

Document General

Pre-Servicing Agreement

Between

and

The Corporation of the City of Kawartha Lakes

16T- _____

Dated as of _____

**CITY OF KAWARTHA LAKES
PRE-SERVICING AGREEMENT**

THIS AGREEMENT made in duplicate this ____ day of _____, _____.

BETWEEN:

Hereinafter called the "OWNER"

OF THE FIRST PART

and

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

Hereinafter called the "CITY"

OF THE SECOND PART

WHEREAS:

1. The Owner is the owner of land within the City of Kawartha Lakes legally described as, _____, now in the City of Kawartha Lakes.

2. The Owner has made application for a plan of subdivision, known as _____, filed with the City as 16T-_____ in respect of the Land;

3. The Owner wishes to commence installation of certain works on or in the Land (the "Works") within the proposed plan of development prior to execution of the Subdivision Agreement, including: (TO BE CONFIRMED BY CONSULTING ENGINEER, i.e. Earthworks & Grading/Tree Removal/ Underground Servicing/Model Home construction/Other), as more particularly set out in Schedule "A" attached hereto; ~~and~~

4. The Owner acknowledges the requirement to provide update to the municipal drain report, specific to Section 65 of the Drainage Act, as applicable.

5.4. The City is prepared to permit the Owner to commence installation of the Works, as requested, in accordance with Council Policy 2018-009 Pre-Servicing of Subdivision Lands Policy, as amended and the following terms and conditions;

6.5. The Owner acknowledges that the City is under no legal obligation to assume or accept the services referred to herein as the Works.

The provisions of the Pre-Servicing Agreement shall prevail until the registration of the plan of subdivision against the lands, after which the subdivision agreement shall supersede this Agreement. In the event that the Draft Plan Approval for the plan of subdivision lapses, the Pre-Servicing Agreement is null and void.

In consideration of the City granting the Owner permission to commence installation of the Works on or in the Land within the plan of development 16T-_____ prior to the execution of the Subdivision Agreement and the mutual covenants contained herein, the parties agree and acknowledge as follows:

1. Permission

The City hereby grants permission for the Owner to commence installation of certain Works on or in the Land, within the plan of subdivision prior to execution of the Subdivision Agreement. Permission is granted for certain Works based on

the engineering design drawings approved for pre-servicing by the City and listed within **Schedule "A"** of this agreement.

The City has received the following documentation pertaining to approving agencies, as applicable to the development and pre-servicing request:

- City endorsement of Ministry of Environment, Conservation and Parks (MECP) Environmental Compliance Approvals for sanitary and storm sewers, stormwater management facilities
- City endorsement of the Ministry of Environment and Climate Change Form 1 Record of Watermains Authorized as a Future Alteration, for the extension of watermain infrastructure
- Conservation Authority Clearance and Permits
- Ministry of the Environment, Conservation and Parks Record of Site Condition, Confirmation of Filing Number
- Clearance from the Ministry of Tourism, Culture, and Sport

A copy of the detailed construction management plan, construction schedule and two complete copies of "Issued for Pre-Servicing" sets of engineering drawings are attached to this agreement. All payments pursuant to By-Law 2007-132 for Engineering Activities have been confirmed.

2. Acknowledgment of Owner

(1) The Owner acknowledges that:

- (a) proceeding with the Works in advance of execution of the Subdivision Agreement is totally at his or her own risk;
- (b) electing to proceed with the Works in advance of execution of the Subdivision Agreement is not based upon any representation from the City as to when any remaining site servicing for the subdivision may be provided;
- (c) in granting this permission, the City makes no representation that the Owner is not required to comply fully with all applicable conditions of approval of the development prior to receipt of final approval and tender for registration of the subdivision; and
- (d) outstanding engineering submission requirements including the signed Composite Utility Plan and Landscaping/Streetscaping Plans as described in the Letter of Indemnity and Undertaking in **Schedule "B"** are forthcoming, however not completed and that the Owner is proceeding at their own risk of future design and construction modifications, at the Owner's sole cost.

(2) The Owner agrees that no work, including the installation of any services will be permitted on any municipal property or public right of way, including any public highways, easements or reserves, prior to the execution of the Subdivision Agreement and receipt by the City of the cash and securities required thereunder.

