

Guide to Development Agreements



January 2004

TABLE OF CONTENTS

Goals and purpose of this Guide	... 2
PART 1 Principles and Approach	... 3
Planning Act Authority	... 3
Development Agreement Goals	... 4
1. The developer should bear the development's costs and risks	... 4
2. The developer must provide security for its obligations	... 4
3. The development agreement must be easy to administer	... 5
4. Have an approved development agreement policy	... 6
PART 2 Specific Considerations	... 7
Issues to consider	... 7
1. Municipal Services	... 7
2. Management of development (certificate system)	... 9
3. Maintenance and guarantee periods and obligations	... 11
4. Payments to be made by the developer (costs, taxes, capital levies)	... 12
5. Security	... 13
6. Default and enforcement	... 14
7. Insurance and indemnity	... 15
8. Dispute resolution	... 15
9. General issues	... 16



Goals and purpose of this Guide

Municipalities face many issues as they negotiate and administer agreements for the development of land. These range from municipal management and financial issues to political ones. Each has associated considerations and risks.

The purpose of this guide is to highlight the issues, explain why they need to be considered and to outline approaches and options available to Councils to address them. There is no right or wrong approach. However, recognizing and addressing the issues will lead to a sound approach, and help minimize the risks associated with development.

This guide aims to help those municipalities just becoming involved in land development, as well as those who have been involved in development for years. For those already involved in development it serves as a reminder or refresher of the factors they may already take into account.

This guide recognizes there are also many other factors Councils will take into account when dealing with developments and agreements such as

- the nature of the proposed development,
- how the municipality has approached development agreements in the past, and
- the working relationship between Council and developers in the municipality.

What this guide does not attempt to provide is a standardized form of agreement with specific wording. Rather, it provides an approach. What the agreement will ultimately look like and contain is a matter Council will determine, in consultation with its municipal solicitor.

Part 1 of this guide sets out general principles and approaches to land development issues and agreements. Part 2 addresses specific concerns and issues, and options available to help municipalities negotiate, administer and enforce development agreements.

PART 1 | Principles and Approach

Development agreements can be required when land to be developed is being subdivided or rezoned, or when a developer wants a municipality to provide services such as water or sewer for a new development.

This guide focuses mainly on the most common development agreements, those relating to permanent or seasonal residential developments. This is the most common use of a development agreement, and the most suitable to a standardized approach. However, many of the principles and issues discussed in this guide also apply to commercial or industrial developments, though those development agreements will differ depending upon a number of factors including the nature of the proposed development.

Planning Act Authority

Under the Planning Act, the authority for a municipality to require a developer to enter into a development agreement arises in two circumstances.

Section 70

Section 70 allows municipalities, as a condition of the approval of a subdivision application, to require a development agreement. These agreements establish the terms and conditions for the development of the land and the construction of municipal services. If the land being subdivided is unzoned, they can also include restrictions on the use of land.

Section 46

Section 46 provides for development agreements as a condition of a zoning by-law amendment. In this case, the agreement can deal with the construction of municipal services, siting and design of buildings, traffic control and parking, landscaping, and restrictions on land use and operation.



Development Agreement Goals

When approaching a development agreement, recommended municipal goals include:

1. The developer should bear the development's costs and risks

To the greatest practical extent, the developer should bear the cost and risk of the proposed development. This is a sound approach from a municipal management point of view, since the municipality will not share in the profits of the resulting enterprise. If the development is successful, the municipality will receive new assessment, offset in part by increased servicing costs. If the municipality invests in the subdivision by paying for any part of the municipal services (roads, water or sewer) or by relieving some of the developer's cost burden, the municipality (ratepayers) is investing in the enterprise and perhaps contributing to the developer's bottom line, but has no corresponding opportunity to share in the profits.

There may well be situations where a Council, having considered the interests of the municipality, is prepared to share costs and risks with a developer. This should only be the case where Council determines that a project of clear benefit to the municipality will not proceed without municipal support to the developer. Even in this situation, the issues identified in this guide will help identify exactly how much responsibility and risk the municipality should assume.

2. The developer must provide security for its obligations

Development agreements require the developer to pay for and construct municipal services that will ultimately become the municipality's responsibility. The municipality counts on the developer to carry out this work. If the services are not constructed or are done badly, people who buy lots or houses will look to the municipality to remedy the problem. These owners have already paid for a serviced lot and are now looking for those services. If the developer has gone bankrupt or is not willing to fix the problem voluntarily, Council will have to either tell the new owners they have to pay for the work themselves, or justify to the rest of the ratepayers that the work should be completed using general tax revenues.

