



DEVELOPMENT AGREEMENT GUIDE

MUNICIPALITY OF EMERSON-FRANKLIN



A Guide to Understanding Development Agreements

DRAFT

The Municipality of Emerson-Franklin

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1. Preamble

This Development Agreement Guide expresses the general intent of the Municipality of Emerson-Franklin in formulating development conditions and approvals for consideration by Council. Each development will be governed by its respective development agreement, not by these guidelines.

The purpose of a Development Agreement is to ensure that all parties pay their equitable share of the costs of development, that development agreement obligations are consistent for all developments and that development occurs in accordance with current Municipality of Emerson-Franklin standards.

Development agreements will deal within the limits of the Municipality of Emerson-Franklin powers to make cost recoveries for the works provided by the Municipality of Emerson-Franklin or by an initial Developer. The Municipality of Emerson-Franklin can only make its best efforts within the limits of its powers.

Each councillor's duty to vote as they decide cannot legally be restricted by an agreement. For example, where a future cost recovery depends on a majority vote of Council to enact a by-law levying local improvement charges or approving a subdivision and imposing development conditions, including cost recoveries, that majority vote will determine what the Municipality of Emerson-Franklin attempts to recover within the upper limit of what lawfully can be recovered.

The adoption/amendment of Development Agreement is determined by a majority vote of the Council. Only an enactment of a by-law by the Council or a development agreement signed by a Developer would impose an obligation for payment or reimbursement to a previous Developer.

PART 1 – Admin and Finance

There are certain administrative and financial requirements that the Developer and the Municipality of Emerson-Franklin need to follow. This section provides information with respect to incorporation of over-sizing, cost sharing, cost recovery, and reimbursement into the agreements.

2. Developer Reimbursement

Where the land of a third party directly benefits from services installed by a Developer, the Municipality of Emerson-Franklin may include in the development agreement to endeavour to collect a cost recovery for the Developer.

Interest will be added to that initial cost (compounded annually) from the first anniversary date of substantial completion of those services to the date of payment at a rate equal to the Municipality of Emerson-Franklin's capital borrowing rate.

In circumstances where application of such interest would be inequitable or beyond the power of the Municipality of Emerson-Franklin, the cost recovery may be at the relevant local improvement by-law applicable during the year of recovery or whatever amount is recoverable within the Municipality of Emerson-Franklin's powers.

Where the Developer, the Municipality of Emerson-Franklin, and the third party so agree the cost recovery may be calculated as above provided or in any other manner agreed to and either paid by the third party directly to the Developer or through the Municipality of Emerson-Franklin.

A development agreement may provide that where the land of a third party directly benefits from services installed by the Developer, as determined by the Municipality of Emerson-Franklin, the Municipality of Emerson-Franklin shall in accordance with these guidelines pay to the Developer the cost and interest as described above in paragraphs one and two subject to and upon capital funding being approved for that payment.

3. Land Value

The cost or value of land will be determined by the Municipality of Emerson-Franklin annually upon the appraised market value of raw acreage that has imminent development potential.

4. Services Fronting on Privately Owned Lands

When a Developer installs services and improvements that front and directly benefit private lands, a local improvement by-law may be enacted. Such a local improvement bylaw must be enacted before the construction work commences. Upon enactment of the required by-law (and approval of funds in the Municipality of Emerson-Franklin's capital budget), the Municipality of Emerson-Franklin will pay to the Developer the lesser of:

- a) The Developer's cost; or
- b) The applicable local improvement cost.

Where no local improvement by-law is enacted, the Municipality of Emerson-Franklin will endeavour to recover with future development agreements.

5. Installation of Services Benefitting Other than the Developer

Where the Municipality of Emerson-Franklin requires installation of oversize services to or through a subdivision, or where private property owners successfully petition against the installation of services, the Development Agreement may require the Developer to install them at his own expense and shall require the Municipality of Emerson-Franklin to endeavour to recover for the Developer all or a portion of its additional costs as follows:

- a) from future Developer's their proportionate share of the oversize service cost when the said services are extended;
- b) from private owners, prior to connection to or use of the installed services; and repayment shall be in accordance with Section 2 Developer Reimbursement.

