

SERVICING AGREEMENT

NO. \_\_\_\_\_

between

THE TOWN OF CRESTON

and

---

DATE \_\_\_\_\_

SERVICING AGREEMENT

THIS AGREEMENT made this            day of            , 19   ;

BETWEEN:

THE TOWN OF CRESTON,  
incorporated under the "Municipal Act" of the Province  
of British Columbia, and having its  
Municipal Offices at \_\_\_\_\_.

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

(hereinafter called the "Owner")

OF THE SECOND PART

WHEREAS:

- A. The Owner holds an interest in lands and premises within the Town of Creston, in the Province of British Columbia, more particularly known and described as follows:

(hereinafter called the "Lands")

- B. The Owner desires to subdivide the Land or Develop on the Land.
- C. The Approving Officer or the Municipality has agreed to approve the subdivision of the Lands or the Development respectively subject to the terms and conditions contained in this Contract, and the posting with the Municipality of the security deposit described herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises, covenants and agreement hereinafter set forth, the parties hereto covenant, agree, represent and promise as follows:

## APPENDICES

1. The following Appendices will be read with and form part of this Agreement:

Appendix "A" - A copy of the subdivision plan of the Lands;

Appendix "B" - A list of the "Works" and an estimate of their respective construction costs.

Appendix "C" - Construction drawings to be used for the construction of the "Works".

## OWNER TO DO WORK

2. The Owner covenants and agrees to construct and provide all the works and services listed and shown on Appendices "B" and "C" hereto, as approved by the Municipality, in accordance with the standards contained in Schedule "A" of the Municipality's Subdivision and Development Servicing Bylaw.

## TRANSFER OF INTEREST IN WORK

3. The Owner covenants and agrees with the Municipality to assign, transfer and convey to the Municipality all of its right, title and interest in the works on any and all of the lands, upon or in which the works are situate, upon the completion of the works, (as witnessed by the issuance of a certificate of substantial completion). The Owner will from time to time and at all times so long as it exercises any rights of ownership in the "said lands" upon the request of the Municipality, make, do and execute or cause or procure to be made, done and executed, all such further acts, deeds, rights-of-way, easements and assurances for the more effectual carrying out of this Agreement.

## PERMISSION TO DO WORK

4. The Municipality covenants and agrees to permit the Owner to construct the "Works", including that portion of the "Works" to be constructed on dedicated highways controlled by the Municipality; on the terms and conditions herein, and in the manner required by and at the places specified in the Plans and Specifications; provided that nothing in this Agreement shall be construed as an undertaking, promise or covenant on the part of the Municipality to make available the use of or access to the "Works" for any purpose, and without limiting the foregoing, for the purpose of serving of Lands or any other real property whatsoever either owned or controlled by the Owner or its associates or otherwise, but rather the Municipality reserves the right in its sole and absolute discretion to make available, operate, alter, use, extend, diminish, discontinue, tear up, sell, rent or otherwise dispose of the "Works" as its Council from time to time deems fit.

## CHANGES TO BYLAW

5. The Owner covenants and agrees to comply with any changes in subdivision requirements or standards enacted by Bylaw prior to the actual commencement upon the lands of the works contemplated by this Agreement.

#### LOT GRADING

6. The Owner covenants and agrees to adhere in all respects to the contours, elevations and drainage patterns indicated on the lot grading plan or storm water management plans prepared by the Engineer and/or Engineering Company indicated in Clause II hereof, and which are attached as Appendix "C" to this Agreement.

#### START OF WORK

7. The Owner covenants and agrees not to commence work until the Municipality's Engineer provides the Owner with written permission to proceed with construction in the form provided in Schedule "A" to the "Works and Services Bylaw".

#### COMPLETION OF WORK

8. The Owner shall complete the construction of the works, specified in Appendix "C" as Project No. \_\_\_\_\_ of the Municipality, to the satisfaction of the Municipality by the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_.

