



SERVICING AGREEMENT

**Between the
City of Grande Prairie**

and

Aquatera Utilities Inc.

and

DEVELOPER

TABLE OF CONTENTS

Interpretations and Definitions	Section 1
Conditions Precedent.....	Section 2
Aqatera	Section 3
Plan of Subdivision	Section 4
Plans for Municipal Improvements and other Utilities	Section 5
Granting and Dedication of utility lots, right-of-way and Easements.....	Section 6
Construction and Installation of Municipal Improvements.....	Section 7
Installation of Other Utility Services.....	Section 8
Contracts for Installation of Municipal Improvements	Section 9
Use of Public Lands	Section 10
Safety.....	Section 11
Construction Completion and Transfer of Municipal Improvements.....	Section 12
Maintenance period and Final Acceptance.....	Section 13
Upkeep of Landscaping in Development Area	Section 14
Developer Responsible for all costs and expenses	Section 15
Shared costs of oversized Municipal Improvements.....	Section 16
Levies and Fees	Section 17
Interest on Monies	Section 18
Amounts payable under this Agreement	Section 19
Indemnity, Insurance and Security.....	Section 20
Default by Developer	Section 21
Arbitration	Section 22
Caveat.....	Section 23
General	Section 24
Other Terms and Conditions.....	Section 25

SA:

Development File:

MEMORANDUM OF AGREEMENT made in six (6) copies this ____ day of _____ 2019.

BETWEEN:

THE CITY OF GRANDE PRAIRIE,
("City")
- and -
AQUATERA UTILITIES INC.
("Aquatera")
-and-
DEVELOPER

OF THE FIRST PART
OF THE SECOND PART
OF THE SECOND PART

WHEREAS:

1. the Developer is, or is entitled to become, registered owner of those lands situated in the City as described in the attached Schedule "A" ;
2. the Developer proposes to develop those lands as shown on the Plan attached as Schedule "B" ("Development Area");
3. the Developer has received subdivision approval from the City's Subdivision Authority in respect of the Development Area and it is a condition of the approval that the Developer enters into a development and servicing agreement;

Aquatera has entered into a franchise agreement with the City whereby Aquatera provides water, wastewater treatment and solid waste management within the City, and will provide such services to the Development Area;

Aquatera will become the owner of all pipes, fittings, valves, connections and other facilities and equipment for water supply and wastewater treatment required to be constructed and installed under this Agreement by the Developer in respect of the Development Area and the City will become the owner of all other Municipal Improvements;

the parties hereto, for the sake of ease of administration, wish to enter into but one agreement for the provision of all Municipal Improvements required for the Development Area notwithstanding that some are the responsibility of the City and some of Aquatera;

and the Developer wishes to proceed with orderly servicing of the Development Area through the installation and construction of Municipal Improvements in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements set out herein, and in consideration of Ten Dollars (\$10.00) paid by each party to each of the other parties, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. INTERPRETATIONS AND DEFINITIONS

1.1 In this Agreement:

- (a) "Act" means the Municipal Government Act, R.S.A. 2000, c. M-26, as amended or replaced.
- (b) "CCC" means a Construction Completion Certificate in the form set out in Schedule "C" to this Agreement.
- (c) "City" means the City of Grande Prairie and, whether or not Aquatera is specifically mentioned in a section, in the case of the water and wastewater Municipal Improvements includes Aquatera, unless the context otherwise requires
- (d) "City Standards" means
 - (i) the standards and specifications as set out in the City's "Standard Guidelines for Design & Development of Municipal Improvements" and the City's "Standard Specifications for Construction of Municipal Improvements", presently in effect and as may be amended in future from time to time, for design, construction and installation of all Municipal Improvements;
 - (ii) in the case of water and wastewater, Municipal Improvements include standards prescribed by Aquatera in the City's "Standard Guidelines for Design & Development of Municipal Improvements" and the City's "Standard Specifications for Construction of Municipal Improvements";
 - (iii) any additional standards, conditions or requirements imposed upon the Development Area by the City's Development Authority, Subdivision Authority, Subdivision and Development Appeal Board or Development Officer or by Aquatera acting reasonably;
 - (iv) any condition of the approval of the Plans imposed by the City or Aquatera acting reasonably;
 - (v) all codes, regulations, legislation, design and engineering standards applicable to the servicing and development of the Development Area.
- (e) "Conditional CCC" means a Construction Completion Certificate in the form set out in Schedule "C.1" to this Agreement.
- (f) "Developer's Consultant" means the consulting professional retained by the Developer and shall include but is not limited to professional engineers, landscape architects, land use

planners and legal surveyors, all of whom are members in good standing of their respective professional associations created under the laws of Alberta.

- (g) "Development Area" means those lands which are outlined on Schedule "B".
- (h) "Excess Capacity Amount" means an amount of money as specified as the "Excess Capacity Amount" in Schedule "G" which represents a reimbursement to previous developers for excess capacity of Municipal Improvements previously installed or constructed by the previous developers pursuant to commitments made by the City, in the development agreements between the previous developers and the City, to recover costs. The amount to be paid to the previous developers shall be calculated by the City in accordance with the provisions of Schedule "G" and the development agreements with the previous developers.
- (i) "Excess Capacity Reimbursement" means the amount payable to the Developer as a result of the Developer constructing a Municipal Improvement with capacity in excess of that required for the servicing of the proposed subdivision of the Subdivision Area as outlined in Schedule "G".
- (j) "FAC" means a Final Acceptance Certificate in the form set out in Schedule "D".
- (k) "Maintenance Period" means the period of time set out in Schedule "C" for a specific part of the Municipal Improvements. If a period of time is not specified in respect of any Municipal Improvement, the Maintenance Period for such Municipal Improvement is deemed to be the period of Two (2) years following issuance of the CCC for such Municipal Improvement.
- (l) "Municipal Improvements" means all those improvements required by the City or Aquatera to be constructed and installed to City or Aquatera Standards to service the Development Area, including but not limited to:

Major Improvements

- (i) Sanitary and storm sewer drainage systems including all necessary connections and equipment;
- (ii) Water mains including fittings, valves, hydrants and the looping of water mains beyond the Development Area in order to safeguard and ensure the continuous supply of water in the Development Area;
- (iii) Service connections from the sanitary sewer, storm sewer, and water mains to the property lines of individual lots;
- (iv) Oversizing of roadways and water, sewer and storm sewer systems to accommodate future land development;
- (v) Curbs and gutters;
- (vi) Asphalt street paving (excluding Second Lift Asphalt);
- (vii) Street lighting;
- (viii) Fire lanes;
- (ix) Traffic control devices of all kinds;
- (x) Grading of service area;

Minor Improvements:

- (xi) Sidewalks, trails and associated lighting;
- (xii) Park development on dedicated lands;

- (xiii) Extensions to the survey control network;
 - (xiv) Utility lot, boulevard and other landscaping;
 - (xv) Fencing;
 - (xvi) Landscaping and tree planting; and
 - (xvii) Second Lift Asphalt.
- (m) "Plans" means the plans for Municipal Improvements approved by the City and Aquatera and any changes approved by the City and Aquatera in writing.
- (n) "Public Lands" means roads, municipal easements, public parks, public utility lots, municipal reserves, environmental reserves, school reserves and other properties within and in the vicinity of the Development Area which are owned or administered by the City or any school authority, or which are to be dedicated by the Developer to the City or any school authority.
- (o) "Repair Period" means a period proposed by the Developers Consultant and accepted by the City to repair minor deficiencies.
- (p) "Servicing Amounts" means the amount of money specified as the "Servicing Amounts" in Schedule "E" which is to be paid to the City to reimburse it for some or all of the costs of construction of Municipal Improvements that have been or will be constructed or installed that benefit the Development Area.
- (q) "Subdivision Plan" means the plan of the Development Area prepared by the Developer and approved by the City.
- (r) "Other Utility Service" means electric, telecommunications and natural gas services.
- (s) "Work" means all of the construction and other work to be done by the Developer pursuant to or in relation to this Agreement.

2. CONDITIONS PRECEDENT

- 2.1 This Agreement is conditional upon and shall not go into force and effect until all of the following have been completed by the Developer, prior to the endorsement and registration of the subdivision plan, and in any event not later than December 31, of the Current Year:
- (a) the Developer has paid to the City all amounts payable to the City and Aquatera, under this Agreement;
 - (b) the Developer has provided to the City Letters of Credit, or other security required, pursuant to this Agreement;
 - (c) the Developer has provided to the City proof of insurance as required by this Agreement;
 - (d) the Developer has provided to the City a letter from Alberta Environment acknowledging receipt of the Plans; and

- (e) the Developer has provided to the City a certificate in a form satisfactory to the City by the Developer's Consultant that all Municipal Improvements to be constructed or installed pursuant to this Agreement have been designed:
 - (i) in a manner that in his professional opinion will meet all the requirements of the City Standards and the Alberta Environmental Protection's Standards and Guidelines for Municipal Waterworks, Wastewater and Storm Drainage Systems; and
 - (ii) in accordance with good engineering standards and practices in all the circumstances, including without limitation the soils, topographical, geotechnical and all other relevant conditions of the Development Area.
- (f) the Developer has acquired fee simple registered title to the lands within the Development Area.
- (g) the Developer has provided to the City, Plans for Municipal Improvements that have been approved in writing by the City and Aquaterra.

3. AQUATERA

N/A

4. PLAN OF SUBDIVISION

- 4.1 Prior to issuance of a CCC with respect to any Municipal Improvement, the Developer must cause the Subdivision Plan to be registered in the Land Titles Office for the North Alberta Land Registration District. If the Subdivision Plan is not so registered, any CCC issued before the date of registration will be null and void.

