

## Sanitary and Storm Sewer Connection Agreement

The effective date of this Agreement is \_\_\_\_\_, 2020.

Between:

**The City of Saskatoon**, a municipal corporation pursuant to the provisions of *The Cities Act*, S.S. 2002, Chapter C-11.1 (the "City")

- and-

**Superior General Partner Inc.**, a Saskatchewan corporation, carrying on business in the City of Saskatoon, in the Province of Saskatchewan (the "Developer")

Whereas:

### Part I Introduction & Definitions

- A. The Developer is the registered owner of those lands municipally known as 4050 Wanuskewin Road, Saskatoon, Saskatchewan attached to this Agreement outlined in red on Schedule "A" (the "Plan") and legally described as:

South East Quarter of Section 26, Township 37, Range 5, West of the Third Meridian Extension 123 as described on Certificate of Title 97S29372A, description 123

South West Quarter of Section 26, Township 37, Range 5, West of the Third Meridian Extension 124 as described on Certificate of Title 97S29372A description 124

Parcel F, Plan No. 101459303 Extension 178 as described on Certificate of Title 97S29372B description 178

North West Quarter of Section 23, Township 37, Range 5, West of the Third Meridian Extension 176 as described on Certificate of Title 97S29372B description 176

collectively containing approximately 69 hectares and hereinafter referred to as the "Property".

- B. The Developer desires and has made application to connect into the City's Sanitary Sewer and Storm Sewer system for a portion of the Property totaling approximately 137 meters of frontage and 5.5 hectares hereinafter referred to as the "Development Area" outlined in blue on the Plan and as the City requires as a condition of approval of the connection to City services that the Developer enter into an Agreement with the City respecting the installation and construction of certain services and other matters referred to in this Agreement.
- C. The City deems it advisable that the Development Area be developed as provided in this Agreement, and that the Developer and the City provide the facilities as set out in this Agreement.
- D. Throughout this Agreement "Manager" means the General Manager of the City's Transportation and Construction Department.

Now therefore the City and the Developer agree as follows:

## **Part II Off-Site Servicing**

### **City Servicing and Term**

- 1. (1) Upon the execution of this Agreement the City shall within a reasonable time, and in any event no later than six years from the effective date of this Agreement (the "Term"), and in coordination with the Developer's various stages of service construction, cause the Development Area to be improved and benefited by the supply, placement, installation, construction, use and enjoyment of the following services:
  - (a) Trunk Sewer Service;
  - (b) Primary Water Main Service;
  - (c) Arterial Road Service;
  - (d) Interchange Service;
  - (e) Parks Service;
  - (f) Water Main; and
  - (g) Servicing Agreement Service,

in accordance with the drawings and specifications agreed upon between the parties. The City warrants that all such services shall be of a size and capacity sufficient to satisfy the servicing requirements of any and all permitted uses to be situated within the Development Area.

- (2) The Developer will submit draft drawings and specifications to the City to govern the servicing of the Development Area. The City will review and provide its approval or any amendments to the drawings and specifications. Upon approval by the City, the parties will use the approved drawings and specifications for the performance of their services in sections 1 and 7 of this Agreement and the drawing shall thereafter form part of this Agreement.

### **Levies Payable by the Developer**

2. (1) In consideration of the City providing the various services upon and in relation to the Development Area as specified in section 1, the Developer shall pay to the City the following fees, levies and other charges calculated in accordance with and at the rates described in Schedule "B":
- (a) Trunk Sewer Levy;
  - (b) Primary Water Main Levy;
  - (c) Arterial Road Levy;
  - (d) Interchange Levy;
  - (e) Parks and Recreation Levy;
  - (f) Water Main Charge; and
  - (g) Servicing Agreement Fee (collectively the "Development Charges").
- (2) The Developer shall pay to the City the Development Charges as follows:
- (a) upon connection to the City's Sanitary Sewer system the Developer shall pay to the City a yearly charge representing 20% of all the Development Charges starting on the anniversary of the connection date with the remaining four payments due and payable on each subsequent anniversary of the date of sanitary sewer connection; and
  - (b) the Developer acknowledges that the Development Charges will be subject to the rates in Schedule "B".