#### OWNER TO GRANT RIGHTS-OF-WAY

9. The Owner to grant to the Municipality all necessary road dedications, statutory rights-of-way and easements over the said lands to accommodate the said works and, where the said works are located upon or under privately owned lands other than the said lands, to obtain at the Owner's expense, all necessary road dedications, statutory rights-of-way and easements over such lands, in favour of the Municipality where applicable, to accommodate the said works.

#### DESIGN BY P. ENG.

10. The Owner covenants and agrees that all works required herein, shall be designed by a Professional Engineer, who shall be registered with the Association of Professional Engineers of British Columbia and retained by the Owner. Plans and specifications for the said works shall be prepared by or under the direct supervision of the said Professional Engineer and all plans shall bear his professional seal and signature.

The Owner covenants and agrees to ensure that his Design Engineer (as specified in Clause II) maintains professional liability, and errors and omissions insurance to a value of \$250,000 per occurrence during the term of his engagement.

The Owner covenants and agrees to retain the Design Engineer during the construction period for the purposes of inspection to ensure compliance with the approved design and to provide certification of the as-built records.

ENGINEERING DRAWINGS

11. The Owner covenants and agrees that the intent of this Agreement is that the Owner shall construct fully completed works, and grant necessary easements as shown in the plans and specifications prepared by:

Under Drawing Nos.:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

and as received for the purposes of this Agreement by the Engineer of the Municipality on the day of \_\_\_\_\_, A.D., 19\_\_\_\_.

CHANGES TO DESIGN BY MUNICIPALITY

12. The Municipality's Works Superintendent may alter the plans, because of conditions at the site, so that the works function and operate in a manner satisfactory to the Works Superintendent. Should the works, as provided herein, prove to be in any way defective or should they not operate to the satisfaction of the Works Superintendent, then the Owner shall, at his own expense, modify and reconstruct the works so that the works shall be fully operative and function to the satisfaction of the Works Superintendent.

SUBSTANTIAL COMPLETION

13. A Certificate of Substantial Completion shall be provided by the Works Superintendent on the completion of the construction, listing all the deficiencies. This letter of Substantial Completion shall not be construed as acceptance of the works.

"AS-BUILT" SUBMISSION

14. The Owner covenants and agrees to submit to the Municipality the final "as-built" drawings and records of construction, and test results, as accepted by the Works Superintendent pursuant to Schedule "A" of the Works and Services Bylaw, within 60 days of the date of the Letter of Substantial Completion.

MAINTENANCE PERIOD AND RESPONSIBILITY

15. The Owner covenants and agrees to maintain every part of the works in perfect order and incomplete repair for a period of one year from the date shown on the Certificate of Substantial Completion in accordance with the requirements of the Works and Services Bylaw.

Should the Owner for any reason fail to maintain when ordered, the Works Superintendent, at his option and after giving the Owner seven days written notice (emergencies excepted), may do so, and the whole costs, charges and expenses so incurred by the Municipality will be payable by the Owner, as provided for herein. The decision of the Works Superintendent will be final with respect to the necessity for repairs or the adequacy of any work done.

#### CERTIFICATE OF ACCEPTANCE

16. The Municipality covenants and agrees that upon satisfactory completion by the Owner of all of the covenants and conditions in this Agreement, including the maintenance of the works in complete repair for a period of one (1) year, to provide the Owner with a Certificate of Acceptance of the works, signed by the Municipality's Engineer. Notice of acceptance of the work will be issued by the Municipality's Engineer when all deficiencies have been corrected. "As-Built" drawings and service location cards received, and the maintenance period outlined herein has expired. The Certificate of Acceptance will be in the form outlined in Schedule "A" to the Subdivision and Development Servicing Bylaw. All such works and services remain at the risk of the Owner until the "Certificate of Acceptance" for the work has been issued.