5. PLANS FOR MUNICIPAL IMPROVEMENTS AND OTHER UTILITIES

- 5.1 Prior to commencing construction and installation of the Municipal Improvements required under this Agreement, the Developer shall submit Plans to the City for approval and the Plans shall give all necessary details of the Municipal Improvements to be constructed and installed by the Developer, including any necessary specifications to be attached thereto. Construction and installation are deemed to include any stockpiling, leveling, grading or excavation work.
- 5.2 The Plans for the construction and installation of the Municipal Improvements for the development of the Development Area shall conform strictly to City Standards.
- 5.3 A timetable for the construction and installation of all of the Municipal Improvements shall be submitted by the Developer, upon approval of the Plans by the City. The Developer shall comply with all time limits and complete all phases of the Developer's work within the dates specified in the timetable.
- 5.4 It is understood and agreed that the City's approval of the Plans for the Municipal Improvements shall be in principle only and, in the case of unforeseen conditions which may adversely affect development, or in the case where a Municipal Improvement to be built in accordance with the Plans would not be suitable for the purposes intended, the detailed design specifications for any of

the Municipal Improvements shall be subject to review and revision, from time to time, by the City in accordance with the City's Standards and in accordance with accepted engineering and construction practices.

- 5.5 The Developer may apply to change the Plans by submitting a request in writing to the City which includes plans and specifications supporting the proposed changes prepared by the Developer's Consultant in accordance with City Standards.
- 5.6 The City may in its unfettered discretion approve, approve with or without conditions or reject any proposed changes.
- 5.7 If the City approves any proposed changes, those changes and any conditions of the approval form part of the Plans.
- 5.8 The Developer shall also obtain such other permits as the City or a department or agency of the Province of Alberta may require from time to time prior to commencement of work.
- 5.9 The Developer acknowledges and agrees that the Developer relies exclusively on its own consultants, contractors and staff and that the City and Aquatera do not, by their approvals, inspections and acceptance of the Works, warrant or represent that the Work is without fault or defect and that all approvals and inspections of the Work given or made by the City or Aquatera are for the sole benefit of the City and Aquatera and shall in no way relieve or excuse the Developer from constructing and installing the Work in strict compliance with the provisions of this Agreement.

6. GRANTING AND DEDICATION OF UTILITY LOTS, RIGHTS-OF-WAY AND EASEMENTS

- 6.1 Upon registration of the Subdivision Plan and prior to the sale of any lots in the Development Area, the Developer shall at its expense and in locations satisfactory to the City and Aquatera designate, grant and dedicate public utility lots, rights-of-way, and easements as are adequate to the needs of the City, Aquatera and other utility suppliers for the supply of Municipal Improvements and other utilities to the Development Area acting reasonably. Such utility lots, rights-of-way and easements shall be registered as a first charge, contemporaneously with the registration of the Subdivision Plan. The Developer shall forthwith upon registration provide proof of compliance with the requirements of this section by way of duplicate registered copies of instruments and certified copies of titles.

7. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

- 7.1 The Developer shall commence and conclude the construction and installation of the Municipal Improvements, with the exception of landscaping and tree planting, in accordance with the timetables contained within the approved Plans and, in any event, within ONE (1) year of October 31 in the year this Agreement is executed. Landscaping and tree planting must be completed within a further period of ONE (1) year, or such additional period as the City shall allow as a result of other construction activity in the area.

The order of construction and installation shall be as follows:

- (a) Strip topsoil except parks and buffer strips; and grade. The stripped topsoil shall be stockpiled at a location indicated on the Project Plans.
- (b) Underground Utilities:
 - i) sanitary sewer mains
 - ii) water mains
 - iii) sanitary sewer and water connections
 - iv) storm sewer lines
 - v) pre-grading of service area to be completed
 - vi) street lighting and/or underground power, television and telephone
 - vii) gas lines
- (c) Sidewalk and/or curb and gutter.
- (d) Roads
- (e) Lane, lot, easement and/or utility lot grading.
- (f) Survey Control Network, loaming and seeding or other form of landscaping of boulevards and parks, tree planting and other development of boulevards and parks, final grading and seeding of utility lots (in which ever order the Developer elects).

7.2 The Developer warrants that all Municipal Improvements shall be constructed and installed in a good and workmanlike manner and in accordance with this Agreement, including but not limited to, the requirements of the Plans and the City Standards, and the standards imposed by federal and provincial departments and agencies.

7.3 At all times during the performance of the Work:

- (a) the City and Aquatera shall have free and immediate access to all records available to both the Developer and the Developer's Consultants relating to the performance of the work including (but without limiting the generality of the foregoing) all design, inspection, material testing and as-constructed records; and
- (b) the City or Aquatera may:
 - (i) exercise such inspection and supervision of the performance of the work as the City may deem necessary and advisable to ensure to the City the full and proper compliance by the Developer with the Developer's undertakings to the City and to ensure the proper performance of the work;
 - (ii) reject any unsatisfactory design, material or work;
 - (iii) order that any unsatisfactory work be re-executed at the Developer's cost;
 - (iv) order the re-execution of any unsatisfactory design and the replacement of any unsatisfactory material at the Developer's cost;

- (v) order the Developer to bring on the job and use additional labor, machinery and equipment at the Developer's cost and as the City may deem necessary to ensure the proper and timely performance of the work;
- (vi) order that the performance of the work or part thereof be stopped until its orders are obeyed; and
- (vii) order the testing of any materials to be incorporated in the work and the testing of any Municipal Improvements.

The Developer acknowledges that it is not the obligation of the City to determine that the Work is being performed according to City Standards, or any other applicable standards. The Developer and its Consultants shall be solely responsible for ensuring that the Work is done pursuant to City Standards and any, and all, other applicable standards and legal requirements.

- 7.4 During the construction and installation of the Municipal Improvements, and during the Maintenance Period for the Municipal Improvements, the Developer shall pay all contractors and other parties hired by the Developer to fulfill the Developer's obligations under this Agreement and the failure of the Developer to pay any such contractors or other parties shall constitute a default of this Agreement by the Developer, unless there is a bona fide dispute between the Developer and the contractor or other party.
- 7.5 The Developer shall take effective measures to control stockpiles, dust, dirt, garbage, weeds, building materials or any other annoyances originating in or from the Development Area. Without restricting the generality of the foregoing, the Developer shall also be responsible for removal of mud and other objectionable materials deposited on any Public Lands as a result of Work done in the Development Area.
- 7.6 In the event the Developer fails to take effective measures as required by the preceding paragraph within TWENTY-FOUR (24) hours of being given notice by the City or if there is an emergency situation, the City may take such steps and measures as it deems necessary to eliminate the problem at the expense of the Developer. The City shall be entitled forthwith to be indemnified and reimbursed by the Developer for any payment, cost or expense incurred by taking any action required to remedy the situation (including solicitor and own client costs).
- 7.7 Upon the completion of the work by the Developer, the Developer's Consultant shall submit to the City, CCC's for the Municipal Improvements under his professional seal certifying that the Developer's Consultant has provided adequate periodic inspection services during the course of the work and that the Developer's Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans; in accordance with accepted engineering and construction practices; and in accordance with City, Aquatera and other agencies standards.
- 7.8 Notwithstanding anything hereinbefore contained to the contrary, the Developer covenants and agrees (these covenants being substantial and major terms of this Agreement), that it shall plan and stage the development of the Development Area so as to guarantee and ensure to the City that all services, including water, sewer, storm sewer, electricity and underground natural gas services, have been installed and are operating in any part of the Development Area before any premises in that part, are occupied.

8. INSTALLATION OF OTHER UTILITY SERVICES

- 8.1 The Developer shall be responsible for making arrangements with the suppliers of electric power, telecommunication and natural gas services and shall solely be responsible for all costs and expenses relating to the installation of lines, equipment and facilities required for such services within the Development Area, within the streets adjoining the lots to be created in the Development Area and within streets and rights-of-way outside the Development Area, if required.
- 8.2 The electric power, telecommunications and natural gas facilities and equipment shall be installed within the roadways, utility lots or easement areas in accordance with the Plans, adjacent to the lots that are intended to be served by such services and shall be installed in a manner and in locations which will permit lot owners within the Development Area to hook up to such services upon paying the normal hook-up fees charged by the supplier of the Other Utility Service.

9. CONTRACTS FOR INSTALLATION OF THE MUNICIPAL IMPROVEMENTS

- 9.1 The Developer covenants and agrees that any contract entered into between the Developer and a third party in respect to the performance of all or any of the Developer's obligations as set out in this Agreement to construct and maintain the Municipal Improvements, or any of them, shall provide that:
- (a) the third party shall indemnify and save harmless the City and the Developer from and with respect to any damages, claims or demands whatsoever (including all legal costs and disbursements on a solicitor and client basis) arising out of the performance of any work undertaken by the third party or arising in any way from the negligence of the third party's servants, agents or employees;
 - (b) the third party shall provide reasonable proof of financial responsibility;
 - (c) the third party shall comply with the provisions of the *Workers' Compensation Act* for the Province of Alberta;
 - (d) the third party will allow the City and Aquatera access to the Work for the purpose of inspection;
 - (e) the Work to be performed by the third party shall not be deemed to be duly and adequately completed under the contract except upon the issuance of a Construction Completion Certificate for the same by the City;
 - (f) the third party shall coordinate with the City and Aquatera work forces and others to facilitate the installation of utilities and shall protect such utilities from damage;
 - (g) the third party will carry adequate public liability insurance of an amount and coverage satisfactory to the City and Aquatera to protect the third party, the City and Aquatera from any claims, actions or demands arising from the pursuance or purported pursuance of the Work being performed by such third party.