- (3) The Developer shall, subject to subsection 14(2), pay to the City the Development Charges for future subsequent events as follows:
  - (a) upon the conveyance either directly or indirectly of sewage from additional lands outside the Development Area but within the Property connected to the sanitary sewer and or storm sewer system of the City a further designation of land will be prepared immediately by way of a registered land surveyor at the Developer's cost indicating the revised overall development area;
  - (b) the incremental difference in the overall development area will be subject to payment of the levies by the Developer indicated in clause 2(1)(a), 2(1)b, 2(1)c, 2(1)d, and 2(1)e, at the rates approved by the City at the time such subsequent event occurs; and
  - (c) the City shall prepare an invoice of the development charges and the Developer shall pay such charges within 30 days of receipt of invoice.

### **Payment Dates and Interest**

3.
  - (1) All of the Development Charges and other fees, levies and charges payable by the Developer to the City pursuant to this Agreement shall be due and payable upon the various dates specified in this Agreement.
  - (2) Should any amount or invoice not be paid at the times or within the period so specified, interest shall be payable at Royal Bank of Canada prime rate plus two (2%) percent per annum on all such overdue amounts. In addition to any other remedy which may be available to the City, should any amount invoiced to the Developer not be paid within the times specified, the City shall upon seven (7) days written notice to the Developer have the right to immediately stop construction until such amount or invoice has been paid.

### **Retroactive Charges**

4. The Developer acknowledges that this Agreement is retroactive in effect and all Development Charges and other levies, fees or charges provided for in this Agreement shall specifically apply to any lands developed or services provided before the execution of this Agreement.

### **Maintenance in Accordance with *The Cities Act***

5. All services and other facilities supplied, placed, installed and constructed by the City pursuant to the provisions of this Agreement shall be maintained in keeping with the provisions of *The Cities Act*.

### **City's Indemnification**

6. The City will indemnify and save harmless the Developer with respect to any action commenced against the Developer as a result of any act or omission of the City upon or in relation to the City's obligations set out in this Agreement, including the acts or omissions of its officers, employees, servants or agents, or anyone for whom the City is responsible at law.

## **Part III Development Area Servicing**

### **Developer Servicing Responsibilities**

7. Except as herein expressly provided, the Developer agrees that development and servicing is its sole responsibility and it agrees to cause the Development Area to be serviced and developed by the supply, placement, installation, construction and maintenance of the following services:

- (1) Direct Services:
  - (a) Sanitary sewer mains;
  - (b) Storm sewer mains; and
  - (c) Street remediation,

in accordance with the drawings and specifications approved by the City.

### **Developer Warranties**

8. (1) All works constructed by the Developer pursuant to section 7 of this Agreement on, in or under any street, avenue, lane, easement or other public place shall be the property of the City upon completion of construction. Such works shall be warranted and maintained by the Developer for the maintenance periods specified as follows:

Sanitary Sewer Mains	2 years from the date of Construction Completion Certificate
Storm Sewer Mains	2 years from the date of Construction Completion Certificate
All others	2 years from the date of Construction Completion Certificate

A Construction Completion Certificate shall be issued on completion and acceptance of each phase of work. The warranty periods as outlined in this subsection shall apply notwithstanding the expiration of the Term of this Agreement.

- (2) The Developer shall put up such barricades, lights or other protection for persons and property as will adequately protect the public or any person in the Development Area and maintain same during the course of construction, and, upon the request of the Manager or the Saskatoon Police Service, shall improve or change same.
- (3) When the Developer has completed all of the storm sewers, sanitary sewers, and street remediation pursuant to any work done under subsection 8(1), it may so notify the Manager, in writing, who shall within 15 days of such a notice, carry out the required inspection, and if the Manager is satisfied on inspection that the work is substantially complete and will not be materially affected by other work, he shall within 15 days issue a Construction Completion Certificate to that effect, and the maintenance period for the works included in the Certificate shall start on the day the Certificate is issued.
- (4) Upon completion and acceptance by the Manager as required in subsection 8(3) hereof, the Developer shall carry out any work, by way of repair or replacement, as directed by the Manager, and which the Manager acting reasonably deems necessary to conform to the approved plans and specifications:
  - (a) after the issuance of the Construction Completion Certificate, the Developer shall be responsible for any and all repairs and replacement to any utilities and improvements which may become necessary up to the end of the maintenance periods set out in subsection 8(1);
  - (b) if during the construction or maintenance period any material defects become apparent in any of the utilities or improvements installed or constructed by the Developer under this Agreement, and the Manager requires repairs or replacements to be done, the Developer

shall be so notified, and within a reasonable time after said notice, shall cause any repairs or replacements to be done, and if the Developer shall default, or any emergency exists, the City may complete the repairs or replacement and recover any and all costs incurred by the City in completion of said repairs or replacement including reasonable costs of administration thereof from the Developer;