(3) The only exception to this acknowledgement is where the Owner and the City confirm that the municipal property is within the Draft Plan of Subdivision approval and/or where the proposed Draft Plan of Subdivision approval is predicated on servicing works on external municipal property.

(4) The Owner shall acknowledge in writing to provide a minimum of 100% security for the Works proposed on any municipal property (vacant, unassumed, improved, or assumed) that the City and Owner confirm meets condition (3).

(5) The Owner agrees that the site servicing Works within the Land will not be permitted to be connected to any existing sewers on any public right of way, prior to the execution of the Subdivision Agreement and receipt by the City of the cash and securities required thereunder.

(6) The Owner covenants and agrees to retain a competent engineer experienced in the municipal engineering field. All of the Works that are future Public Services shall be installed under the supervision and inspection of the engineering firm of _____ (the "Engineer"), and the Owner shall not retain the services of another engineering firm or change firms without the prior written consent of the Director. The Engineer shall provide appropriate inspection and review of the Works in order that a written final certification regarding all the future Public Services may be provided. The Engineer shall be retained by the Owner until all requirements of this Agreement have been completed to the satisfaction of the Director.

Commented [RP1]: Owner to insert

(7) The Owner shall provide an undertaking between the Owner and the Engineer with respect to the work being done under the supervision and inspection of the Engineer, as provided in Schedule "C".

(8) The Owner shall notify the Director at least two (2) business days in advance of the commencement of any construction. The Owner's Engineer shall provide fully qualified, experienced supervisory layout and inspection field staff to provide quality assurance of the construction of the future Public Services. If the Owner's Engineer does not supervise the installation of the Public Services to the Director's satisfaction, the City may stop the construction.

3. Compliance with By-laws, Rules and Regulations

The Owner agrees to comply with all federal, provincial and municipal laws, rules, regulations, and by-laws.

4. Hours of Installation

(1) The Owner agrees that no work will be conducted on Sundays or Statutory Holidays, and that no work requiring inspection and/or certification will be conducted on Saturdays, except in the case of an emergency.

(2) The Owner's Contractor(s) shall, as far as possible, refrain from work on days which are legal holidays in the City. In case the Owner desires to work on any such holiday, he or she shall notify the Director, in writing, at least four (4) working days in advance of any such holiday that he or she desires to work, stating those phases where work will be conducted. If the Contractor fails to give such notice, such failure shall be considered as an indication that no work requiring the presence of a Director or Inspector is to be done by the Contractor on such a holiday.

5. Construction Management

The Owner agrees that prior to any Works commencing, there will be a mandatory pre-construction meeting with all parties involved including the City, Owner or Owner's representative/agent, Owner's Engineer and the contractor performing the work. A detailed Construction Management Plan must be provided to the City, as **Schedule "E"** of this agreement, and include, but not be limited to:

- Project team and contact information
- Erosion and sediment control plan
- Detailed grading plan confirming earthworks activity
- Removals plan, including trees, infrastructure, drains, etc.
- Protection plan for all natural features, wetlands, areas not to be disturbed, areas proposed for natural compensation, and areas proposed for Low Impact Development as outlined in the Draft Plan of Subdivision
- Buffer plan delineating protection of existing residences, businesses, City infrastructure, and natural areas adjacent to the Draft Plan of Subdivision, not limited to noise barriers, dust mitigation, debris mitigation, protective vegetation, runoff controls, traffic controls, fencing, and so forth

- Blasting plan in conformity with OPSS.MUNI 120 – General Specification For The Use of Explosives, noting design, submission, construction, notification, and monitoring
- Engineering Condition Assessment of all streets abutting the Lands to be developed identifying the condition of the streets prior to any pre-servicing
- Construction traffic routing plan and measures for construction access, signage, regular maintenance and cleaning of adjacent streets, traffic and safety plan, and site security – all in compliance with the approved, adjacent road condition written assessment that is required for all municipal streets abutting the Lands
- Detailed construction schedule noting all proposed milestones and timelines, sequence of proposed works, and committing to monthly updates of said schedule acceptable to the City
- Coordination of the preconstruction meeting with the City staff, Engineer, the Contractor and all other agencies, as applicable
- Other

Commented [CS2]: Phase numbering to be inserted by City's Planning Division

6. Tree Removal and Clearing

The Owner agrees that tree clearing or removal to facilitate servicing the Lands will be identified on a Removals Plan and will be submitted with an appropriate Sediment and Erosion Control Plan for the proposed removals.