10. USE OF PUBLIC LANDS

- 10.1 The City hereby grants to the Developer the right, permission and power to use, break up, dig, trench and excavate on Public Lands, (except for environmental reserves, municipal reserves, school reserves and school grounds, in which case permission in writing from the City shall be required together with written permission from all school authorities and Provincial agencies having an interest in or jurisdiction over the particular Public Land) within, bordering, or near the Development Area, and otherwise to do the work therein and thereon as may be necessary from time to time to construct and install the Municipal Improvements and Other Utility Services, provided that:
- (a) the Work shall be done in accordance with any directions of the City and Aquatera, whose requirements, if any, shall be followed; and all work, construction, and specifications shall conform to the Plans and City Standards;
 - (b) the Developer shall do as little damage as possible in the performance of the Work;
 - (c) upon completion of the Work, the Developer shall restore all Public Lands to a condition and state of repair equivalent to that which prevailed prior to the performance of such Work (including where necessary the replanting or replacement of trees and shrubs) and shall maintain and upkeep the restored landscaped portions of the Public Lands (including the replaced or replanted trees and shrubs) for a period of TWENTY-FOUR (24) MONTHS thereafter, ordinary wear and tear excepted;
 - (d) the Developer shall indemnify and save harmless the City, its servants, agents or contractors from and against all losses, costs, claims, suits or demands of any nature which may arise by reason of the Work;
 - (e) the Developer acknowledges that the City's permission extends only to those areas under the City's jurisdiction and that permission must be obtained from the appropriate Provincial, Federal and local authorities before work may be carried out on Public lands under their control. Permission must be obtained from their bodies before work may be carried out;
 - (f) the Developer shall be responsible for obtaining any and all applicable permits, approvals, and licenses, whether municipal, provincial, or federal, and will not commence any part of the Work requiring any such permit, approval, or license until same has been obtained. Without limiting the generality of the foregoing, such permits shall include road closure and signage permits.
 - (g) the Developer shall not perform any Work which may obstruct traffic and pedestrian movement except in such manner and at such times as approved by the City;
 - (h) the Developer shall give written notice to the City and, if applicable, Aquatera of its intention to construct or install each of the Municipal Improvements and Other Utilities Services at least FORTY-EIGHT (48) HOURS prior to so doing;
 - (i) the Developer shall, during construction and installation of Municipal Improvements and utilities, minimize damage to and interference with existing Municipal Improvements or Utility infrastructure necessarily effected by the carrying out of such Work, and upon

completion thereof, shall restore all damaged Municipal Improvements and Utility infrastructure, whether in the Development Area or on other lands, to the condition, as nearly as possible, in which they existed prior to the commencement of construction and installation of the Municipal Improvements and other Utilities by the Developer, reasonable wear and tear excepted;

- (j) at all times during the construction and installation of the Municipal Improvements and other Utilities, and except as authorized by the City and, if applicable, Aquatera in writing, the Developer shall maintain or provide alternative means of providing services to premises or areas receiving services through Municipal Improvements and Utilities necessarily disrupted by the Developer in carrying out the construction and installations and, without restricting the generality of the foregoing, the Developer shall maintain physical access to such premises or areas for collection of refuse and recyclables and police and fire protection;
- (k) the Developer shall, at its sole expense, remove, relocate or abandon any Municipal Improvements and Other Utilities already existing if requested to do so by the City or any Other Utility supplier. The removal, relocation or abandonment shall be performed by the Developer to the satisfaction of the City and the Other Utility supplier and in accordance with City and Other Utility supplier Standards and the Plans;
- (l) the Developer shall comply with all the provisions of any applicable statutes respecting builders' liens and shall take all steps necessary to ensure that no lien shall attach to Public Lands, and if any such lien shall arise the Developer shall immediately initiate proceedings to cause it to be discharged and any registration thereof vacated. If such lien shall not have been discharged and the registration thereof vacated within THIRTY (30) DAYS of being filed, the City shall have the right, to make such payment or take such action as may be necessary or expedient to discharge such lien, whether or not the validity of such lien is admitted or denied by the Developer.

11. SAFETY

- 11.1 Work site safety shall be the Developer's responsibility. Without restricting, or limiting the foregoing, or any other provision of this Agreement, the Developer agrees and acknowledges that it shall ensure that safety concerns are given paramount attention throughout the performance and completion of the Work to be performed under this Agreement.
- 11.2 Without limiting the generality of the foregoing section, or any other provision of this Agreement, the Developer shall ensure that:
 - (a) all reasonable steps are taken to prevent unauthorized persons, neighbors, visitors, children and pets from entering any excavation area, dangerous area, or any area in which equipment is being used or stored;
 - (b) appropriate warning signs and barriers are in place at the Work site prior to commencement of the Work, and are monitored and maintained throughout the performance of the Work; and

- (c) all reasonable measures are taken; including such additional measures as may be directed by the City from time to time, to ensure Work site safety for workers, unauthorized persons, neighbors, visitors, children and pets.

12. CONSTRUCTION COMPLETION AND TRANSFER OF MUNICIPAL IMPROVEMENTS

- 12.1 When the Developer claims that one or more of the Municipal Improvements have been constructed and installed in accordance with the requirements of this Agreement, the Developer may apply in writing to the City for a CCC.
- 12.2 Following application for a CCC, the City and/or Aquatera shall make an on-site inspection, weather and ground conditions permitting, of the Municipal Improvements in respect of which the CCC is sought.
- 12.3 If, in the sole opinion of the City, weather or ground conditions are so adverse as to prevent completion of a proper site inspection or re-inspection of the Municipal Improvements, the City shall notify the Developer in writing that an inspection cannot presently take place. The City shall, when in its opinion weather and ground conditions allow, complete the inspection upon TWENTY-FOUR (24) HOURS notice to the Developer.
- 12.4 The Developer shall ensure that a representative of the Developer's Consultant is present at an inspection.
- 12.5 During the inspection, the City, Aquatera and the Developer's Consultant shall identify all the deficiencies in the construction, installation, repair, restoration or maintenance of the Municipal Improvements that either observes.
- 12.6 The Developer's Consultant shall prepare a written list of all deficiencies identified in the construction, installation, repair, restoration or maintenance of the Municipal Improvements and propose a repair period for minor deficiencies.
- 12.7 The Developer's Consultant shall provide this list to the City within TWO (2) WEEKS of the inspection. As soon as practicable after receipt of the list, and in any event within Thirty (30) days, the City shall review the list and may:
 - (a) accept it;
 - (b) amend it; or
 - (c) replace it.
- 12.8 The list, as accepted, amended or replaced by the City, shall constitute the Deficiency List.
- 12.9 In the event the City, in its discretion, is satisfied upon carrying out the inspection that a given part of the Municipal Improvements has been installed, constructed and maintained in accordance with this Agreement, it shall issue the CCC for that part of the Municipal Improvements effective the date of the inspection.

- 12.10 In the event major deficiencies are found on inspection, the Developer shall forthwith repair the said deficiencies and, unless the City has directed otherwise, apply for a re-inspection. After receipt of such application for a re-inspection, the City shall perform the re-inspection, weather and ground conditions permitting, and a revised Deficiency List shall be provided in the same manner as the original Deficiency List. This process shall continue as often as is necessary until all deficiencies have been rectified.
- 12.11 When all major deficiencies for a particular Municipal Improvement have been rectified by the Developer to the satisfaction of the City, upon receipt of a written application therefor, the City shall issue a CCC for that part of the Municipal Improvements to the Developer effective on the date of the inspection which shows all deficiencies had been rectified.
- 12.12 Notwithstanding the foregoing, a CCC shall not be issued or be deemed:
- (a) for any Municipal Improvements until all easements, utility rights-of-way, restrictive covenants and encroachments reasonably required by the City with respect to the Development Area have been registered at the Land Titles Office to the satisfaction of the City;
 - (b) for any Municipal Improvements until the City has been supplied with subdivision plans indicating road and utility alignments and related appurtenances in an AutoCAD format in accordance with City specifications and all inspection and test records.
 - (c) for any part of the Municipal Improvements crossing a pipeline or located on a pipeline right-of-way, until the Developer has submitted to the City:
 - (i) a copy of a Pipeline Crossing Agreement permitting the Municipal Improvements to cross the pipeline or in the case of landscaping on the right-of-way, permitting the landscaping to be located on the pipeline right-of-way; and
 - (ii) an assignment of all the rights under the said Pipeline Crossing Agreement in favour of the City in form and content satisfactory to the City.
 - (d) for the water and wastewater parts of the Municipal Improvements until a CCC has been issued for roads and lanes to be constructed over the water and wastewater parts.
- 12.13 In the event the City refuses to issue a CCC for any Municipal Improvement claimed by the Developer to be completed and the Developer's Consultant certifies to the City that in his opinion the Municipal Improvement in question is completed in accordance with this Agreement, then the Developer may refer the issue to arbitration as hereinafter provided. If in such arbitration the arbitrator finds for the Developer, then these findings shall in themselves constitute the issuance of a CCC for the Municipal Improvements in question.
- 12.14 Upon the issuance of a CCC for water and wastewater parts of the Municipal Improvements, the Developer shall and does hereby transfer to Aquatera all right, title, and interest therein of such parts without any cost or expense to the Aquatera, and such parts shall become the property of Aquatera.