6. Bridge Financing of Services

Where the installation of oversized wastewater and land drainage sewers, stormwater impoundments, trunk sewers, pump/lift stations, street pavements and other municipal services are required to serve a proposed development, and where The Municipality of Emerson-Franklin capital funding cannot be provided for the cost of the oversizing, Council may approve bridge financing by the Developer in accordance with the following conditions:

- a) The Developer shall pay the full cost to construct the required services.
- b) The proposed development must be located within areas of acceptable urban expansion.
- c) The services to be installed will be as agreed upon between the Developer and the Municipality of Emerson-Franklin to serve the ultimate service area.
- d) The Municipality of Emerson-Franklin may agree in a development agreement on a repayment schedule based upon approved capital funding in the future from The Municipality of Emerson-Franklin budgets and collection of funds from future development areas. Such repayment shall be in accordance with Section 2 Developer Reimbursement.

7. Development Control Strips

Where a requested local improvement by-law is not enacted, the Municipality of Emerson-Franklin may require that a development control strip otherwise created on a plan with title in the name of the Municipality of Emerson-Franklin; to function as notification to the Municipality of Emerson-Franklin of a development agreement covenant by the Municipality of Emerson-Franklin to endeavor to make future cost recoveries from the subsequent developers for services installed by an initial Developer.

8. Insurance

Where a requested local improvement by-law is not enacted, the Municipality of Emerson-Franklin may require that a development control strip otherwise created on a plan with title in the name of the Municipality of Emerson-Franklin; to function as notification to the Municipality of Emerson-Franklin of a development agreement covenant by the Municipality of Emerson-Franklin to endeavor to make future cost recoveries from the subsequent developers for services installed by an initial Developer.

9. Security

The Developer shall provide and maintain security, in forms and amounts satisfactory to the Municipality of Emerson-Franklin, to guarantee performance and completion of all conditions and requirements included in the development agreement. This normally includes letters of credit, performance bonds, or cash deposits with the Municipality of Emerson-Franklin but other forms of security may be acceptable under certain circumstances.

10. Consultants and Administration Fees

The development agreement shall provide that the Developer pay for consulting services associated with the servicing of the development including design and site services. The consultants, although working for the Developer during the design phase, are required to ensure that all of the Municipality of Emerson-Franklin's requirements and standards are being met during the provision of site services.

11. Tenders for The Municipality of Emerson-Franklin/Developer Cost-Shared Services

For the services and improvements where the Municipality of Emerson-Franklin shares the cost with the Developer, the Municipality of Emerson-Franklin will require that the prices reflect competitive tenders and are satisfactory to the Municipality of Emerson-Franklin.

12. Substantial Completion and Construction Completion

- a) "Substantial Completion" means completion certified by a consulting engineer and/or landscape architect, which is then approved by the Municipality of Emerson-Franklin in accordance with the definition for subdivision completion.
- b) "Construction Completion" means 100 percent completion as certified by a consulting engineer and/or landscape architect, which is thereafter approved by the Municipality of Emerson-Franklin.
- c) The development agreement shall provide for Warranty/Maintenance (as outlined in the Maintenance and Compliance Schedule of the Agreement) periods to commence on the "Date of Substantial Completion" or the "Date of Construction Completion," whichever is appropriate.

On these dates the responsible Consulting Engineer and/or Landscape Architect shall provide appropriate Completion Certificates to the Municipality of Emerson-Franklin as "owner" of public rights-of-way and public reserves. The completion status would be confirmed by a formal inspection arranged by the consultant and attended by appropriate representatives of the Municipality of Emerson-Franklin.

13. Final Acceptance Certificates

In general, "Final Acceptance" of any individual improvement, obligation, or responsibility requires that:

- The item has been completed satisfactorily;
- Any warranty/maintenance period has expired; and
- Any deficiencies noted during the end of warranty inspection have been rectified to the satisfaction of the Municipality of Emerson-Franklin.

Final Acceptance of any such item shall be formally acknowledged by the release of the security corresponding to that item. Final Acceptance of the entire development is acknowledged by the final release of all securities and by separate formal Final Acceptance Certification for:

- a) Underground,
- b) Above Ground, and
- c) Boulevard and Tree Works.

14. Permits and Approvals

The Developer/Contractor is required to comply with all applicable Municipal, Provincial, and Federal legislations and obtain all necessary permits and approvals.

15. Plan Requirements

When applicable, each development agreement shall include the following plans:

- a) Legal Plan outlining the Planned Area;
- b) Master site grading plan; and
- c) General servicing plan(s), prepared by a consulting engineer, showing a schematic layout of all the improvements required to fully service the Planned Area and any special plans required to enhance the understanding of the development agreement.

PART 2 – Land Acquisition and Dedication

Developers may be required to transfer land to the Municipality of Emerson-Franklin for various purposes to ensure an orderly development. This section outlines such requirements for street rights-of-way, easements, waterways, retention ponds, and park reserves.