The Owner agrees to provide continuous and careful control of dust from the Land. Where the Owner is notified of a dust problem and takes no action to resolve the dust problem to the satisfaction of the City, the Owner agrees to pay the actual costs incurred by the City, plus administration fee, to control dust on the Land. Reasonable mitigation measures may include, but are not limited to, spraying the Land with mulch, seeding or watering of the land to hold down dust or promote vegetation.

The Owner agrees to provide a copy of all applicable Conservation Authority permits.

7. Early Construction Homes, Model Homes

Early Construction Home means a single detached dwelling, semi-detached dwelling or townhouse block to promote the sale of residential units and provide for early start construction for areas of high consumer demand within a draft approved plan of subdivision, proposed for registration.

Model Home means a single detached dwelling, semi-detached dwelling or townhouse block used in the interim for the sole purpose of an office and/or show room and/or sales centre to promote the sale of residential units within a draft approved plan of subdivision proposed for registration.

The Owner is permitted to commence construction of unoccupied Early Construction Homes and Model Homes on the Lands, up to 10% of the building lots, to a maximum of 10 Early Construction Homes and/or Model Home Permits, subject to appropriate Zoning confirmed by the City of Kawartha Lakes Planning Division, prior to the Registration of the Subdivision Agreement and M-Plan, to facilitate marketing of the development. Model Home Permits will be issued only to the Owner.

The Owner acknowledges that no occupancy of an Early Construction Home or Model Home is permitted.

The Owner acknowledges and agrees that in requesting building permits to permit the construction of Early Construction Homes and Model Homes and prior to the execution of the subdivision agreement and registration of the plan of subdivision, the Owner agrees to the conditions of the building permit(s) and to indemnify and save harmless the City from and against all loss, cost, charges, damages, expenses, claims, and demands whatsoever, to which the City may be put or which it may suffer or sustain or for which it may be liable by

reason of anything done or omitted to be done in the construction of the Early Construction Home(s) or Model Home(s) authorized by the building permit.

The Owner acknowledges that the issuance of Early Construction Home or Model Home permits does not obligate the City to release any conditions of draft approval of the plan of subdivision herein nor does it constitute the City's approval of the engineering design plans and drawings and further that the Owner is proceeding with the construction of model homes entirely at the Owner's own risk, and the Owner shall be fully responsible for any modifications to or demolition of any model home which may become necessary as a result of final approval of the draft plan of subdivision or the engineering design of the subdivision or the lack of final approval thereof.

The Owner must identify the location of the proposed unoccupied Early Construction Home or Model Home on the Pre-Servicing engineering drawing submission, listed in Schedule A, and include at a minimum:

The Owner shall have constructed a minimum 7 metre wide access road from an open public road to the lot upon which the model home is to be constructed. The access shall be paved to the base course asphalt stage with full curb and gutter.

- (1) The Owner shall construct a gravel turning circle, or approved equivalent, at the end of any such access road, in accordance with the Building Code Act.
- (2) An in-service fire hydrant shall be located within 90 metres of the Early Construction Home or Model Home, based on vehicular travel distance.
- (3) At the time of commencement of construction of an Early Construction Home or Model Home, no portion of a model home shall be constructed within 15.0 metres of any other building with an unfinished exterior, other than another Early Construction Home or Model Home.
- (4) Water services shall not be turned on and sanitary lateral shall not be connected.
- (5) The Owner shall maintain, at the Owner's sole cost, the access road and turning circle, including snow ploughing, until the City of Kawartha Lakes Engineering & Corporate Assets provide confirmation of Acceptance of Public Services and subsequent issuance of the first Occupancy Permit from the City of Kawartha Lakes Building Division.
- (6) The Owner covenants and agrees that no Early Construction Home or Model Home shall be occupied for residential purposes prior to the registration of the Subdivision Agreement and the City of Kawartha Lakes Engineering & Corporate Assets confirmation of Acceptance of Public Services.
- (7) The Owner's Consulting Engineer must provide the City a confirmation letter indicating the above conditions are met, prior to the issuance of Early Construction Home or Model Home Permits.
- (8) The Owner's Consulting Engineering must provide a Lot Grading and Drainage Plan for each Early Construction Home or Model Home Permit applied for, with the Consulting Engineer's certification, as per the City of Kawartha Lakes requirements. The Lot Grading and Drainage Plan must also identify onsite parking and Model Homes used as sales offices shall have a barrier free path of travel to the building entrance.
- (9) The Owner undertakes and agrees that construction of an Early Construction Home or Model Home shall meet the requirements under the Ontario Building Code, as amended.