#### FINAL BUILDING INSPECTION WITHHELD

17. The Owner covenants and agrees that the Municipality will withhold the granting of a Final Inspection for the use of any building or part thereof, constructed upon the lands until all the essential services herein have been completed to the satisfaction of the Municipality's Engineer.

#### OWNER INDEMNIFIES MUNICIPALITY

18. The Owner covenants and agrees to save harmless and effectually indemnify the Municipality against:
  - (a) All actions and proceedings, costs, damages, expenses, claims, and demands whatsoever and whomsoever brought by reason of the execution of the works required by this Agreement. All such claims recoverable from the Municipality, or the property by duty or custom is obliged, directly or indirectly, in any way or to any degree to construct, repair or maintain, during the term of the Owner's work, shall be paid by the Owner, and if recoverable from the Municipality shall, together with any costs and expenses incurred in connection therewith, be charged and paid forthwith by the Owner.
  - (b) All expenses and costs which may be incurred by reason of the execution of the required works by this Bylaw, resulting in damage to any property owned in whole or in part by the Municipality for which the Municipality by custom or duty is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain, shall be paid by the Owner, and if paid by the Municipality shall, together with any costs and expenses incurred in connection herewith, be charged to and paid forthwith by the Owner.

- (c) All expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, Workmen's Compensation assessments, unemployment insurance, federal or provincial tax, and for encroachments due to mistakes in survey, and all such claims recoverable from the Municipality, or the property of the Municipality, or any property which the Municipality by duty or custom is duly obliged directly or indirectly, in any way or to any degree, to construct, repair or maintain, shall be paid by the Owner, and if recovered from the Municipality shall, together with any costs and expenses incurred in connection therewith, be charged to and paid forthwith by the Owner.
- (d) All expenses and costs which may be incurred by the Municipality as a result of faulty workmanship and defective material in any of the works installed by the owner.

The above clauses shall not be construed as to extinguish any rights which the Municipality would have were it not for the inclusion of Clause 18 in this Agreement.

#### INSURANCE BY OWNER

- 19. The Owner will at his sole expense throughout the currency of the work carry Comprehensive Liability Insurance acceptable to the Municipality in the amount of at least three million dollars (\$3,000,000.00) with insurance companies licenced to carry on business in the Province of British Columbia in partial discharge of its obligation under Clauses 18(a), (b), (c) and (d).

#### INSURANCE COVERAGE

- 20. The Owner covenants and agrees to provide the following insurance coverage, and to provide the Municipality with a copy of the insurance policy prior to the commencement of any construction of the works:
  - (a) To protect the Owner and the Municipality against all claims arising out of:
    - i) Death or injury to persons; and
    - ii) Damage to, or loss of use of, any property of third persons, including without limiting the foregoing; the following classes of property: Real property, chattels, land, works, buildings, structures, wires, conduits, pipes, mains, shafts, sewers, tunnels, and apparatus in connection therewith, even when the damage or loss of use is caused by vibration, moving, shoring, underpinning, raising, rebuilding or demolition of any building, structure of support, or by excavation, tunnelling or other work below the surface of the ground or water; and
    - iii) Damage to or loss of all building, structures, stores, equipment and materials included in or required for the carrying out of the "Works".
  - (b) Every policy of insurance required will:
    - i) Name "THE TOWN OF CRESTON" as an additional insured; and
    - ii) State that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured; and

- iii) State that the policy cannot be cancelled, lapsed or materially changed without at least thirty (30) days written notice to the Municipality, delivered to the Town of Creston's Municipal Clerk.

#### SECURITY DEPOSIT

21. As security for the due performance of all of the covenants and promises contained in this Agreement the Owner has forthwith deposited with the Municipality a security deposit in the amount of \$\_\_\_\_\_, in the form of cash or a Letter of Credit acceptable to the Municipality (herein called the "Security Deposit").