16. Walkways

The minimum right-of-way width for walkways shall be specified by the Municipality of Emerson-Franklin and agreed to in the development agreement; in any case the width of the right-of-way shall be sufficient to enable the removal of snow.

17. Street Rights-of-Way

The Developer shall provide to the Municipality of Emerson-Franklin at no cost street rights-of-way required to serve the subdivision including right-of-way widths for streets that require ditch drainage or rural street cross sections. The Developer may also be required to provide land to the Municipality of Emerson-Franklin at no extra cost for the purposes of widening of streets and/or widening collector streets serving the subdivision.

The Developer may be required to pay a share of the cost to acquire required street rights-of-way outside the subdivision that are:

- Designated by the Municipality of Emerson-Franklin as having been acquired;
- and/or required to provide access from the subdivision to the regional street system.

In addition to such requirements the Developer may be required to provide or accommodate, in the subdivision plan, for street rights-of-way designated by the Municipality of Emerson-Franklin for future access or regional streets requirements. The Municipality of Emerson-Franklin would either purchase or acquire such lands from the Developer.

The development agreement may require the Developer to create and/or dedicate a reserve adjacent to an arterial road or expressway for the purposes of sound attenuation. The cost of land, in all of the above cases, shall be in accordance with Section 3 Land Value.

18. Frontage Roads

The development agreement shall require the Developer to provide at no cost to the Municipality of Emerson-Franklin frontage road rights-of-way in the subdivision wherever required by the Municipality of Emerson-Franklin, in accordance with the Municipality of Emerson-Franklin's Design and Construction Standards.

19. Lane rights-of-Way

The development agreement will require the Developer to provide, at no cost, lane rights-of-way wherever required by the Municipality of Emerson-Franklin in the subdivision. Such dedications should comply with the Municipality of Emerson-Franklin's Design and Construction Standards.

20. Easements

The Developer is required to provide easements, where necessary, for the installation and maintenance of various utilities (i.e. natural gas, hydro, and telephone lines) and municipal works (i.e. swales, sewer, and roads). These easements will be registered in the Manitoba Land Titles Office as caveats attached to the affected parcels.

21. Rivers and Creeks

If Joubert Creek exists within a development area, additional lands may be required for land drainage flow. In such cases the Developer would be required to transfer such lands to the Municipality of Emerson-Franklin at a price as negotiated with the Municipality of Emerson-Franklin.

22. Stormwater Retention Basins: Public Maintenance

For any development with stormwater retention basins, the Developer needs to provide an appropriate amount of land for access to the retention pond for public maintenance purposes at specified locations.

23. Public Park Reserves

Generally, Developers are required to dedicate an equivalent of 10 percent of the development area to the Municipality of Emerson-Franklin for use as active and/or passive parks.

- a) The Developer should dedicate at least 8 percent of the net subdivision area in land for the purposes of public park, and pay the remaining 2 percent in an equivalent cash amount.
- b) In cases where land is not dedicated for public purposes, the Developer is required to make a full cash payment equivalent to 10 percent of the appraised value of the Development Application.

Net area = (Gross area of subdivision) – (land acquired by the Municipality of Emerson-Franklin for land dedication)

PART 3 – Services and Improvements

Developers are required to construct various types of municipal services that subsequently become part of the Municipality of Emerson-Franklin's infrastructure. This section outlines these services and provides some guidelines pertaining to oversizing and cost sharing.

24. Waste Water Sewers

The Developer shall construct all required wastewater sewers to service the subdivision. This could also require the Developer to service adjacent lands in order to convey wastewater from the subdivision to the existing wastewater collection system.

In cases where the Municipality of Emerson-Franklin requires oversize sewers to serve the subdivision, necessary calculations would be carried out to determine the additional costs associated with oversizing; such calculations should be satisfactory to the Municipality of Emerson-Franklin.

The development agreement may require the Developer to pay for existing services or services planned to be constructed in the future that directly benefit the proposed subdivision. Such costs are determined by the Chief Administrative Officer, and specified before or during the development agreement.

Any repayment shall comply with the Section 2 Developer Reimbursement.

25. Local Land Drainage Services

The Developer may be required to construct all required lateral local land drainage sewers to service the subdivision. And if necessary, the Developer may also be required to provide services and facilities in adjacent lands in order to convey wastewater from the subdivision to the existing land drainage. When such services benefit adjacent lands, the Municipality of Emerson-Franklin will repay the Developer.

Any repayment shall comply with the Section 2 Developer Reimbursement.