(10) In order to secure the Owner's obligations herein, the Owner agrees that the City shall be entitled to draw upon any performance security filed by the Owner in the amount as noted in Schedule "D" and any other

agreement that is related to the development of the lands herein, including but not limited to any performance security filed pursuant to the Subdivision Agreement.

(11) In the event the City should perform any work the cost of which is to be paid by the Owner pursuant to this undertaking, the City's costs of undertaking such work may be charged to the Letter of Credit as specified in **Schedule "D"** deposited with the City by the Owner and further that such costs may be collected in like manner as municipal taxes.

8. Right of Entry

(1) The Owner agrees to allow the City, its employees, and agents, to enter the Land within the proposed plan of subdivision at all reasonable times and for all reasonable purposes, including and without limiting the generality of the foregoing, for all necessary inspections, to correct any deficiencies and to eliminate any nuisances arising from or relating to the installation of the Works.

(2) The Owner shall forthwith, upon demand, pay the City for all costs incurred by the City, including its reasonable administrative overhead, in undertaking any of the aforesaid actions.

9. Indemnification and Security

(1) The Owner on behalf of themselves, their heirs, executors, administrators, assigns and successors in title shall indemnify, defend and save harmless the City, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs and investigation expenses), interest or damages of every nature and kind whatsoever, including but not limited to bodily injury, sickness, disease or death, damage to or destruction of property as a result of, or in relation to any matter arising under this Agreement, the enforcement or non-enforcement of the Owner's obligations under this Agreement, the condition or state of repair of any and all of the works carried out in accordance with this Agreement, in consequence of any breach of any warranty, representation, term, obligation or covenant of the Owner contained in this Agreement, except for the negligence or wilful misconduct of the City.

(2) The Owner hereby waives any right to and agrees that it will not commence or continue any claim, including but not limited to any Crossclaim or Third Party claim, for contribution and indemnity against the City its elected officials, officers, employees and agents in relation to any claim, demand, action or suit brought against the Owner by any person for injury, loss or damage arising from or in connection with, the enforcement or non-enforcement of this Agreement or any matter arising under this Agreement, including but not limited to any losses in relation to the design, installation, use, maintenance or repair by the Owner of the works and facilities contemplated in this Agreement, except for the negligence or wilful misconduct of the City.

(3) This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Owner in accordance with this Agreement, and shall survive this Agreement.

(4) The Owner shall provide and maintain the following insurance coverage throughout the term of this Agreement and any renewal thereof:

- i. Commercial General Liability Insurance shall be in the name of the Owner with the *Corporation of the City of Kawartha Lakes (herein after called the City)* named as an additional insured, with limits of not less than Ten Million (\$10,000,000.00) dollars inclusive per occurrence. Coverage shall include but is not limited to bodily injury, death and damage to property including loss of use thereof, products and completed operations liability, blanket contractual liability, owners and contractors protective, premises and operations liability, contingent employers liability, non-owned automobile liability and contain a cross liability and severability of interest clause. If

applicable, such policy shall include an "XCU" endorsement providing coverage for property damage and injury related to construction works such as excavation, pile driving, blasting, shoring, underpinning, raising or demolition of any building or structure, collapse of any structure or subsidence of any structure or land from any cause;

ii. If applicable, Standard Form Automobile Liability Insurance with limits of not less than Five Million (\$5,000,000.00) dollars inclusive per occurrence for Third Party Liability including bodily injury, death and damage to property, in respect of the use or operation of all motor vehicles owned, operated or leased by the Owner;