#### FORFEIT OF SECURITY DEPOSIT

22. In the event that the Owner fails to construct and install the Works and Services prescribed herein within the time specified in Clause 8, the said Security Deposit of \$\_\_\_\_\_, will be forfeited to the Municipality.

#### DESIGN BOND

23. Where security is provided in lieu of approved working drawings, (hereinafter called a "Design Bond") the Owner agrees to have the working drawings completed to the satisfaction of the Municipality's Engineer within 90 days of the date of this Agreement. Failure to do so will result in forfeiture of the Design Bond in the amount of \$\_\_\_\_\_, which shall be used by the Municipality to complete the design. Once forfeited, the bond becomes non-refundable in whole or in part.

#### USE OF SECURITY

24. The Owner agrees that if all the works or obligations are not completed, installed or performed pursuant to this Agreement, the Municipality may complete or fulfill the works or obligations at the cost of the Owner and deduct from the security deposit held by the Municipality the cost of such completion, and the balance of the deposit shall be returned to the Owner, less any additional administration fees or cost incurred. If there is insufficient money on deposit with the Municipality then the Owner will pay such deficiency to the Municipality immediately upon receipt of the Municipality's bill for completion. It is understood that the Municipality may do such work either by itself or by Contractors employed by the Municipality. If the works are completed as herein provided, then the deposit shall be returned to the Depositor.

#### RELEASE OF MAINTENANCE SECURITY

25. If the Approving Officer is satisfied that the Owner has complied with the covenants contained in this agreement and if there is no litigation pending or threatened by any third party against the Municipality as a result of, or arising from, the construction of the "Works", the Approving Officer may return all, or any portion of the Security Deposit to the Owner at such times and in such amounts as he may deem proper, provided only that he will retain an amount equal to 15% of the Security Deposit, with a minimum of \$1,000 and a maximum of \$20,000, to secure the performance of the maintenance required of the Owner (hereinafter called the "Maintenance Deposit").

#### RETURN OF MAINTENANCE SECURITY

26. If the Approving Officer is satisfied that the Owner has complied with the covenants contained in this agreement and if there is no litigation pending or threatened by any third party against the Municipality as a result of, or arising from, the construction of the "Works", the Approving Officer



may direct that the Maintenance Deposit be returned to the Owner and thereafter the Owner's responsibility for the "Works" shall cease.

#### ADMINISTRATION FEE

27. The Owner covenants and agrees to pay to the Municipality a non-refundable fee in the amount of \$\_\_\_\_\_ to cover Municipal administration and processing costs. These fees are payable prior to the signing of this Agreement or the commencement of construction of the works.

#### NO OTHER REPRESENTATIONS

28. It is understood and agreed that the Municipality has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those in this agreement.

#### COMPLIANCE WITH BYLAWS

29. Subject to this Agreement, the works and the development herein shall comply with all of the Bylaws of the Town of Creston.

#### NO WAIVER

30. The Owner covenants and agrees that nothing contained or implied herein shall prejudice or affect the rights and powers of the Municipality in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the said lands as if the Agreement had not been executed and delivered by the Owner.

WHENEVER the word "will" is used in this Agreement it will be construed as imperative (mandatory).

WHENEVER the singular or the masculine is used in the Agreement it will be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties hereto so require.

THIS CONTRACT SHALL ENURE TO THE benefit of and be binding upon the parties hereto, their respective successors and assigns. IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first above written.

FOR  
CORPORATE  
BODY

THE CORPORATE SEAL OF)

was hereunto affixed in the  
presence of:

\_\_\_\_\_  
Authorized Signatory

SEAL

FOR  
PRIVATE  
INDIVIDUAL

SIGNED, SEALED AND  
DELIVERED by the above  
named in the presence of:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

\_\_\_\_\_  
Owner's Signature

SIGNED, SEALED AND  
DELIVERED

THE CORPORATE SEAL OF)  
THE TOWN OF CRESTON  
was hereunto affixed in the  
presence of:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

SEAL