26. Regional Land Drainage Facilities

- a) The Developer may be required to construct all required regional land drainage trunk facilities (stormwater retention basins, interconnection pipes, outfalls and linear waterways) to serve the subdivision. This may also require the Developer to construct services and facilities in adjacent lands for the conveyance of land drainage runoff from the subdivision to the existing land drainage system. In such cases, the Developer may be allowed to recover the agreed oversizing costs.
- b) In cases where the Municipality of Emerson-Franklin requires the Developer to construct regional land drainage trunk facilities to serve the subdivision, the necessary calculations to determine cost sharing shall be based on Trunk Service Rate (TSR). The Developer's payment calculated on the basis of TSR shall be adjusted to take into account the cost of the works that she/he was required to construct under her/his agreement.
- c) The development agreement may require the Developer to pay the TSR for existing services or services planned for in the future that would benefit the proposed

subdivision. In cases where services are to be constructed in the future, the Municipality of Emerson-Franklin may accept a security in return for immediate payment.

TSR is a uniform per acre charge which is calculated by adding together all the costs for the regional land drainage system (including construction, engineering, and land acquisition) and dividing it by the total drainage area it serves.

Any repayment shall comply with the Section 2 Developer Reimbursement.

27. Water

- a) The Developer shall construct all required water wells to serve the subdivision.
- b) The development agreement may require the Developer to pay for existing services, or services planned to be constructed in the future, that directly benefit the proposed subdivision. Such costs are determined by the Municipality of Emerson-Franklin, and specified before or during the development agreement.

Any repayment shall comply with the Section 2 Developer Reimbursement.

28. Lot Line Connections

The Developer shall construct all required wastewater sewer and domestic water services from the main lines to the individual (single-family and two-family) lots in accordance with the Municipality of Emerson-Franklin's specifications.

29. Street Pavements & Lanes

- a) The Developer shall construct, in all street rights-of-way within the subdivision, pavements in accordance with the Municipality of Emerson-Franklin's Construction and Design Standards. The Developer may also, in certain cases, be required to construct designated access roads and/or modifications to existing streets outside the subdivision boundaries.
- b) The Municipality of Emerson-Franklin may require the Developer to construct pavements of greater width and depth to serve additional areas. In such cases, the Municipality of Emerson-Franklin shall reimburse the Developer for the costs associated with additional width and depth. Such costs will be estimated by the Municipality of Emerson-Franklin.
- c) Where a development borders on an arterial road, the Developer shall pay the cost of constructing one lane of concrete pavement and a share of the land drainage, sidewalks, landscaping, street lighting, and intersection improvements and modifications as determined by the Municipality of Emerson-Franklin.
- d) Where regional street improvements constructed by an initial Developer benefit other lands or the Municipality of Emerson-Franklin, an appropriate cost sharing formula shall be determined and agreed upon in the development agreement.
- e) Area charges may be applied in lieu of frontage charges where more than one Developer shares the improvement costs.
- f) The Developer may be required to pay a share of the cost of previously constructed access roads that serve the subdivision.

Any repayment shall comply with the Section 2 Developer Reimbursement.

30. Traffic Control Devices and Signage

- a) The Developer shall pay for modifications to existing and/or installation of required new traffic control devices (traffic signals, overhead signs, etc) within the development area.
- b) Where traffic control devices constructed by an initial Developer benefit other area, or where traffic devices installed by the Developer benefit the Municipality of Emerson-Franklin, an appropriate cost sharing formula shall be determined and agreed upon at the time the development agreement is signed.

31. Walkways

The Developer may be required to construct the following improvements with public walkways in the subdivision:

- a) Sidewalks – as specified by the Municipality of Emerson-Franklin
- b) Appropriate fencing along the street frontage of the walkway
- c) Ornamental lighting and landscaping between the sidewalk and the property lines

32. Sidewalks

The Developer may be required to construct sidewalks along street rights-of-way as specified and designated by the Municipality of Emerson-Franklin – generally including all collector roads and streets adjacent or leading to schools or parks. In such cases a caveat, that a sidewalk will be constructed abutting the property, will be registered against all parcels fronting or flanking along a sidewalk.

33. Boulevards

The Developer shall, in accordance with the Municipality of Emerson-Franklin's specifications, be responsible for the installation of pavement, unit paving stones or sod, and plantation of trees in all non-traveled surfaces of boulevards, cul-de-sac islands, and medians.

34. Street Name Signs

The Developer shall pay for the cost of installation of street name signs at each intersection in the development area bearing street names approved by The Municipality of Emerson-Franklin Council.