Proper security is therefore crucial to guarantee the developer's obligations. This will ensure that no matter what goes wrong, the municipality can ensure the work gets done without having to use the municipality's own funds or sue the developer in court. No matter how good the agreement, enforcement is difficult without sufficient security in place. Development agreements without security put the municipality's money at risk.

The surest and safest kind of security is a letter of credit provided to the municipality on behalf of the developer through a bank or credit union, in an amount based on all the costs of building the services and meeting other obligations. A letter of credit is a



municipal self-help remedy. By making a simple demand to the bank or credit union, the municipality is entitled to the whole amount, or whatever portion it determines it needs. The municipality can then determine how and when to do the work. The municipality does not have to go to court to get the money.

While not as safe, efficient or convenient, municipalities can require other kinds of security such as performance bonds, collateral mortgages or temporary titles to lots within the development. Cash deposits are also an option if the development is a small one. These other forms of security are discussed in detail in Part 2.

3. The development agreement must be easy to administer

a. The language must be clear and the agreement organized logically.

Clear wording and logical organization make the agreement much easier for the reader to understand and follow. The agreement must make sense to the Councils, administrators and developers who will be reading it, not just to their lawyers.

In this context, risk and responsibility must be clearly allocated. Every aspect of the agreement must speak for itself on the issues of responsibility and risk. Each party's responsibilities must be clear, as must deadline dates, timeframes, and the mechanisms for confirming that obligations have been met.

For example, for a municipal service like a road, the agreement needs to be clear as to who is responsible for building the road, to what standard, within what timeframe, who will decide whether it has been properly built, and how long will the developer remain responsible for the road after construction.

b. The agreement must be as complete as possible.

The agreement must be as complete as possible, ensuring both parties agree on all aspects of the agreement. Important issues should not be deferred. Leaving too many issues to be decided at a later date will result in more potential for misunderstanding or disagreement.

The municipality's bargaining power is also strongest before the development agreement is signed and the plan registered. Once the plan has been registered, the developer can sell lots and the municipality can lose advantage.

For example, work standards, plans and specifications should be confirmed and included in the agreement. If they are not, a mechanism for determining and approving them later must be provided for. If the developer is not yet able to be clear on a point or issue, but Council is prepared to sign the agreement in the meantime, the developer must accept the risk of Council imposing some future term or requirement that the developer might not like.



c. Procedures for approvals, inspections, certificates, etc. should be provided for.

The agreement should provide for clear approval, inspection, certification and other procedures. The CAO's role in administering the development agreement should then be purely administrative. This will ensure proper documents are provided and deadlines are easily monitored. The municipal engineer should be the one to judge whether work is complete and complies with standards.

The agreement should not provide for the developer to attend Council meetings as the work progresses to seek approvals or allow changes. Council's role should be to pass a resolution upon completion of the development to accept the work, or to make a decision whether to take action under the agreement upon a developer's default. Its subsequent involvement should be kept to a minimum.

This provides for a more consistent and manageable system, and avoids the inevitable suggestions that Council treats certain developers differently or more favourably.

d. Schedules

Schedules should be used to reference detailed information that is important to the functioning of the agreement, but need not be included in the body of the agreement as it need not be there or may be too detailed. Schedules usually include the legal description of the land, a copy of approved plan of subdivision in registerable form, a description of payments required to be made, drainage plans, and the standards for the services.

4. Have an approved development agreement policy

It is useful for a municipality to have a policy reflecting its standard requirements, as set out in an approved standard development agreement. Having an approved standard agreement will also help developers, as they can obtain a copy of the standard agreement long before they make an application for subdivision approval and will already have a general understanding of the municipality's approach to development. All proposed developers are treated equally and know what is expected. If a developer wants to propose something different, Council will know about it ahead of time and can consider it when deciding whether to approve the application.



PART 2 | Specific Considerations

As stated above, while this guide does not provide specific wording for a standard form of development agreement, it provides an approach. With the goals outlined in Part 1 in mind, Part 2 identifies the specific issues municipalities should take into account when considering a development proposal, and what will need to be included in the development agreement. The significance of the issues outlined below will of course change depending upon the nature of the development. However, considering these issues for all developments will ensure Councils come to grips with the necessary issues ahead of time.