- 12.15 Upon the issuance of a CCC for any other part of the Municipal Improvements, the Developer shall and does hereby transfer to the City all right, title, and interest therein of such part without any cost or expense to the City, and such part shall become the property of City.
- 12.16 In the event no formal transfer documents are prepared or executed by the Developer, this Agreement shall be good and sufficient evidence of transfer of title to Aquatera or the City, as the case may be.
- 12.17 Following the issuance of a CCC for a part of the Municipal Improvements, Aquatera and the City, as the case may be, shall assume the normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the part transferred to them but excluding landscaping, fencing and facilities owned by any other utility supplier.
- 12.18 Nothing herein releases the Developer of its maintenance obligations.
- 12.19 Notwithstanding other provisions of this Agreement, the City shall issue a CCC for a Municipal Improvement notwithstanding the existence of minor deficiencies with the Municipal Improvement if, in its opinion, the minor deficiencies do not impair the operation of the Municipal Improvement and thus do not need to be rectified immediately. A CCC issued pursuant to this provision shall be issued effective on the date of the inspection or re-inspection, as the case may be.
- 12.20 Upon issuing the CCC for any of the Municipal Improvements having minor deficiencies, the Developer shall repair the minor deficiencies within the repair period identified in the deficiency list.
- 12.21 The final determination of what constitutes a minor deficiency is in the sole and exclusive discretion of the City and Aquatera acting reasonably.
- 12.22 Minor deficiencies shall be considered repaired when the Developer's Consultant certifies to the City that the repairs have been completed in accordance with the City standards in effect at the time the Plans were approved and the City, upon re-inspection of the Municipal Improvement, agrees that the repairs have been completed to its satisfaction.
- 12.23 If the minor deficiencies are not repaired within the Repair Period, the maintenance period for the particular Municipal Improvement shall be extended for a period of time equal to the period of time between the date of issuance of the CCC and the date on which the minor deficiencies were repaired.
- 12.24 In the event the minor deficiencies are not repaired within TWELVE (12) months of the date of the issuance of the CCC, the City may draw on the Letter of Credit to complete the repairs.
- 12.25 Notwithstanding other provisions of this Agreement, the City may issue a Conditional CCC for water and wastewater parts of Municipal Improvements located under roads and lanes when a CCC has not been issued for the roads and lanes. In such a case, the Developer shall pay Aquatera a fee to conduct an additional inspection once a CCC has been issued for the roads and lanes to confirm that the water and wastewater parts of the Municipal Improvements are not in need of any final adjustments or repairs as a result of the construction of the roads and lanes. The fee for an additional inspection shall be paid prior to such inspection and the processing of the CCC application. If any deficiencies are found at the time of the additional inspection, the Developer shall forthwith repair the said deficiencies and, unless Aquatera has directed otherwise, apply for a re-inspection (the

Developer shall pay Aquatera a fee for any re-inspections required due to any deficiencies, which shall be paid prior to the re-inspection). Once Aquatera is satisfied that the said deficiencies have been repaired and the Developer has paid Aquatera any fees for a re-inspection, the City shall issue the CCC for the water and wastewater parts of the Municipal Improvements.

- 12.26 The Developer shall provide to the City, for approval, “as constructed” drawings of each Municipal Improvement not later than SIX (6) months after the issuance date of the maintenance period for the particular Municipal Improvement. If such “as constructed” drawings are not provided within these time limits, the maintenance period of each Municipal Improvement for which such drawings are not provided shall be extended for SIX (6) months from the date the City receives the drawings.

13. MAINTENANCE PERIOD AND FINAL ACCEPTANCE

- 13.1 The Maintenance Period in respect to any part of the Municipal Improvements shall commence upon the date of the City’s written CCC for any such part, and the Developer shall repair or replace the whole or any portion thereof during such Maintenance Period where such repair or replacement is required, as determined by the City, as a result of any cause other than the neglect by Aquatera or the City, their servants, agents or contractors in the use and operation thereof.
- 13.2 Prior to the issuance of an FAC for any landscaping work, the City shall be entitled to require the Developer to replace any trees, shrubs or grass which may have died or failed to achieve proper growth, as determined by the City in its discretion; and further, the City shall be entitled to require the replacement or repair of any other landscaping works such as berming, rip-rap, noise attenuation fencing or screen fencing which may have failed in whole or in part as a result of any cause other than neglect by the City, its servants, agents or contractors in the use and operation thereof.
- 13.3 The Developer shall fully comply with the City Standards and any other applicable standards, and with accepted engineering and construction practices, in undertaking and completing the repair or replacement of any of the Municipal Improvements pursuant to the requirements of this Section.
- 13.4 In the event of any emergency arising during the Maintenance Period, the City or Aquatera being the sole judge of what constitutes an emergency, the City or Aquatera shall have the right in its discretion to undertake any repair or remedial work to the Municipal Improvements deemed necessary or appropriate and all costs and expenses incurred by the either in that regard shall be paid by the Developer to the City or Aquatera upon demand.
- 13.5 During the Maintenance Period, Aquatera shall perform the normal maintenance requirements respecting the cleaning and flushing of sanitary sewers, provided that Aquatera’s costs and expenses of the final cleaning and the removal of obstructions, immediately prior to the issuance of the FAC, shall be paid by the Developer to Aquatera before the FAC is issued.
- 13.6 In the event that the City or Aquatera is of the opinion that any repair or replacement required during the Maintenance Period is of a major nature, the City shall be entitled, in its discretion, to require a further full Maintenance Period for the particular Municipal Improvement, or portion thereof and such further Period shall commence upon the City issuing a CCC for the repair or replacement work.
- 13.7 Not more than NINETY (90) days nor less than SIXTY (60) days prior to the expiration of any Maintenance Period for any part of the Municipal Improvements, the Developer shall give notice to the City of expiration of the Maintenance Period for that Municipal Improvement and the

Developer shall request an FAC in respect to such part of the Municipal Improvements or such additional period as the City shall allow as a result of other construction activity in the area.

- 13.8 In the event that the inspection reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement, the City may refuse to issue the FAC and require the Developer to repair or replace the whole or any portion of any such Municipal Improvement; provided, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request that further inspection and the issuance of an FAC.
- 13.9 In the event that an inspection reveals that there are no major or minor deficiencies in relation to a Municipal Improvement, the City shall issue an FAC for that Municipal Improvement.
- 13.10 In regards to the issuance of a Conditional CCC for water and wastewater parts of Municipal Improvements located under roads and lanes when a CCC has not been issued for the roads and lanes, the Maintenance Period shall be commence for the water and wastewater parts of the Municipal Improvements upon the issuance of the Conditional CCC if and any if upon the additional inspection undertaken by Aquatera reveals that there are not in need of any final adjustments or repairs as a result of the construction of the roads and lanes. If any deficiencies are found at the time of the additional inspection, the Maintenance Period shall be commence for the water and wastewater parts of the Municipal Improvements after the repair of the said deficiencies and upon the issuance of the CCC for the water and wastewater parts of the Municipal Improvements.

14. UPKEEP OF LANDSCAPING IN DEVELOPMENT AREA

- 14.1 The Developer shall be responsible, at the Developer's expense, save as hereinafter specifically limited, to maintain the Developer's lands and all Public Lands within the Development Area in such condition as may be reasonably required by the City, by mowing grass thereon, and eliminating weeds, refuse, litter and undesirable vegetation.
- 14.2 Where the Developer has sold a lot (and transferred possession) within the Development Area, the Developer's obligations under the preceding paragraph, in respect only to such lot, shall cease and determine.
- 14.3 The City shall assume the normal maintenance of all other Public Lands which have been seeded to grass, such as parks, buffer strips, and the like, after satisfactory germination and establishment of grass sown by the Developer on such Public Lands and after the expiration of the Maintenance Period.

15. DEVELOPER RESPONSIBLE FOR ALL COSTS AND EXPENSES

- 15.1 The Developer shall be solely responsible for all costs and expenses associated with this Agreement including but not limited to all the costs and expenses of or in any way associated with:
- (a) retaining its consultants;
 - (b) preparing the Plans and any amendments thereto;
 - (c) preparing and registering the Subdivision Plan;
 - (d) obtaining any approvals required in relation to the Plans or Subdivision Plan;

- (e) installing and completing the Municipal Improvements;
- (f) remedial work done by the City or Aquatera to ensure compliance with and due performance of this Agreement;
- (g) the City or Aquatera enforcing this Agreement;
- (h) levies and fees.

15.2 The Developer shall also be responsible for and shall pay to the City all legal costs, fees, expenses and disbursements incurred by the City in enforcing, or otherwise dealing with the developers default under this Agreement.

16. **EXCESS CAPACITY**

16.1 This section does not apply to water and waste water Municipal Improvements.

16.2 Prior to the City signing the "Consent to Register Plan" form for the subdivision plan and issuing any building permits for the Development Area, the Developer shall pay to the City

- (a) the Servicing Amounts set out in Schedule "E" to this Agreement as reimbursement for some or all of the costs of installation and construction of Municipal Improvements incurred by the City, if any; and
- (b) the Excess Capacity Amount set out in Schedule "G" to this Agreement as reimbursement for the Developer's proportionate share of payments made or costs incurred by other developers in respect of excess capacity of Municipal Improvements, if any.

16.3 The City may require the Developer to construct or pay for an improvement with an excess capacity. Where such is the case, the City may provide for the reimbursement to the Developer of the cost incurred or payment made in respect of the excess capacity, together with reasonable interest on the cost in an amount to be fixed by the City (collectively "Excess Capacity Reimbursement").