- (c) the Developer shall be responsible for adjusting all hydrants and main valve boxes and all service valve boxes to the established grades as they are developed, until such time as the City issues the Construction Completion Certificates for the maintenance of streets; and
  - (d) the Developer agrees that maintenance is a continuous operation that must be carried on until the expiry date of the maintenance period for each and every utility, and that no releases from liability of any kind will be given until all repairs or replacements required by the Manager acting reasonably in his final inspection reports have been made . The final inspection reports shall be completed no later than 60 days prior to the end of the warranty period. A formal release will be issued upon correction of all deficiencies listed in the final inspection reports.
- (5) During the maintenance periods referred to in this Agreement and notwithstanding any other provisions to the contrary, in the case of an emergency involving the stoppage of a sewer line constructed by the Developer, the City may take such emergency repair measures as it deems necessary, through its officers, servants or agents, on its behalf, to prevent damage to property, any and all costs incurred by the City in completion of said repairs or replacement including reasonable costs of administration on demand.

### **Developer Covenants**

9. In relation to the development and servicing of the Development Area, the Developer agrees:
- (a) to provide:
    - (i) all utility, construction and service easements which may be required, at no cost to the City or any other utility agency or service, and to comply with the terms of any easement agreement entered into by the Developer with respect to such

easements provided that such easements shall not materially adversely affect the development of the Development Area;

- (ii) and register a utility easement plan if required by the Manager; and
  - (iii) a covenant in all sale, ground lease or transfer agreements within the Development Area to the effect that the grades set on any such easements shall not be altered without the prior approval of the Manager, whose approval will not be unreasonably withheld;
- (b) to indemnify and save harmless the City with respect to any action commenced against the City arising solely and directly as a result of any act or omission of the Developer in relation to the Developer's obligations set out in this Agreement, including the acts or omissions of its officers, employees, servants or agents, or anyone for whom the Developer is at law responsible;
  - (c) that all work carried out by the Developer shall be designed and the works supervised by a qualified firm of consulting engineers retained by the Developer. Plans and specifications of design must be approved by the Manager, acting reasonably, and all design and work carried out must conform to the current City of Saskatoon specifications as to material and construction practices for such services;
  - (d) that the Developer shall obtain all approvals required by the Saskatchewan Ministry of Environment and the Saskatchewan Water Corporation, together with any other consent or approvals which may be required by law, copies of all such approvals shall be provided to the Manager;
  - (e) to supply all necessary labour, material, equipment and to construct, provide and maintain all storm sewers complete with manholes and all other accessories throughout the Development Area;
  - (f) to supply all necessary labour, material, equipment and to construct, provide and maintain all sanitary sewers, including all other accessories throughout the Development Area;
  - (g) to provide the City with all such detailed plans, specifications, tests and records as the Manager may reasonably require both before and after construction. The "as built" plans shall be to the City's standard in size, scale and form and shall be on both mylar transparencies and digital copy. The Developer shall submit a deposit calculated by

the product of \$10.00 and the Development Area frontage equaling an amount of \$1,400.00 to be held until all such information pertaining to this clause has been received and reviewed to the satisfaction of the City. The deposit will be refundable by the City up to a period of three years from the execution date of this Agreement;

- (h) to supply the City with proof of adequate commercial general liability insurance which includes a non-owned vehicle endorsement and vehicle liability insurance, minimum coverage to be as follows:

**Commercial General Liability Insurance which includes a non-owned vehicle endorsement:**

\$5,000,000.00 for each occurrence

**Vehicle Liability Insurance:**

\$5,000,000.00 for each occurrence,

which coverage shall be maintained throughout the Term of this Agreement.

**Standard of Construction**

- 10. With respect to work undertaken by the Developer, where for any reason the Manager requires construction by the Developer to be different from the City's standards, or different from the conditions of this Agreement, the Developer shall construct in accordance with the instructions of the Manager.