Issues to Consider

1. Municipal Services

Municipal services are the services a developer may be required to construct, and that the municipality will ultimately be responsible to operate, maintain and replace. These can include roads, drainage, sidewalks and walkways, water, sewer, storm sewer and street signage. The most significant and controversial issues arising from development agreement interpretation and administration are generally those related to the municipal services.

The municipality must first determine what services will be required in connection with the proposed development. Once determined, the municipality needs to consider the following:

a. Standards

To avoid disputes, the agreement must be clear as to the standard to which the developer must construct each service. The agreement should either have the plans and designs attached as a schedule, or reference municipal service standards already approved by Council. If the standards cannot be agreed upon in advance for some reason, the agreement should provide that the municipality will make the final decision as to the standards, and that the developer will be bound by this determination.

b. Timing of construction

Upon registration of the plan of subdivision in the Land Titles Office, the municipal roads are created on paper (even though not yet constructed), individual lots can now be sold, and owners can apply for building permits. The agreement must set a reasonable time within which the services must be constructed and approved. Otherwise, owners of lots could be looking for building permits before the developer has constructed the roads or other services.



c. Approval of construction

Once the developer completes construction of the services within the time given, an engineer representing the municipality's interests needs to inspect and confirm the condition of the services. This approval determines whether the developer has met municipal requirements for the construction of the services, and triggers the start of the maintenance period. The inspection and approval process is discussed in the management of development section below.

d. Location of services

Where the services are to be located must be determined before the agreement is signed. This will not be an issue if the municipal services will be located within public property. However, if the municipal services will be located within private property, or the municipality requires access to private property to operate or maintain the service or supply it to future users, the developer will be required to provide an easement allowing access. Any such easements should be at no cost to the municipality, and should be registered against the private property before it is sold.

e. Services to be provided by another municipality

Where the development will require services to be provided from a neighbouring municipality, the municipality within which the development is taking place must ensure these services can be provided, and on what basis. Standards and terms of service, capital contributions (present and future), capacity, rates and charges, and tax sharing are among the issues that can arise, and should be resolved before approval of the development.

f. Other Works

As part of the development, the developer may be required to install other works such as boat launches or playground equipment in a cottage subdivision. These works may or may not be constructed on public land, but either way it is not intended that the municipality will ever become responsible to operate, maintain or replace them.

The agreement can provide for the construction of these works, and may even deal with construction standards, timing, and approval. However, as the municipality will not be responsible for these services, the agreement should not require the municipality to take enforcement action if these works are not properly constructed. If the municipality is required to take enforcement action, it will be using security it holds to complete these works, even though they will never be responsible for the services.

g. Utilities

Although not a municipal service, the developer may intend to install utilities such as hydro, telephone, and gas to service the lots. These are services the municipality wants



to see installed, but will never become responsible for. The development agreement can require these utilities to be installed, but should not require the municipality to be responsible to take enforcement action if the developer fails to install any of them. The amount of the municipality's security generally does not include the costs of the utilities. By using the letter of credit to install the utilities, a municipality would be using the security it holds to guarantee the municipal services for something for which it is not responsible.

Some developers are also reluctant to have any reference to utilities in a development agreement, as it can affect their ability to negotiate directly with the utility company on the payment for the installation of the utilities.

2. Management of development (certificate system)

The development agreement needs to have a clear, workable and mechanical system to administer the developer's municipal service construction and maintenance obligations. The parties must know what the developer needs to have in place to start construction, when this construction must start, when it must be completed, and who will decide whether the construction meets the municipal standards.

a. Commencement certificate

The municipality should be in control of when the developer can begin construction of the development. There may be a number of matters that need to be completed by the developer before the municipality will give approval to start construction. These may include:

- the plan of subdivision has been registered,
- all plans (road, drainage, water and sewer) have been approved by the municipality,
- required easements have been provided,
- letter of credit and insurance are in place, and
- all payments required by the agreement have been made.

Once these are in place, the municipality can issue a commencement certificate to allow the developer to begin construction. Without this restriction, the developer could start construction and sell lots without having obtained or provided for these matters. Once started, it is very difficult and costly to stop construction even if it is not in accordance with the agreement.

b. Phases

Generally, the developer will install all of the municipal services at the beginning of the development. However, some developments might proceed in phases. A developer might want to phase the development so as to delay incurring all of the construction



costs up front and instead spread them out over the life of the development. A municipality might also not want to have all of the lots up for sale at once and control the number of lots coming onto the market in any given year.