35. Underground Services

The Developer shall be responsible for the installation of all underground electrical, telephone, and cable television services.

36. Street and Lane Lighting

The Developer shall, in accordance with the Municipality of Emerson-Franklin's accepted standards, install ornamental lights on all streets and lanes within the subdivision. Where the use of ornamental lighting is unreasonable – other forms of acceptable lighting will be permitted. (except in cases where the utility and the Municipality of Emerson-Franklin determine it to be unreasonable).

37. Stormwater Retention Basins

For every 4 acres of water surface within an impoundment area, the Developer shall provide 1 acre of land for public access purposes at locations determined by the Municipality of Emerson-Franklin. In accordance with the Municipality of Emerson-Franklin's plans and specifications, the Developer shall:

- a) Grade, level, and sod the public land component;
- b) Install all services in road allowances located adjacent to the public land component; and
- c) Install chain link fencing to demarcate the public land component.

38. Public Park Reserves: Services

The Developer shall install services in road allowances located adjacent to public park reserves based on the formula: 100 feet of serviced frontage for each acre of dedicated parkland.

39. Public Park Reserves: Improvements

The Developer shall grade, level, and sod the public park reserve; install irrigation equipment, and land drainage systems.

40. Limited Urban Development Subdivisions

The Municipality of Emerson-Franklin may approve subdivisions in certain designated rural areas (Future Growth Areas); in such cases the Developer is required to construct gravel streets for A-5 Districts; or construct rural-highway type asphalt surface streets for RR-2 Districts.¹⁸ The Developer must, in accordance with the Municipality of Emerson-Franklin's specifications, fulfill the following conditions for approval:

General Requirements:

- Minimum width of travelling surface shall be 7.5 metres with a minimum shoulder width of 1.5 metres
- The Developer shall construct all ditches
- The Developer shall seed all non-surfaced areas within the road rights-of-way
- The Developer shall install all overhead electrical services to the subdivision

PART 4 – Maintenance and Compliance

Once the services have been installed, the Developer is responsible for the maintenance/warranty of the works for a specified length of time to ensure that they meet the Municipality of Emerson-Franklin's standards before they become the responsibility of the Municipality of Emerson-Franklin. This section outlines the length of time that the warranty extends for the main types of services. The obligation covers the construction and materials; however, it does not include such maintenance items as snow clearing.

41. Maintenance

The Developer is responsible for the maintenance/warranty of the following infrastructure from the date of Substantial or Construction Completion for the periods as specified below:

Infrastructure	Period
Land Drainage Systems	1 year
Stormwater Impoundments	Until 75% of the lots immediately abutting the impoundment are occupied
Wastewater Sewers	1 year
Street and Lane Pavements	1 year
Sidewalks and Walkways	1 year
Lot Line Connections	1 year following turn-on
Structures	1 year
Sodding of Public and Private lands	1 year

42. Survey: Stormwater Retention Basins

The Developer shall be required to stake and grade rear yards of the lots adjoining a stormwater retention basin as a condition for issuance of a Construction Completion Certificate. Prior to the issuing of the certificate the Developer shall provide a legal survey demonstrating that the rear yard property lines of all private lots adjacent to the stormwater retention basin correspond to the appropriate elevation of the retention basin's impoundment design relative to normal water level.

43. Survey Monuments

The Developer is responsible for the maintenance/replacement of all survey monuments within the subdivision area to the satisfaction of the Municipality of Emerson-Franklin.

44. Haul Roads and Deposit of Foreign Materials

The Developer shall direct all traffic to and from the subdivision area on haul roads designated by the Municipality of Emerson-Franklin during the construction period. The Developer should ensure that the haul vehicles do not drop "foreign" materials on the streets. If the vehicles do drop such foreign materials, then the Developer shall pay for the removal of such materials.

45. Limited Urban Development Subdivisions

The Developer shall maintain the seeded area, to the satisfaction of the Municipality of Emerson-Franklin, until grass growth is well established and until the houses fronting such grassed areas are occupied. The Developer is also responsible for the maintenance of all works to be constructed under the development agreement during the construction period and for the following periods from the date of substantial completion:

- 1 year for Future Growth Areas

46. Signage

The Developer shall install signs at the entrances to the subdivision, which display the layout plan of the area. This plan should indicate the locations of all proposed sidewalks, public walkways, parks, prospective school sites, zoning information, and future regional and collector street rights-of-way. The signs shall also indicate the location of fire hydrants, sewer manholes, and streetlights.

47. Access Roads

The Developer may be required to construct and maintain temporary access roads into the subdivision area during the period of construction.