iii. "Broad Form" (all risk) Property Insurance covering all property, equipment, machinery, tools and stock used by the Owner for the performance of the Work including costs to clean-up and restore property damaged by sudden and accidental escape of pollutants and shall be in a form acceptable to the City and shall not allow subrogation claims by the Insurer against the City;

iv. The Owner shall cause to be placed by each professional engineer or other professional consultant it retains in connection with its development of the Lands, Professional Liability Insurance in an amount of not less than Two Million (\$2,000,000) dollars per occurrence.

v. Environmental Impairment Liability Insurance subject to limits of not less than Five Million (\$5,000,000.00) dollars inclusive per claim and shall include coverage for but not limited to bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or dispose of soil, surface water, groundwater or other contamination. The policy shall be endorsed to include the *Corporation of the City Kawartha Lakes* as an additional insured. The policy shall be renewed for 3 years after the termination of this Agreement. The City has the right to request that an Extended Reporting Endorsement be purchased by the Owner at the Owner's sole expense;

vi. Installation Floater insuring any and all materials (including labour), supplies, property of the Owner/property of others intended for the installation in connection with repair, completion, erection or improvement of property. Coverage applies while property is in transit to the installation site, while stored at a temporary location, awaiting installation at the work site, during loading and unloading as well as the course of installation until completed. The limit for any one loss is not to be less than an amount equal to the maximum value of the property being installed at any one time in the performance of the work being completed;

vii. If applicable, Hook Liability coverage in the amount of the value of the equipment being lifted at any one time during the performance of the work; and,

viii. Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits. Certificate(s) of insurance must specify the underlying policies to which the umbrella/excess coverage applies and indicate any applicable aggregates.

(5) Upon execution of this Agreement and thereafter on an annual basis prior to each insurance policy renewal date, until certification of the facilities and works and release of the Securities held by the City pursuant to this Agreement, the Owner shall provide to the City a Certificate of Insurance as evidence of the above required insurance coverage. All policies shall be endorsed to provide the City with not less than thirty (30) Days' written notice of cancellation, material change or amendment restricting coverage. The Owner shall provide the City with a new Certificate of Insurance showing any changes or upon the renewal of coverage. All policies shall be with insurers licensed to underwrite insurance in the Province of Ontario. The insurance shall be with insurers acceptable to the City and with policies in a form satisfactory to the City and if requested, the Owner shall provide the City with a certified copy of the applicable insurance policy and any endorsements. The Owner may be required to provide and maintain additional insurance coverage(s), which are related to this Agreement. All premiums and all applicable deductibles under the above required insurance policies are at the sole cost of the Owner. All policies shall apply as primary and not as excess of any insurance available to the City.

(6) Upon completion of the installation of works and the execution of a Subdivision Agreement, the Owner on behalf of themselves, their heirs, executors, administrators, assigns and successors in title, hereby covenant to indemnify and save harmless the said City from all actions, causes of actions, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of the installation of any works permitted under this agreement, or the failure of the Owner to complete the contemplated installation.

10. Security

(1) Prior to commencing any work hereunder, the Owner agrees to provide the City with security in the amount of 50% of the estimate of total cost of engineering works in accordance with the proposed works identified for pre-servicing and outlined in the engineering drawing set listed in Schedule "A" attached and as per **Schedule "D"** of this agreement, attached ("the Deposit") to secure and guarantee its obligations under this Agreement. The security can be used to secure the site with any required fencing, vegetative cover, or grading, if the Owner does not enter into a subsequent subdivision or development agreement. The security is to be increased to a minimum of 100% on any municipal owned property within the limits of the Draft Plan of Subdivision.

(2) For this purpose, the decision of the Director of Engineering and Corporate Assets, as to whether damage has been done, or whether rectification or cleanup is required as a result of the installation of the Works, shall be final and binding. The City shall be entitled to draw upon the said security for the above purposes at any time. No reductions in security will be granted throughout the term of the pre-servicing agreement.