16.4 The Developer acknowledges and agrees that its entitlement to an Excess Capacity Reimbursement, if any, is set out in Schedule "G" and it shall not make any claim for excess capacity from the City, and does not expect nor shall it require the City to seek any reimbursement for or on behalf of the Developer for any excess capacity except to the extent set out in Schedule "G". If Schedule "G" does not set out any Excess Capacity Reimbursement, the Developer acknowledges and confirms that it is not being obliged by the City to construct excess capacity Municipal Improvements and that, to the extent it is doing so, it is doing so at its own volition, for its own reasons, at its own costs and without any right of reimbursement, indemnity or any payment of any kind.

16.5 Notwithstanding anything in this Agreement, the City will endeavor to assist the Developer in receiving Excess Capacity Reimbursement by making reasonable efforts to enter into agreements for the recovery of the Excess Capacity Reimbursement with the developers of lands benefiting from the excess capacity Municipal Improvements when those lands are developed or subdivided for development. The City shall only be responsible to the Developer for any Excess Capacity Reimbursement actually collected by it, and the City does not guarantee such collection. The City

shall not be liable or responsible to the Developer for its failure or inability to collect the Excess Capacity Reimbursement or any portion thereof for any reason.

- 16.6 Nothing herein shall preclude the Developer from entering into private agreements with other landowners or developers for the sharing or reimbursement of excess capacity Municipal Improvement costs. However, the Developer acknowledges that the City is not party to such agreements and has no obligations thereunder, including and without limiting the generality of the foregoing, no obligation to seek reimbursement for the Developer or other parties to such agreements, or to assist the Developer in effecting cost recovery from any person.

17. LEVIES AND FEES

- 17.1 The Developer shall pay to the City the levies and fees set out in Schedule “F” as follows:
- (a) Contributions towards costs of arterial roadway development and upgrading at Servicing Agreement stage upon execution of this agreement;
 - (b) Contributions towards costs of arterial roadway development and upgrading at Building Permit Stage within thirty (30) days of the date an invoice is issued. Invoicing will occur upon a Building Permit issuing for a lot. If an invoice is not paid within such thirty (30) day period, it will bear interest at the rate of eighteen percent (18%) per annum until paid;
 - (c) The Servicing Agreement fee upon execution of this agreement.
- 17.2 Failure to pay an invoiced amount will be a default under this agreement.
- 17.3 The Developer acknowledges that the payment required by paragraph 17.1 shall be made voluntarily, unconditionally and not subject to protest. The Developer shall not attempt to recover any part of such payment on any ground whatsoever.

18. INTEREST ON MONIES

- 18.1 Except as otherwise specifically provided in this Agreement, all monies owed by the Developer to the City shall bear interest calculated semi-annually and calculated from the date upon which such sum or monies are due and payable and such interest shall be calculated at a rate of Eighteen (18%) per annum.

19. AMOUNTS PAYABLE UNDER THIS AGREEMENT

- 19.1 The Developer acknowledges and agrees that the City and the Developer are properly and legally entitled to make provision in this Agreement, for the purposes specified herein, for the payment by the Developer to the City of the various sums prescribed in this Agreement, and further:
- (a) The Developer acknowledges that the City and Aquatera have agreed to enter into this Agreement on the representation and agreement by the Developer to pay to the City and Aquatera the sums specified in this Agreement;
 - (b) The Developer acknowledges that it is voluntarily entering into this Agreement and agrees that the City is fully entitled in law to recover from the Developer the sums specified in this Agreement;

- (c) The Developer hereby waives for itself and its successors and assigns any and all rights, defenses, actions, causes of action, claims, demands, suits and proceedings of any nature or kind whatsoever, which the Developer has, or hereafter may have, against the City in respect to the Developer's refusal to pay the sums specified in this Agreement;
 - (d) The Developer, for itself and its successors and assigns, hereby releases and forever discharges the City from all actions, claims, demands, suits and proceedings of any nature or kind whatsoever which the Developer has, or may hereinafter have, if any, against the City in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the City pursuant to this Agreement.
- 19.2 The City and the Developer agree that any amounts of money presently or hereafter owing by the Developer to the City pursuant to the provisions of this Agreement, whether by way of a liquidated or unliquidated claim, and howsoever arising, shall be a charge and encumbrance against the lands described in Schedule "A". Upon default by the Developer, the City shall be entitled to recover any such monies owing, together with all costs on a solicitor and client basis, by enforcing the charge and encumbrance against such lands.

20. INDEMNITY, INSURANCE AND SECURITY

- 20.1 The Developer shall indemnify and save harmless the City and Aquatera and their officers, employees, and agents from, of, and against any and all losses, costs, damages, actions, causes of action, suits, claims and demands resulting from anything done or omitted to be done by the Developer, its employees, agents, contractors, subcontractors or suppliers, including anything done or omitted to be done in pursuance or purported pursuance of this Agreement, or any of the work hereunder.
- 20.2 Aquatera and the City shall indemnify and save harmless each other and their respective officers, employees, and agents from, of, and against any and all losses, costs, damages, actions, causes of action, suits, claims and demands resulting from anything done or omitted to be done by the either of them, their employees, agents, contractors, subcontractors or suppliers, including anything done or omitted to be done in pursuance or purported pursuance of this Agreement, or any of the work hereunder.
- 20.3 As a condition precedent to this Agreement and prior to any construction or work being undertaken, the Developer shall obtain, at its own expense, with insurers, and in forms satisfactory to the City, the following insurance:
- (a) Commercial General Liability Insurance for bodily injury, death and damage to property in the amount of at least FIVE MILLION (\$5,000,000.00) DOLLARS for any one occurrence, which shall include:
 - (i) the City and Aquatera and their employees, agents, officers, and elected officials as additional named insured;
 - (ii) coverage for products and completed operations;
 - (iii) blanket contractual liability, including this Agreement and any obligations under any development permit for the Lands and Development Area;

- (iv) coverage for any shoring, blasting, excavating, underpinning, demolition, pile driving and caisson work, work below surface, tunneling and grading that is to be undertaken;
 - (v) employees of the Developer, independent contractors of the Developer, and agents of the Developer, as additional insured's, including professional liability insurance for any professionals employed, or under contract to the Developer. The Developer shall provide a certificate of insurance confirming coverage accordingly.
 - (vi) a cross liability clause providing that the policy shall be applicable to any claim or action brought by one insured against any other insured, to the same extent as if a separate policy had been issued to each insured;
 - (vii) a severability of interest clause providing that the policy shall apply separately to each insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (viii) non-owned automobile liability coverage;
 - (ix) contingent employer's liability endorsements;
 - (x) a broad form property damage cover;
 - (xi) an occurrence property damage cover;
 - (xii) coverage for attached machinery; and
 - (xiii) such additional coverage as the City may from time to time reasonably require.
- (b) A Standard Automobile Policy providing coverage of at least TWO MILLION (\$2,000,000.00) DOLLARS per occurrence, for bodily injury, death and damage to property, for all vehicles owned, leased or operated by the Developers which are used in conjunction with the Work.
- (c) The City makes no warranties as to the adequacy of any insurance requested herein or as is approved by the City. Nothing herein precludes the Developer from obtaining such additional insurance as it may determine necessary.
- (d) The Developer shall provide the City with a Certificate confirming the required insurance coverage in a form acceptable to the City. The Developer shall, through the duration of this Agreement, keep the insurance policies in full force and effect and in good standing, until released by the City.
- (e) All insurance required to be placed by the Developer shall:
- (i) remain in effect for the full term of this agreement;
 - (ii) as permitted by law, be and provide that it is primary coverage insurance; and

- (iii) contain a clause providing that the insurer shall notify the City and Aquatera at least THIRTY (30) DAYS prior to any cancellation or material change to the policy; and
 - (f) The Developer's liability and obligations hereunder are not limited to, or by any insurance limit or coverage.
 - (g) The Developer shall maintain all required Workers' Compensation coverage and, provide proof of same to the City prior to commencement of work and whenever requested by the City.
- 20.4 As a condition precedent to this Agreement the Developer shall deliver and deposit with the City security in the amount set out in Schedule "E" prior to construction, which shall consist of:
 - (a)
 - (i) Fifty (50%) percent of the estimated costs of constructing and installing of all major Municipal Improvements, which includes, but is not limited to, water system, sanitary sewer system and storm water system infrastructure, and roads, sidewalks and trails, curbs and gutters, street lighting and other related infrastructure when the Developer is providing security in the form of an Irrevocable Letter of Credit; or
 - (ii) One hundred (100%) percent of the estimated costs of constructing and installing of all major Municipal Improvements, which includes, but is not limited to, water system, sanitary sewer system and storm water system infrastructure, and roads, sidewalks and trails, curbs and gutters, street lighting and other related infrastructure when the Developer is providing security in the form of a Subdivision Bond; and
 - (b) One Hundred (100%) percent of the estimated costs of constructing and installing all of minor Municipal Improvements, which includes, but is not limited to landscaping, fencing, park development and the second lift of asphalt on all roads.

