discharged by the Grantee, which discharge may be unreasonably withheld, and the said easement shall be enforceable against the Grantor, and his/her/its heirs, administrators, executors, successors, agents, assigns and successors in title, including without limitation, any successor in title of any subdivision which may be registered in respect of the Land.

LIMITATIONS

1. This Easement does not give the Grantor or the Grantor's heirs, assigns and successors in title, any right to access or make any connection or interfere with the Utility Services installed within the Easement Area, or on the Land;
2. The Grantor shall not change the ground elevation of the Easement Area without the prior written consent of the Grantee;
3. The Grantor shall not erect or place any fence, buildings or structure of any kind, nor pile or place any stones, rock, dirt, rubbish or any other thing including trees or shrubs on the Easement Area without the prior written consent of the Grantee.

PERMITTED USES

4. Subject to the restrictions and limitations herein contained, the Grantee may use the Easement when and as required for the following uses (the "Permitted Uses"):
 - (i) To enter upon the land with the necessary vehicles and equipment and to install, affix, construct and place upon, over, under, in or across the land the Utility Services and to

- maintain, inspect, repair, replace and remove Utility Services as required for the continued operation of the Utility Services;
- (ii) to perform periodic maintenance, testing, metering, upgrades, and regular or emergency service to the Utility Services, and to repair or replace any part of the Utility Services, and other maintenance, service or inspection for the continued operation of the Utility Services
- (iii) Such other uses as the Grantee may require for the continued operation and utilization of the Utility Services;

GENERAL

5. The Grantee, its employees, contractors, agents, successors, and assigns shall undertake all work associated with the Permitted Uses in accordance with the following limitations and standards:
 - (i) In so far as reasonably possible the Grantee will provide the Grantor reasonable notice of its intention to perform any work within the Easement Area, except in emergency situations, when the work may be undertaken without prior notice;
 - (ii) All work will be done in a professional and workmanlike manner, and in compliance with all applicable laws, rules, codes and regulations;
 - (iii) All work will be undertaken in a manner that reasonably minimizes and causes the least amount of disturbance to the Grantor's property;
 - (iv) Grantee shall use best efforts to restore the Grantor's land to its prior state before the work started;
 - (v) Grantee is not responsible for damage to any fence, buildings or structure of any kind or any shrubs or trees which the Grantee has placed within the Easement Area that may be damaged or destroyed by any work undertaken within the Easement Area.
6. Subject to the limitations herein contained, the Grantor shall be allowed free access to, and use of, the Easement Area and except to the extent that it may be necessary for the Grantee and their agents (servants, employees, licensees, successors) to use the Easement Area for the Permitted Uses.
7. Nothing herein contained shall be deemed to vest in the Grantee any title to mines, ores, metals, coal, slate, oil, gas or other minerals in or under the Easement Area, except only the parts thereof that are necessary to be excavated, carried away or used in the installation, construction, operation, maintenance, inspection, alteration, removal, replacement, reconstruction and/or repair of the Utility Services.
8. The Grantee shall have the right to sell, assign or license all or any portion of the rights granted under this Grant of Easement to a third party for purposes consistent with the operation of the Utility Services including but not limited to management, utilization, maintenance, repair, testing and upgrading the Utility Services.
9. The Grantor releases the Grantee from any claim for damages, including negligence or nuisance, and agrees to indemnify and save the Grantee harmless from any claim or claims howsoever arising.
10. This Grant of Easement shall inure to the benefit of and is binding upon the Grantor, the Grantee and their respective executors, administrators, successors and assigns.

IN WITNESS WHEREOF I / We, the Grantor(s) have hereunto subscribed (my) our name (s) the day and year first above written, in the presence of:

Witness

Grantor

Witness

Grantor

June 24, 2020



**SCHEDULE "C" - Developer Agreement
ACKNOWLEDGEMENT OF RESPONSIBILITY**

RE:

(SUBDIVISION NAME)

The undersigned, being the owner of the above development, acknowledge that I have completed a walk-through and observation of the said development with:

(Representative from the DRWU)

and I acknowledge and agree that the entire waterline infrastructure within the development including the curb stop and valves are in good and proper working order as of this date, namely

(Date)

I understand that in the event of any damage thereto occurring after this date until the sale of any particular lot in the development, it shall be and remain my responsibility to cover the costs of repair and/or replacement of any components thereof. After a change of ownership of any such lots, the responsibility shall then be with the new owner.

Dated this ____ day of _____, 20____.

Per: _____
Developer (Please print name)

Per: _____
Developer (Signature)

Per: _____
DRWU Representative (Please print name)

Per: _____
DRWU Representative (Signature)

AFFIDAVIT OF EXECUTION

C A N A D A) I, _____
(NAME OF WITNESS)

PROVINCE OF SASKATCHEWAN) of the _____ of _____

TO WIT:) in the Province of Saskatchewan

MAKE OATH AND SAY:

1. THAT I was personally present and did see _____ duly sign and execute the within instrument for the purpose named therein; and:

Check ONE ONLY:

I satisfied myself that he/she is/are the person(s) named in the within instrument; OR

He/She is/are personally known to me;

2. THAT the same was executed at _____, Saskatchewan, and I am the subscribing witness thereto.

3. THAT the said _____ is/are in my belief of the full age of 18 years.

SWORN BEFORE ME at the _____ of _____)
in the Province of Saskatchewan,)
this _____ day of _____, 20____)
)
)
)

(Signature of Witness)

A Notary Public/Commissioner for Oaths
in and for the Province of Saskatchewan,
My Appointment/Commission expires: _____
OR Being a solicitor

AFFIDAVIT OF EXECUTION

C A N A D A) I, _____
(NAME OF WITNESS)

PROVINCE OF SASKATCHEWAN) of the _____ of _____

TO WIT:) in the Province of Saskatchewan

MAKE OATH AND SAY:

1. THAT I was personally present and did see _____ duly sign and execute the within instrument for the purpose named therein; and:

Check ONE ONLY:

I satisfied myself that he/she is/are the person(s) named in the within instrument; OR

He/She is/are personally known to me;

2. THAT the same was executed at _____, Saskatchewan, and I am the subscribing witness thereto.

3. THAT the said _____ is/are in my belief of the full age of 18 years.

SWORN BEFORE ME at the _____ of _____)
in the Province of Saskatchewan,)
this _____ day of _____, 20____)
)
)
)

(Signature of Witness)

A Notary Public/Commissioner for Oaths
in and for the Province of Saskatchewan,
My Appointment/Commission expires: _____
OR Being a solicitor