11. Withdrawal of Permission

(1) The City may withdraw its permission for the installation of the Works at any time if the Director of Engineering and Corporate Assets, in his or her sole opinion, deems it to be in the best interests of the City. Upon such withdrawal, the Owner shall forthwith ~~cease~~ further work with respect to the Works on or in the Land within the plan of subdivision.

(2) When, pursuant to subsection (1), the City has withdrawn its permission the Owner agrees that it shall have no claim whatsoever against the City with respect to this agreement, the permission granted or any installation of the Works performed prior to said withdrawal of permission.

12. Revocation of Grant

In any event, upon the execution by both the Owner and the City of the Subdivision Agreement contemplated herein and the posting of such payments and securities by the Owner as may be required thereunder, this Agreement, along with the grant of permission accorded herein, shall be automatically revoked, and any unexpended portion of the Deposit shall be returned to the Owner forthwith.

13. Notice

If any notice is required to be given by the City to the Owner with respect to this agreement, such notice shall be delivered personally, mailed, emailed, or sent by facsimile transmission to the address or fax number indicated below (or to such other address and/or fax number as the Owner may hereafter give to the City's Clerk) in writing, and any such notice delivered, mailed by prepaid first class mail or sent by facsimile transmission, shall be deemed good and sufficient notice under the terms of this agreement and to have been given upon such delivery, receipt or transmission.

Name: _____
Company Name: _____
Address: _____
Phone: _____
Email: _____

14. Successors

The Owner shall require this agreement to be assumed by any successor in title, to the effect that the obligations and covenants herein shall be binding upon the executors, administrators, successors and assigns.

15. Number and Gender

Words importing the singular shall include the plural and vice versa. Words importing gender shall include all genders.

IN WITNESS WHEREOF the Corporate Seal of the City and of the Owner is hereunto affixed under the hands of its proper officers in that behalf.

THE CORPORATION OF THE CITY OF KAWARTHA LAKES
X
Name: Juan Rojas Title: Director, Engineering and Corporate Assets
Date: _____
X
I/We have authority to bind the Corporation
Name: _____ Title: _____
Date: _____

SCHEDULE "A"

SCHEDULE "A" WORKS TO BE COVERED UNDER THE PRE-SERVICING AGREEMENT BETWEEN _____ AND THE CORPORATION OF THE CITY OF KAWARTHA LAKES.

Municipal Services to be Constructed by Owner

All Works are to be constructed in accordance with engineering design drawings prepared by _____ as reviewed and accepted by the City of Kawartha Lakes.

The following Works are to be constructed as part of the Pre-Servicing agreement.

(CONSULTING ENGINEER TO CONFIRM SCOPE OF WORK APPLICABLE TO PRE-SERVICING REQUEST)

1. Install and Maintain erosion control features
2. Tree Removal and Clearing
3. Strip and stockpile topsoil
4. Excavate earth and pre-grade road for installation of Municipal Services
5. Installation of Municipal Services as per approved plans
6. Road Works to base asphalt
7. Early Construction Home(s) and/or Model Home(s), subject to Zoning

Note – No Works to be conducted on municipal property or right-of-ways, save as explicitly provided-for herein. All Works to be completed on the Owner's property only.

The Construction Management Plan will be maintained by the Owner and Consulting Engineer for the purpose of outlining the construction schedule, measures for minimizing construction debris, construction traffic plan and routing, and the contact list for any and all issues that may arise.

All construction is to be in accordance with the _____ Subdivision "Issued for Pre-Servicing" detailed engineering design drawings, prepared by _____, dated _____. A list of the drawings included in the package are provided below:

The drawings are to be listed below – titles, project number, dates, and consultant.

- 12 -

SCHEDULE "B"

LETTER OF INDEMNITY AND UNDERTAKING

COMPOSITE UTILITY PLANS, LANDSCAPING PLANS & COST ESTIMATE

DRAFT TEMPLATE

- 13 -

SCHEDULE "C"

LETTER OF UNDERTAKING BETWEEN OWNER AND ENGINEER

DRAFT TEMPLATE

- 14 -

SCHEDULE "D"
COST ESTIMATE

DRAFT TEMPLATE

- 15 -
SCHEDULE "E"
CONSTRUCTION MANAGEMENT PLAN

DRAFT TEMPLATE