The security referred to in Section 20.4(a) (i) and 20.4(b) shall ensure full compliance by the Developer with all terms, covenants and conditions of this Agreement and, without limiting the generality of the foregoing, shall ensure the construction, installation and maintenance of the Municipal Improvements. The security referred to in Section 20.4(a) (ii) shall ensure compliance by the Developer with all terms, covenants and conditions of this Agreement pertaining to the construction, installation and maintenance of the major Municipal Services Improvements.
- 20.5 The security shall be an amount equal to the estimated costs of constructing and installing all of the Municipal Improvements, as set out in Schedule "E". For purposes of this paragraph, the estimated cost for the Municipal Improvements shall be determined as follows:
 - (a) where actual tendered costs are available, the tendered costs shall be used;
 - (b) where actual tendered costs are not available, the Developer's Consultant shall prepare cost estimates which shall be submitted to the City and Aquatera for approval and, if approved by the City and Aquatera, such cost estimates shall be used.
- 20.6 The security shall consist of cash security deposit, irrevocable unconditional Letter of Credit ("Letter of Credit") issued by a Chartered Bank, A Credit Union or ATB Financial in a form acceptable to the City and its solicitor, or a Subdivision Bond issued by a surety company and in a

form acceptable to the City and its solicitor. If the security is provided by way of cash, the City shall not be required to accept any cheque which is not certified. The amounts of security required pursuant to Section 20.4 above and Schedule "E" shall consist of either:

- (a) a cash security deposit or a Letter of Credit, or combination thereof, for all major and minor Municipal Improvements as described in with Sections 20.4 (a) (i) and 20.4(b); or
- (b) a Subdivision Bond for all major Municipal Improvements as described in Section 20.4(a) (ii) and a cash security deposit or a Letter of Credit for all minor Municipal Improvements as described in and in accordance with Section 20.4(b).

20.7 In the case of a security being provided for in the form of a Letter of Credit, each Letter of Credit shall be approved by the City and its solicitor in its sole discretion but, in any event, shall contain the following terms and provisions:

- (a) a statement that the security is issued in favor of the City in consideration of the City entering into this Agreement with the named customer of the issuing bank;
- (b) an acknowledgment by the issuing bank that the City shall be entitled to automatically draw on the security in accordance with the provisions of this Agreement, and an undertaking by the issuing bank to promptly honor and pay draws made by the City without any inquiry; and
- (c) a clause stating:

"It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof unless, at least 30 days prior to the present or any future expiration date, we notify you in writing by double registered mail that we elect not to consider this Letter of Credit to be renewable for any additional period."

- (d) a statement that each Letter of Credit will permit partial draws.

20.8 In the case of security being provided in the form of a Subdivision Bond, each Subdivision Bond shall be approved by the City and its solicitor in its sole discretion but, in any event, shall contain the following terms and provisions:

- (a) a statement that the bond is issued in favour of the City as the sole Obligee and in reference to this Agreement and its obligations thereunder;
- (b) an acknowledgement by the issuing surety company that the City shall be entitled to make a claim against the bond in accordance with the provisions of this Agreement, and an undertaking by the issuing surety company that it shall act promptly and in good faith of any review of a claim submitted by the City; and
- (c) a statement that each Subdivision Bond will permit partial claims and draws up to the total of the value of the Subdivision Bond.

- (d) It is a condition of this bond that it remain in effect until the obligations of the Agreement that are related to the construction, installation and maintenance of the major Municipal Improvements are completed and approved by the Obligee, and may only be terminated upon the proper notice of the Obligee. In that regard, when the major Municipal Improvements described in the Agreement are completed and approved by the Obligee and any warrantee period for such major Municipal Improvements under the Agreement has expired, the Obligee shall return this bond to the Surety for termination or advise the Surety in writing that this bond is terminated.

20.9 In regards to security provided under this Agreement, the following terms and conditions shall apply:

- (a) any cash security deposit, Letter of Credit, or other security (other than a Subdivision Bond) required or otherwise provided by the Developer to the City pursuant to this Agreement is hereby assigned and pledged to the City as security for the performance of the Developer's obligations as contemplated herein (such assignment and pledge to be perfected by possession and/or registration);
- (b) security provided by the Developer to the City in the form of a Subdivision Bond is hereby only assigned and pledged to the City as security for the performance of the Developer's obligations as contemplated herein to construct, install and maintain the major municipal improvements (such assignment and pledge to be perfected by possession and/or registration);
- (c) the Developer acknowledges having received a copy of this Agreement, and the security terms contemplated herein, and waives any right it may have to receive a copy of any Financing Statement or Financing Charge Statement in relation hereto; and
- (d) notwithstanding any other provision of this Agreement and further, without prejudice to any other right or remedy of the City, the obligation of the City or its solicitor to release any security deposit funds held by it under or in connection with this Agreement (including, without restriction, any cash deposit) is subject to the City's right to deduct or set off any amount which may be due by the Developer to the City or the amount of any claim by the City against the Developer under this Agreement (including, without limitation, the amount of any liquidated damages). Without limitation, if the Developer is in breach or default of any provision of this Agreement or of any provision of any contract with any project manager(s), subcontractor or supplier, and, after receiving notice thereof, the Developer does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the City may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any costs or liabilities incurred by the City in respect thereof may be deducted from or set off against any amount(s) to be paid or released to the Developer under this Agreement. This provision shall survive the termination of this Agreement for any reason whatsoever.

20.10 The Developer shall renew the security and insurance from time to time to ensure that all security and insurance is in force and good standing (until such time as the City has released same in writing) on the following terms and conditions:

- (a) the Developer shall provide the necessary renewal of security or insurance to the City as required herein at least THIRTY (30) DAYS prior to the lapse of the security or insurance;

- (b) it is acknowledged by the parties that failure to provide the renewal of security or insurance is deemed to be a default under this Agreement. Upon default, the City has the right to call any security and obtain any necessary insurance, and it is agreed that any costs so incurred by the City shall be paid by the Developer forthwith.
- 20.11 If it should appear to the City or Aquatera, acting reasonably, that the security or insurance deposited is insufficient in relation to the cost to or protection of the City or Aquatera for which the security or insurance has been provided, the City or Aquatera may notify the Developer at any time to increase the amount of the security or insurance as required, and the Developer shall within THIRTY (30) DAYS of such notice provide such increased security or insurance in a form satisfactory to the City and Aquatera.
- 20.12 The amount of security to be provided by the Developer to the City may, in the sole and absolute discretion of the City, be reduced on application by the Developer subject to the following provisions and conditions:
- (a) upon the Developer having received a CCC or an FAC for the Municipal Improvements or any of them so completed, the Developer may apply to the City for a reduction in the amount of security;
 - (b) the City shall not reduce the amount of the security by more than NINETY (90.00%) PERCENT of the estimated value of Municipal Improvements for which a CCC has been issued. This amount will remain in effect for the duration of the maintenance period with respect to that improvement;
 - (c) notwithstanding subsection (b) of this section 20.12, the City shall not be obliged to consider a reduction in the amount of security upon the issuance of a Conditional CCC for water and wastewater parts of the Municipal Improvements pursuant to section 12.25 of this Agreement;
 - (d) despite subsection (b), the total amount of the security referred to in Section 20.4(a) (i) and 20.4(b) shall at no time be less than the amount owing under this Agreement in respect of levies and other fees and charges; and
 - (e) any reduction in security as stated in this section must first be approved in writing by the issuer of the security.
- 20.13 The security referred to in Section 20.4(a) (i) and 20.4(b) shall remain in effect until the FAC's for all of the services have been issued; the levies, fees and other charges have been paid in full and for not less than two (2) years following November 30th of the year of this Agreement. The security referred to in Section 20.4(a) (ii) shall remain in effect until the FAC's for all of the major Municipal Improvements have been issued and the Maintenance Period for the major Municipal Improvements has expired.
- 20.14 The City may draw on the Letter of Credit, cash security deposit, Subdivision Bond and any other security provided by the Developer, in such amounts as the City in its sole discretion determines, if:
- (a) it is not renewed to the satisfaction of the City within the time specified in this Agreement;

- (b) the Developer creates an unsafe condition, in which event the City or Aquatera may use the proceeds of the security to do any work required to protect life and property from injury and destruction;
 - (c) the Developer defaults on any of its obligations under this Agreement, including without limitation:
 - (i) the obligation to repair any and all damage to Municipal Improvements and to Public Lands caused by the Developer, its employees, servants or agents during the process of rectifying deficiencies identified on a CCC or FAC Deficiency List or revision thereto; and
 - (ii) the obligation to pay any amounts due to the City or Aquatera under this Agreement when due; and
 - (iii) the obligation to install Municipal Improvements as and when required;
 - (d) the City or Aquatera incur any costs or expenses performing work or rectifying work which is the obligation of the Developer;
 - (e) the City or Aquatera incur any costs or expenses as a result of the Developer defaulting under this Agreement including solicitor/client costs and the costs of drawing upon or realizing upon any security;
 - (f) the Developer fails to discharge any builders' lien from Public Lands as required under this Agreement; or
 - (g) allowed pursuant to any other provision of this Agreement.
- 20.15 If at any time following default by the Developer the security under this Agreement is insufficient to cover the cost of remedying the default, security provided by the Developer to the City under any other servicing agreement may be realized and used to pay the deficiency.
- 20.16 If the City overlooks obtaining security for the performance of any obligation shown on the Plans, the Letter of Credit, or other security provided by the Developer shall be deemed to be security for the performance of such overlooked obligation. Without limiting the generality of the foregoing, the security referred to in Section 20.4(a) (ii) shall be deemed to be security only for the performance of such overlooked obligations pertaining to the major Municipal Improvements.
- 20.17 The City and the Developer agree that any rights and remedies available to the City whether specified in this Agreement or otherwise available at law, are cumulative and not alternative and the City shall be entitled to enforce any right or remedy in any manner the City deems appropriate in its discretion without prejudicing or waiving any other right or remedy otherwise available to the City. Further, the City and the Developer hereby represent, warrant, covenant and agree that all of the costs for the construction and installation of the Municipal Improvements for the Development Area, as set out in this Agreement, are estimates, and as such shall in no way limit or restrict the Developer's responsibility under this Agreement, nor in any way whatsoever establish or otherwise suggest a maximum amount of the Developer's obligations under this Agreement.