**Changes in City Services**

- 11. In the event that the Developer requires changes in City services for the Development Area, other than those contemplated in this Agreement, same shall be provided at the expense of the Developer. Changes requested by the Developer shall be in writing addressed to the Manager. The City will consider that any development discharge either planned or exceeding the following flow rates will be a change in City service requiring the developer to immediately contact the City:
  - (a) the Development Area shall not exceed a discharge rate of sanitary sewer flows greater than 10 liters per second; and
  - (b) the Development Area will be restricted to a discharge rate of 50 liters per second into the storm sewer system with any release not to begin until a minimum of 12 hours after a rain event occurs.

## **Part IV General**

### **Approval for Installation of Services**

12. The City shall consider all applications for approval made by the Developer as are required respecting the development and servicing of the Development Area by the Developer. All approvals resulting from the applications shall be issued in the normal course and under usual conditions and in accordance with the City's standard specifications respecting the class of works in question.

### **Expeditious Construction**

13. All works required to be performed by this Agreement shall be carried out as expeditiously as time and construction conditions permit.

### **Assignment**

14. (1) During the Term of this Agreement, the Developer may transfer or assign its rights to a third party directly or indirectly, including by a change of control, with the written consent of the City. The City shall provide its written consent upon the assignee demonstrating to the City's reasonable satisfaction that it:
  - (a) has the financial resources necessary to meet the Developer's obligations in this Agreement; and
  - (b) will honour, take assignment of or replace any performance security provided by the Developer pursuant to section 18, if applicable.
- (2) The parties acknowledge and agree that, for the purpose of determining responsibility for future payments and obligations relating to the Property in this Agreement, the "Developer" will be deemed to be the registered owner(s) of the parcel in the Land Titles Registry for Saskatchewan at the time that the obligation or payment arises.

### **Dispute Resolution**

15. In the case of any dispute between the City and the Developer arising out of the performance of this Agreement, or afterwards as to any matter contained in this Agreement, either party shall be entitled to give to the other notice of such dispute and demand arbitration thereof. Such notice and demand being given, each party shall at once appoint an arbitrator and these shall jointly select a third. The decision of any two of the three arbitrators shall be final and binding upon the parties, who

covenant that their dispute shall be so decided by arbitration alone, and not by recourse to any court or action of law. If the two arbitrators appointed by the parties do not agree upon a third, or a party who has been notified of a dispute fails to appoint an arbitrator, then the third arbitrator and/or the arbitrator to represent the party in default shall be appointed by a Judge of the Court of Queen's Bench at the Judicial Centre of Saskatoon. *The Arbitration Act, 1992* of the Province of Saskatchewan shall apply to any arbitration hereunder, and the costs of arbitration shall be apportioned equally between the parties hereto.

### **Applicable Law**

16. The laws of the Province of Saskatchewan shall apply and bind the parties in any and all questions pertaining to this Agreement.

### **Force and Effect**

17. This Agreement shall remain in full force and effect until such time as both the City and the Developer have fully completed their respective obligations hereunder, and, for greater certainty, until such time as all Development Charges, fees, levies and other charges payable by the Developer to the City pursuant to the terms of this Agreement have been paid.

### **Agreement Runs with the Land**

18. The Developer acknowledges and agrees that this Agreement runs with the land, and binds it, and subject to section 14, its successors and permitted assigns; and, further, agrees that the City may elect, at its sole option, to register an Interest based on this Agreement against the property subject to this Agreement in the Land Titles Registry for Saskatchewan charging all those lands comprising the Development Area with the performance of this Agreement.