A development might be phased: geographically by opening only a part of the development at a time, instead of geographically by limiting the number of lots to be developed and sold within in each phase, or by providing for a certain level of service to be installed initially, and delaying the installation of certain services to a later date.

What the developer needs to have done to be able to move to the next phase must be clearly set out. Again, if using phases, a commencement certificate should be required before the developer can proceed with the next phase.

c. Timing of completion

The agreement also needs to set out the timing for the completion of the construction of the services. Without firm timeframes, a developer could start construction and sell lots without any requirement that the services be completed by a certain date. With lots selling, owners will be asking for building permits and for the municipal services to be completed. With set timeframes, all parties know the municipality is entitled to take enforcement action and complete the works if they are not completed satisfactorily. This is a strong incentive to a developer to have the works completed in accordance with the timeframe in the agreement.

d. Acceptance certificates

The agreement should require the developer to notify the municipality upon completion of the construction work to the services. The municipality should then have its engineer inspect the services to determine whether they meet the standards to the municipal engineer's satisfaction. If they do not meet the standards, the developer should be required to bring the services up to standard. Upon meeting the standard, a certificate can be issued certifying the services as properly constructed and meeting the standard.

e. Maintenance period

The maintenance period begins upon the issuance of the acceptance certificate. Maintenance obligations are discussed in detail below. At the end of the maintenance period, the municipality's engineer will carry out another inspection of the services. If the services do not meet the standards, the developer should be required to bring the services up to standard, again to the satisfaction of the municipality's engineer. Upon the developer meeting the standards, the municipality issues a certificate confirming the services meet the standards and the developer's obligations with respect to the services is finished.



f. Engineer

As referred to in Part 1, the determination of whether the services meet the standards and the issuance of the certificates should be the responsibility of an engineer acting on behalf of the municipality. There should be no need to go to Council for approval, unless specific direction is needed. For example, if the developer fails to voluntarily comply with the standards required by the agreement, the engineer should bring this matter to Council for a determination as to whether Council will consider taking enforcement proceedings such as calling in the letter of credit.

3. Maintenance and guarantee periods and obligations

a. Maintenance

Some municipal services suffer the heaviest wear and tear during the period following initial construction. For example, roads take the most pounding while homes are being built, with the digging of basements and moving of heavy material and equipment. Other services such as drainage works and landscaping also generally require the most maintenance shortly after construction.

The agreement should recognize periods of increased maintenance requirements (and costs), by requiring the developer to be responsible to maintain the services during this timeframe. The length of time will depend upon the nature of the services and what the municipality feels is reasonable. It can be the same for all services or may differ depending upon the service.

The agreement must also confirm the standard to which the services must be maintained during this period. It is suggested to use the same standard to which they were constructed, as this is known and is the condition the municipality will want the services to be in when it becomes responsible for them at the end of the maintenance period. The developer should maintain the services to this standard throughout the maintenance period, not just at the end of the period.

The maintenance period will begin once the municipality's engineer has certified the services as properly installed. The maintenance period will end once the municipality's engineer certifies the services as having been properly maintained. With this certification, the developer's responsibility for these services will end.

The municipality should also consider requiring the developer to be responsible for maintaining the overall appearance of the area being developed. The agreement could include a maintenance obligation requiring the developer to provide for such things as cutting of grass, removal of debris, suppression of weeds, and keeping it neat and tidy. This will help to address the nuisance type complaints municipalities typically receive while a subdivision is being developed.



b. Guarantee

In addition to the maintenance obligations, the agreement should require the developer to guarantee the services against faulty workmanship, design or defective materials for a certain period. This requirement differs from the maintenance obligation as it deals with circumstances where the services are constructed to the standards, but there is a deficiency or failure in the service. For example, this could happen where there is a break in a faulty water line. In this case the developer would be responsible to remedy the problem if this occurs within a certain period of time. This period can be similar to the maintenance period timeframes.

4. Payments to be made by the developer (costs, taxes, capital levies)

A description of the payments (at the start and ongoing) to be made and when they are to be made should be included in the development agreement or attached as a schedule.

A municipality has the authority under the Planning Act to pass by-laws for subdivision approval:

- i. for all (technical, administrative, professional) services required by the municipality to deal with the subdivision application; and
- ii. for the capital costs that may be incurred by a municipality by reason of the subdivision.

The Agreement should also require the developer to pay for ongoing administration fees (for example engineering and legal fees related to inspections and enforcement).