21. DEFAULT BY DEVELOPER

- 21.1 In the event the Developer defaults on any of its obligations hereunder, including without limitation the failure to repair any deficiency or perform any maintenance or other work when required, the City or Aquatera may notify the Developer of the default. If the security provided by the Developer pursuant to section 20.4 has been provided in the form of a Subdivision Bond, the City shall, concurrently with notice to the Developer of the default, notify the issuing surety company of the default by the Developer under this Agreement.
- 21.2 If the Developer does not rectify the default within FIFTEEN (15) DAYS of the notice, or such longer period as the City or Aquatera may, in its discretion, allow, the City or Aquatera shall have the right, but not the obligation, to rectify the default including the completion or performance of any of the Work at the cost and expense of the Developer, which cost and expense shall be a debt owed by the Developer to the City or Aquatera due on demand. Notwithstanding the deeming of such costs and expenses to be debts, the Developer shall remain liable to the City or Aquatera for such default and any matters arising out of or in connection with such default.
- 21.3 In the event that the City or Aquatera in its absolute discretion considers it necessary to undertake any immediate work that the Developer has not performed, the City or Aquatera shall be entitled to cause this work to be done at the Developer's cost and expense without notification to the Developer, provided that, upon completion of the repair work, the City or Aquatera shall give notice in writing to the Developer. The City's or Aquatera's costs for such work shall be a debt due on demand by the Developer to the City or Aquatera. Notwithstanding the deeming of such costs and expenses to be debts, the Developer shall remain liable to the City or Aquatera for such default and any matters arising out of or in connection with such default.
- 21.4 In the event that, and without restricting the provisions of the foregoing:
- (a) a default by the Developer has not been rectified by the Developer in accordance with the foregoing provisions; or
 - (b) a default by the Developer has been rectified by the City or Aquatera in accordance with the foregoing provisions and the Developer fails to pay the cost and expense of this rectification within FIVE (5) DAYS after receipt from the City of an account therefore; or
 - (c) emergency repair work has been done by the City or Aquatera, and the Developer fails to pay the cost and expense of the repair work within FIVE (5) DAYS of the demand for payment; or
 - (d) the Approval has been suspended, cancelled or lapsed; or
 - (e) the Subdivision Plan contemplated by the Approval is not submitted to the Subdivision Authority within the time prescribed by section 657 of the Act:
- then the City, in its sole discretion may:
- (i) demand as Payee under any Irrevocable Letter of Credit or other security provided by the Developer pursuant to the requirements of this Agreement in such amounts as the City deems appropriate in its sole discretion; or

- (ii) terminate this Agreement, which termination shall be effective the date notice is given to the Developer, provided that termination shall not release the Developer from any liability arising out of or in connection with this Agreement, of its obligations to indemnify the City, or from any damage claim available to the City for breach of this Agreement; or
- (iii) revoke its approval of the Subdivision Plan; or
- (iv) invoke any two or more of the above remedies, which shall be cumulative remedies and not exclusive.

22. ARBITRATION

- 22.1 If a dispute arises between the parties in respect of the issuance of a CCC or FAC, either party may refer such to arbitration by a panel of three (3) arbitrators in the following manner:
- (a) the party referring the matter to arbitration shall do so by a written notice to the other party stipulating the matter in dispute and the name of one (1) arbitrator;
 - (b) within FIFTEEN (15) days of such notice being given, the other party shall by a further notice in writing to the first party name of one (1) arbitrator;
 - (c) the TWO (2) arbitrators so selected shall thereupon choose a third arbitrator who shall be Chairman of the panel;
 - (d) should any party fail to provide the name of its arbitrator within the time stated above, or should the TWO (2) arbitrators selected by the parties fail to choose a third arbitrator within TWENTY-ONE (21) days of the appointment of the second arbitrator, a party not in default may make application to a Justice of the Court of Queen's Bench of Alberta for the necessary appointment; and
 - (e) the decision of the majority of the arbitrators as to any matter of procedure and the final award of the majority of the arbitrators in respect of the matter referred shall be binding upon the parties hereto.
- 22.2 The arbitrators shall call for and conduct a hearing within THIRTY (30) DAYS of their final selection and shall render a written decision within THIRTY (30) DAYS of holding the hearing.
- 22.3 The arbitrators shall determine which party, or in what proportion each party, is responsible for the costs of the arbitration.
- 22.4 Except as modified herein, the arbitration shall be in accordance with the *Arbitration Act*, R.S.A. 2000,c. 43 as amended or replaced.
- 22.5. Notwithstanding that a matter has become the subject of arbitration, the parties shall, where reasonably possible, proceed with all other matters and things under this Agreement as if such matter had been settled and the dispute determined. It is the intent of the parties that no arbitration procedure shall delay the expeditious operation of the terms of this Agreement.

23. CAVEAT

- 23.1 It is expressly understood that the covenants and obligations on the part of the Developer in this Agreement shall constitute covenants running with the land and shall be binding upon the Developer and its successors and assigns and all owners of the Development Area or any part thereof, and the City shall be entitled to register a caveat upon the title to the Development Area recording the existence of this Agreement.
- 23.2 The City shall provide a Discharge of Caveat to the Developer upon performance of all of the Developer's obligations under this Agreement to the satisfaction of the City.

24. GENERAL

- 24.1 The attached Schedules form part of this Agreement. The Schedules are:
- "A" - Land Description
 - "B" - Development Area
 - "C" - Construction Completion Certificate
 - "D" - Final Acceptance Certificate
 - "E" - Securities
 - "F" - Levies and Fees
 - "G" - Excess Capacity
- 24.2 A waiver by any party of the strict performance by any other party of any covenant, provision or term of this Agreement shall not of itself constitute a waiver of any subsequent breach of such covenant or provision, or of any other covenant, provision or term of this Agreement.
- 24.3 This Agreement shall not be assigned by the Developer without the written approval of the City.
- 24.4 This Agreement may only be amended by a further written agreement.
- 24.5 Any notices required or permitted under this Agreement shall be deemed to have been sufficiently given or made by personal delivery, facsimile transmission or by posting such notice by prepaid registered mail addressed as follows:
- (a) City of Grande Prairie
Legislative Services
City Hall, Postal Bag 4000
10205 - 98 Street
Grande Prairie, AB T8V 6V3
Fax: (780) 539-1056
 - (b) Developer
Address
City, AB T2E 7H7
Ph. (403) 216-4654
E-mail:
Attention:

or at such other addresses as a party shall designate in writing from time to time.

- 24.6 Notice given as aforesaid, if posted, other than during an actual or threatened postal disruption, shall conclusively be deemed to have been given on the fifth business day following the date on which such notice is mailed. Any notice personally delivered or sent by facsimile transmission shall be deemed to have been given on the date of actual delivery.
- 24.7 This Agreement shall not constitute a Development Permit or other permit of the City and or Aquatera. The Developer shall be responsible for obtaining any and all applicable permits, approvals, and licenses, whether municipal, provincial or federal, and will not commence any part of the work requiring any such permit, approval, or license until same has been obtained.
- 24.8 The City or Aquatera, upon request of the Developer, or the Developer, upon the request of the City or Aquatera, shall execute any and all such further documents and assurances which are not inconsistent with anything expressed or implied and which may be reasonably necessary or desirable to give full force and effect to this Agreement.
- 24.9 Where any approval is required to be secured by the Developer from the City, or any employee or agency of the City, or the City or an employee or agency of the City is otherwise required hereunder to perform any duty, the City covenants that it shall process such approval or perform such duty within reasonable time limits to minimize any delay or disruption in the Project.
- 24.10 This Agreement is not intended to nullify, replace, circumvent, extend or modify any existing statutes, by-laws or permit conditions which govern development or construction within the City.
- 24.11 The term "the Developer", where it appears in this Agreement and where the context permits, shall include the Developer's agents, employees, contractors and sub-contractors.
- 24.12 Where there is more than one Developer the obligations of the Developer hereunder shall be joint and several.
- 24.13 This Agreement shall enure to the benefit of and be binding upon the parties, their successors and permitted assigns respectively.
- 24.14 This Agreement constitutes the whole agreement between the parties and there are no promises, undertakings or representations other than those contained herein. If any provision of this Agreement is found to be contrary to law, it shall be severed and the remainder of this Agreement shall remain in full force and effect.
- 24.15 The validity and interpretation of this Agreement is governed by the laws of Alberta.
- 24.16 Time shall be of the essence of this Agreement.
- 24.17 The Developer hereby acknowledges that it is executing this Agreement having been given the full opportunity to review the same and seek proper and independent legal advice and that the Developer is executing this Agreement freely and voluntarily and of its own accord without any duress or coercion whatsoever and that the Developer is fully aware of the terms, conditions and covenants contained herein and the legal effects thereof.

25. **OTHER TERMS AND CONDITIONS**

IN WITNESS OF WHICH the parties have executed this Agreement.

CITY OF GRANDE PRAIRIE

AQUATERA UTILITIES INC.