### **Notices**

19. (1) Any notice or consent (including any invoice, statement, request or other communication) required or permitted to be given by any party to this Agreement to the other party shall be in writing and shall be delivered or sent by registered mail (except during a postal disruption or threatened postal disruption) or facsimile transmission, email or other electronic communication to the applicable address set forth below:
  - (a) in the case of Superior General Partner Inc. to:

Superior General Partner Inc.  
PO Box 1586  
Saskatoon Saskatchewan S7K 3R3  
Attention: Mr. Terry Friske, Plant Manager  
Facsimile: (306) 933-0888  
Email: tfriske@ercoworldwide.com

With a copy to:

ERCO Worldwide, A division of Superior Plus LP  
302 The East Mall, Suite 200  
Toronto ON M9B 6C7  
Attention: Legal Department  
Facsimile: (416) 239-8091

(b) in the case of the City to:

The City of Saskatoon  
c/o Office of the City Clerk  
222 3rd Avenue North  
Saskatoon Saskatchewan S7K 0J5  
Attention: General Manager, Transportation  
and Construction Department  
Facsimile: (306) 975-2971

- (2) Any notice delivered personally shall be deemed to have been validly and effectively given and received on the date of such delivery provided same is on a business day (Monday to Friday, other than a statutory holiday).
- (3) Any notice sent by registered mail shall be deemed to have been validly and effectively given and received on the fifth business day following the date of mailing.
- (4) Any notice sent by facsimile or email or other electronic communication shall be deemed to have been validly and effectively given and received on the business day next following the date on which it was sent (with confirmation of transmittal received).
- (5) Either party to this Agreement may, from time to time by notice given to the other party, change its address for service under this Agreement.

### **Entire Agreement**

20. This Agreement constitutes the complete and exclusive statement of the Agreement between the parties, which supersedes all proposals, oral or written, and all other communications or representations between the parties, relating to the subject matter of this Agreement.

### **Illegality**

21. If one or more of the phrases, sentences, clauses or articles contained in this Agreement is declared invalid by a final and unappealable order or decree of any court of competent jurisdiction, this Agreement shall be construed as if such phrase, sentence, clause or paragraph had not been inserted in this Agreement.

### **Amendment**

22. This Agreement may be changed only by written amendment signed and sealed by authorized representatives of the parties.

### **Headings**

23. The headings contained in this Agreement are inserted for convenience of reference only and are not to be considered when interpreting this Agreement.

### **Covenants**

24. Each obligation of the City or of the Developer in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

### **Time of Essence**

25. Time shall be of the essence of this Agreement and every part of this Agreement.

**Further Assurances**

- 26. The Developer and the City shall, at their own expense, promptly execute such further documentation to give effect to this Agreement as the Developer and the City, as the case may be, may reasonably require from time to time.

In Witness Whereof the parties hereto have hereunto affixed their corporate seals, duly attested by the hands of their proper officers in that behalf, as of the day and year first above written.

**The City of Saskatoon**

\_\_\_\_\_

Mayor

c/s

\_\_\_\_\_

City Clerk

**Superior General Partner Inc.**

\_\_\_\_\_

c/s

\_\_\_\_\_

## Affidavit Verifying Corporate Signing Authority

(No corporate seal)

Canada

Province of Saskatchewan

To Wit:

I, \_\_\_\_\_, of \_\_\_\_\_, in the Province of  
(name of corporate officer/director) (place)  
Saskatchewan, make oath and say:

1. That I am an officer or director of the corporation named in the within instrument.
2. That I am authorized by the corporation to execute the instrument without affixing a corporate seal.

Sworn before me at \_\_\_\_\_,  
in the Province of Saskatchewan, this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Oaths for Saskatchewan  
My Commission expires \_\_\_\_\_.  
(or) Being a Solicitor

\_\_\_\_\_  
(signature of corporate officer/director)





## Schedule "B"

### Fees, Levies and Other Charges Applicable to the Development Area

The development charges payable by the Developer to the City pursuant to Section 2 hereof shall be calculated in accordance with the rates as the Council of The City of Saskatoon has established and are in general force and effect for the 2017 construction season as follows:

(a)	Trunk Sewer Levy.	\$1,320.00 per front metre;
(b)	Primary Water Main Levy	\$235.70 per front metre;
(c)	Arterial Road Levy	\$632.50 per front metre;
(d)	Interchange Levy	\$131.30 per front metre;
(e)	Parks and Recreation Levy	\$40.38 per front metre;
(f)	Water Main Charge	\$504.45 per front metre;
(g)	Servicing Agreement Fee	\$2,510.00 per Agreement.

The Trunk Sewer Levy, Primary Water Main Levy, Arterial Road Levy, Interchange Levy and Parks Levy will be calculated at an area rate of 113 equivalent front metres per hectare. Area rate: 113fm X \$2,359.88 = \$266,666.44 per hectare.