As a matter of policy, the timing for payment of the costs should be as soon as is reasonably possible. In some cases the by-law identifying the fees or costs might set out when they must be paid. In the case of the administration levy by-law amount, it is reasonable to require payment upon the signing of the agreement, as the municipality might have already incurred them. As to capital levy by-law amounts, some municipalities require this amount to be paid in full upon the signing of the agreement, while others require payment before construction starts.

Where the development is phased, a municipality might only require payments for the phase being constructed, but delay payment of the remaining fees until a subsequent phase comes on line.



5. Security

The development agreement should have a workable system for administering and using the security. The ability of the municipality to use the security by calling in a letter of credit without having to go to Court gives the municipality a very strong bargaining position for convincing a developer to voluntarily comply with the agreement.

The amount of the security should equal the installation costs of all municipal services and any other obligations under the agreement (example capital levies not paid upon the signing of the agreement). The security should not include the costs of the works the municipality will not be involved in or responsible for. If the security includes any such works, the municipality will be under pressure from lot owners to remedy problems with these works.

The development agreement should require the letter of credit to be irrevocable, and to renew automatically. Also, if the bank is going to cancel the letter of credit, sufficient notice must be provided to the municipality and allow it to call in the security and hold the funds until the letter is replaced.

The agreement needs to set out a clear and mechanical system for reducing the amount of the letter of credit. The system recommended is one that provides for automatic reduction in the amount based on the cost of a service once it is certified completed, or the maintenance period is completed. This is the easiest type of system to administer. Some Councils prefer a discretionary system where the developer requests reductions in the letter as the development proceeds and Council decides if the amount is to be reduced. This type of system is not as easy to manage and is more open to the criticism that the municipality treats one developer differently from another.

Forms of security other than a letter of credit include:

- **Cash deposits** If the development is a small one, the developer may prefer to provide a cash deposit to the municipality.
- **Performance bonds** Municipalities must be very careful with performance bonds, as they may contain terms that make them much more difficult to enforce than letters of credit.
- **Collateral mortgages or temporary titles** Developers might offer collateral mortgages or temporary title to lots in the development. This option needs to be carefully considered, as Council is really being asked to share in the risk of the development not being successful. Why? First, mortgages and lot titles do not give the municipality the money needed to build a road should this become necessary. Second, if there is a ready market for lots and the developer has sufficient financing, the developer's bank or credit union should have no difficulty in issuing a letter of credit. If the developer cannot get a letter of credit, then it is obviously depending on lot sales to finance the construction of services. If the



lots fail to sell, the municipality's mortgage or title to any lot will not be worth much. When a developer says it cannot provide a letter of credit, this should raise a red flag.

As a practical matter, municipalities should require the letter of credit be provided before the municipality signs the development agreement. This ensures the municipality does not have to chase the developer to provide the letter of credit as the developer cannot register the plan of subdivision without the agreement being signed.

6. Default and Enforcement

Where a developer has not voluntarily remedied a problem, or is unable to do so, the agreement needs a simple but effective default and enforcement process.

The enforcement system should start with a written notice to the developer confirming the nature of the default, what needs to be done to remedy the problem, and outlining a timeframe within which the steps must be taken. If the default is not remedied to the municipality's satisfaction, the municipality should then be entitled to take enforcement proceedings without further notice to the developer.

Enforcement tools available to a municipality include to:

- call in the letter of credit (or security) and carry out the remedial steps,
- apply to Court for an order requiring the developer to carry the steps, and
- withhold building permits.

With good security in place, a municipality should simply have to call in the security and arrange for the remedial steps to be taken. This is the most effective way to remedy a default. The municipality should not have to go to Court, as this can be time consuming, expensive and have unpredictable results.

The withholding of building permits while not preferred, can be very effective. However, the extent to which a municipality can withhold a building permit where the owner applying for the permit has met all other municipal requirements is unclear. Normally the municipality is required to issue the permit. However, this option should be included as an enforcement tool as it does not require the municipality to go to Court to enforce, and also means the lot owner will also be pressuring the developer to remedy the default.



7. Insurance and Indemnity

Though the developer is responsible for constructing and maintaining the municipal services in accordance with the development agreement, the Municipal Act makes the municipality responsible to the public for the services. If anyone is injured or hurt as a result of anything done by the developer relating to the installation or maintenance of the services, the municipality may be liable.