PER: _____

PER: _____

PER: _____

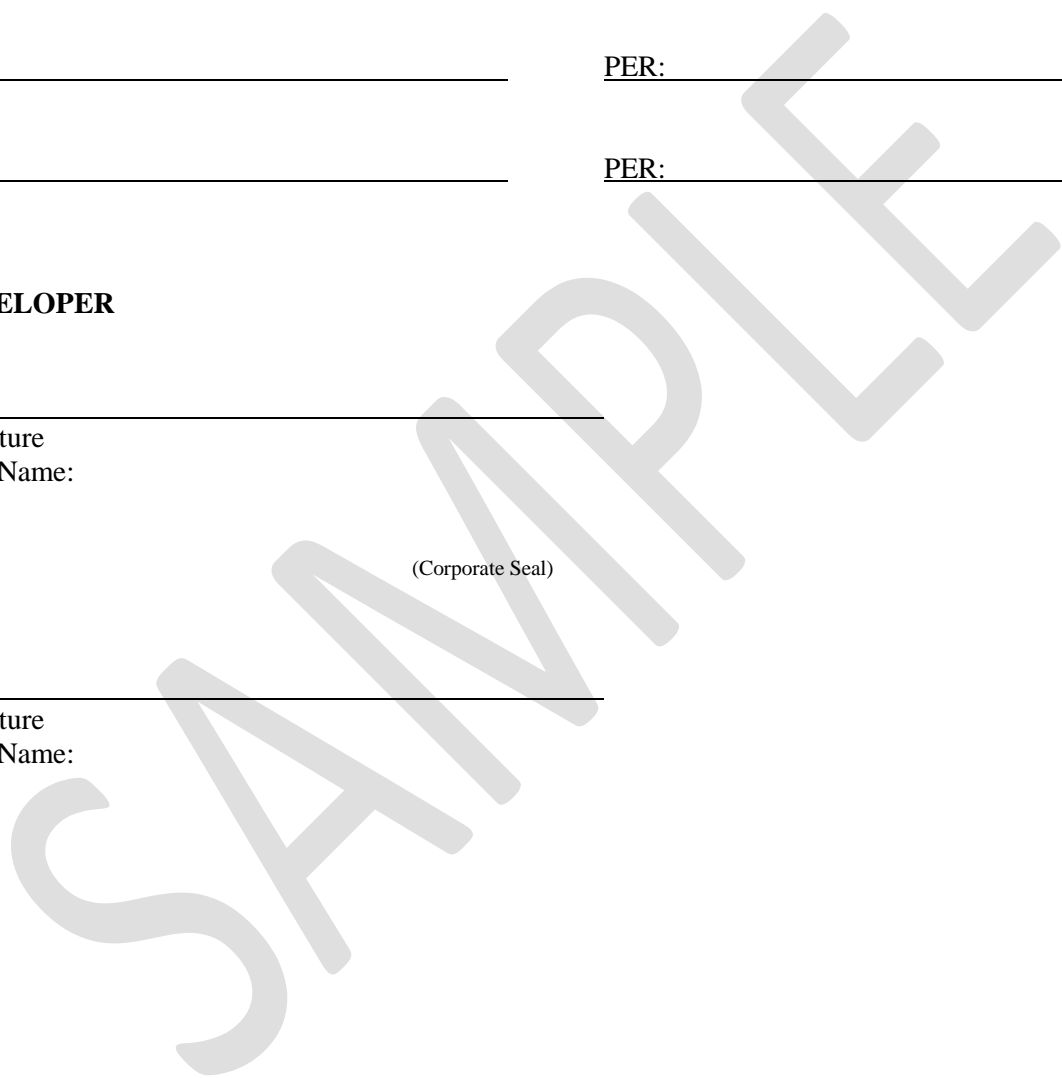
PER: _____

DEVELOPER

Signature
Print Name:
Title:

(Corporate Seal)

Signature
Print Name:
Title:



SCHEDULE "A"
LAND DESCRIPTION

SAMPLE

SCHEDULE "B"

DEVELOPMENT AREA

SAMPLE

SCHEDULE "C"

CONSTRUCTION COMPLETION CERTIFICATE

CONSTRUCTION COMPLETION CERTIFICATES

Separate Construction Completion Certificates shall be provided for the following Municipal Improvements as applicable:

1. Water Distribution Systems and Sanitary Sewers including Service Connections
2. Storm Sewers
3. Roads, Concrete Work
4. Alberta Survey Control Monument Network
5. Street and Traffic Signs
6. U-Lot and Other Final Grading and Landscaping
7. Underground Power, Telephone, Natural Gas and Cable Television Services
8. Street Lights
9. Trail and Park Development
10. Boulevard Tree Planting

The Construction Completion Certificates shall be issued on the attached form.

**CITY OF GRANDE PRAIRIE
AQUATERA**

SCHEDULE "C"

CONSTRUCTION COMPLETION CERTIFICATE

DEVELOPMENT AREA: _____

DEVELOPER: _____

Servicing Agreement DATED _____

CONTRACTOR _____

MUNICIPAL IMPROVEMENT _____

I _____ of the firm _____
"Consulting Engineers", hereby certify that the Municipal Improvement work noted herein is complete as defined by the Servicing Agreement for the above mentioned Development Area, and constructed as far as can be practically ascertained according to the City Standards. Copies of "As-Constructed" Plans and Designs have been submitted or will be submitted within 6 months of the maintenance period start date. All test records for the above mentioned Municipal Improvement have been submitted to the City. I hereby recommend this Municipal Improvement for approval of this Construction Completion Certificate.

Minor deficiencies indicated on the attached list shall be corrected as soon as possible and no later than June 30th, 20__ where weather conditions prohibit earlier correction.

_____ Date _____
PROJECT ENGINEER
(Consulting Engineering Firm)

_____ Date _____
SIGNING OFFICER
(Consulting Engineering Firm)

_____ Date _____
AUTHORIZED CITY/AQUATERA INSPECTOR

DATE Maintenance Period to Start _____

DATE Maintenance Period to Expire _____

APPROVAL: _____ Date _____
DEVELOPMENT ENGINEER,
City of Grande Prairie

**CITY OF GRANDE PRAIRIE
AQUATERA**

SCHEDULE "C.1"

CONDITIONAL CONSTRUCTION COMPLETION CERTIFICATE

DEVELOPMENT AREA: _____

DEVELOPER: _____

Servicing Agreement DATED _____

CONTRACTOR _____

MUNICIPAL IMPROVEMENT _____

I _____ of the firm _____
"Consulting Engineers", hereby certify that the Municipal Improvement work noted herein is complete as defined by the Servicing Agreement for the above mentioned Development Area, and constructed as far as can be practically ascertained according to the City Standards. Copies of "As-Constructed" Plans and Designs have been submitted or will be submitted within 6 months of the maintenance period start date. All test records for the above mentioned Municipal Improvement have been submitted to the City. I hereby recommend this Municipal Improvement for approval of this Construction Completion Certificate.

Minor deficiencies indicated on the attached list shall be corrected as soon as possible and no later than June 30th, 20__ where weather conditions prohibit earlier correction.

_____ Date _____
PROJECT ENGINEER
(Consulting Engineering Firm)

_____ Date _____
SIGNING OFFICER
(Consulting Engineering Firm)

_____ Date _____
AUTHORIZED CITY/AQUATERA INSPECTOR

DATE Maintenance Period to Start: To be determined in accordance with Section 13.10 of the Development Agreement

DATE Maintenance Period to Expire: To be determined in accordance with Section 13.10 of the Development Agreement

APPROVAL: _____ Date _____
DEVELOPMENT ENGINEER,
City of Grande Prairie

SCHEDULE "D"

FINAL ACCEPTANCE CERTIFICATES

FINAL ACCEPTANCE CERTIFICATES

Separate Final Acceptance Certificates shall be provided for the following Municipal Improvements as applicable:

1. Water Distribution Systems and Sanitary Sewers including Service Connections
2. Storm Sewers
3. Roads, Concrete Work
4. Alberta Survey Control Monument Network
5. Street and Traffic Signs
6. U-Lot and Other Final Grading and Landscaping
7. Underground Power, Telephone, Natural Gas and Cable Television Services
8. Street Lights
9. Trail and Park Development
10. Boulevard Tree Planting

The Final Acceptance Certificates shall be issued on the attached form.

**CITY OF GRANDE PRAIRIE
AQUATERA**

SCHEDULE "D"

FINAL ACCEPTANCE CERTIFICATE

DEVELOPMENT AREA _____

DEVELOPER _____

Servicing Agreement DATED _____

CONTRACTOR _____

MUNICIPAL IMPROVEMENT _____

I _____ of the firm _____
"Consulting Engineers", hereby certify that the Municipal Improvement work noted herein is complete as
defined by the Servicing Agreement for the above mentioned Development Area, and constructed as far as
can be practically ascertained according to the City Standards. No outstanding deficiencies exist. I hereby
recommend this Municipal Improvement for approval of this Final Acceptance Certificate.

Date _____
PROJECT ENGINEER
(Consulting Engineering Firm)

Date _____
SIGNING OFFICER
(Consulting Engineering Firm)

Date _____
AUTHORIZED CITY/AQUATERA INSPECTOR

Date Maintenance Period Began _____

Date Maintenance Period to Expire _____

APPROVAL: _____ Date _____
DEVELOPMENT ENGINEER,
City of Grande Prairie

SCHEDULE "F"
TRANSPORTATION LEVIES AND FEES

Levies payable by the Developer are calculated and owed as follows:

Development Area	ha			
<u>Transportation System Levy</u>				
Contribution towards costs of arterial roadway development and upgrading at Servicing Agreement	\$0.00 x	0 ha	\$	-
<u>Transportation System Levy</u>				
Contribution towards costs of arterial roadway development and upgrading at Building Permit Stage:	\$0.00 x	0 ha	\$	-
Number of Lots				
Building Permit Stage per lot amount				
Servicing Agreement Fee			\$	5,000.00
Total Levies and Fees Payable to the City			\$	5,000.00
Total Levies and Fees Payable at Servicing Agreement Stage			\$	<u>5,000.00</u>

SCHEDULE "G"

EXCESS CAPACITY

N/A

SAMPLE