To minimize this risk, and avoid unnecessarily having the municipality monitor how the developer is carrying out its work, the agreement should require the developer to carry specific public liability insurance, with the municipality as an additional insured. If a claim is made by a third party, the municipality can rely on this insurance instead of its own policy.

The agreement should also include, in cases where a third party has successfully sued the municipality for something done by the developer relating to the services, a requirement that the developer pay for (indemnify the municipality) the claim.

8. Dispute resolution

Disputes will arise between the municipality and developer over the obligations in the development agreement. With a good working relationship, these disputes are normally resolved informally between the parties. However, if the dispute is serious enough and cannot be resolved by the parties, municipalities can consider including a dispute resolution mechanism.

Dispute resolution mechanisms can be useful where the developer is reasonable, but there is a disagreement that cannot be resolved. In this case, the dispute resolution mechanism allows the parties to resolve the problem before calling in the security and without having to proceed to Court. In these cases, it can be more cost and time effective than Court.

Dispute resolution can involve mediation and arbitration. Mediation normally involves calling in a mediator to try to bring the parties together to resolve the dispute. If the parties cannot agree, the mediator will not impose a decision. Arbitration usually involves each party appointing someone to sit on a panel to hear the dispute. This process is more formal and often involves lawyers and calling witnesses. Generally, at the end of the arbitration, the panel makes a decision that is binding on the parties.

If the developer is unreasonable, a dispute resolution mechanism is of no help, and can in fact be more expensive and time consuming than Court. For this reason, some municipalities do not provide for any dispute resolution mechanism at all. If there is a disagreement, the municipality can either proceed directly to using the security or can go to Court for other remedies if it wishes.



If a municipality is considering including a dispute resolution mechanism, it must consider the kinds of disputes it wants to have determined by arbitration. Arbitration should only apply to disputes that are better decided by non-judges. For example, a dispute as to whether the condition of the roads meets the standards is not a legal question, but an engineering one. A municipality should not allow for every dispute to be eligible for arbitration. If there is good security in place, the municipality should not put itself in the position of having to go through the time and expense of arbitration proceedings before it can carry out remedial work.

9. General issues

a. Survey monuments

Municipalities are required by the Manitoba Surveys Act to repair or replace survey monuments within the municipality that have been damaged if ordered to do so by the register-general (see section 6 of the Act). Survey monuments installed in preparing the plan of subdivision can be destroyed or damaged when buildings are being built and lots landscaped. To avoid the municipality being responsible for these costs, the agreement should require the developer to be responsible for these costs for a certain fixed period. In addition, the agreement could require the developer to provide a certificate from a surveyor confirming the monuments are in place before issuance of a final acceptance certificate and the release of the letter of credit.

b. Lot grading

As part of a subdivision, the developer's engineer will likely prepare a drainage plan providing for how the drainage for the entire area will function once developed. In some developments the developer will grade the entire area at the start of the subdivision in accordance with the plan. In other cases, the land will remain ungraded until individual lot owners grade their own property upon construction of buildings. Drainage problems can occur where the area is not graded at the start, as the drainage work is incomplete and is only done with the construction of homes.

To avoid this potential problem, a municipality can require a developer to grade all of the land at the start of the subdivision. Some municipalities do not go this far and do not require the overall grading at the beginning, but instead require the developer to keep the land adequately drained and graded such that there is no pooling or standing of water or associated nuisances.

Finally, some municipalities do not require lot grading at all and allow the land to remain as is until individuals lot owners develop the land.



c. Oversizing and construction outside the development

In some cases, developers are required to build services that will benefit not only the proposed development but other areas of the municipality as well. For example this occurs where the developer builds an extension of a water and sewer line to service its development that runs past undeveloped land. When the undeveloped land develops in future, these lands benefit from the water and sewer lines already paid for and installed by the initial developer.

In these cases the agreement can provide for a mechanism where this benefit is recognized, and provide an opportunity for some of these costs to be re-couped from future developers who hook up to the system. Councils need to consider what portion of the overall costs of the services can be apportioned between the present development and future developments, in what circumstances will the municipality try and collect this amount, and within what timeframe.

The agreement must recognize the limited ability municipalities have to recover these costs, as not all development of land will require the approval of Council through a subdivision or re-zoning. As a result, a municipality cannot guarantee these payments, and can only agree it will use its best efforts to collect these amounts on behalf of the developer.

Prepared by:

**McCandless Tramley
Municipal Lawyers**

January 2004

