



PRECEDENT SERVICING AGREEMENT

LAST UPDATED July 2013

AGREEMENT NUMBER: "AGREEMENT NUMBER"

CITY CLERKS FILE NUMBER: _____

"INSERT SUBDIVISION NAME"

**SERVICING AGREEMENT
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THIS AGREEMENT made this day of , A.D. 2013.
BETWEEN:

THE CITY OF EDMONTON
a Municipal Corporation
(hereinafter referred to as the "City")

OF THE FIRST PART,

and

"INSERT DEVELOPER NAME"
(hereinafter referred to as the "Owners")

OF THE SECOND PART,

WHEREAS the Owners are, or are entitled to become, the registered owners of all or a portion of those certain lands within the City of Edmonton legally described on Certificates of Title No.'s "Insert Title Numbers" , attached hereto as Schedule "A";

AND WHEREAS the Owners have applied for subdivision, and the Subdivision Authority, at its meeting of "Approval Date" , File No. "SUB or LDA File No." , approved the said subdivision as outlined on the sketch plan attached hereto as Schedule "B" (the "Said Lands"), and subject to certain conditions, including the entering into of this Agreement for the servicing of the Said Lands;

AND WHEREAS the Owners have submitted detailed plans (the "Engineering Drawings") to the Director of Development Coordination, Sustainable Development of the City, or his designate ("Director, Development Coordination"), for the construction of the municipal improvements as set out in Schedule "D" (the "Municipal Improvements"), which Engineering Drawings shall be approved by Professional Engineers employed by Sustainable Development of the City (the "Engineer") and shall be deemed to be part of this Agreement;

AND WHEREAS the Owners now wish to proceed with the orderly servicing of the Said Lands by the installation and construction of the Municipal Improvements, and in accordance with the terms and conditions hereinafter contained;

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual and other covenants hereinafter contained, the parties hereto hereby covenant and agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 In this Agreement the following terms shall have the meanings set out below:

- (a) **Agreement** shall mean this Agreement between the parties hereto.
- (b) **Arterial Roadway Assessments** shall mean the charge per hectare of assessable area of the Said Lands which shall be used as a contribution towards the construction of cost shareable arterial roadway infrastructure from which the Said Lands will benefit, as well as the owner's proportionate share of overexpenditures incurred by previous developers, as determined by Transportation Services.
- (c) **Arterial Roadway Assessment Fund Administration Fee** shall mean a charge per Agreement which shall be used for the administration of the Arterial Roadway Assessments, as determined by Transportation Services.
- (d) **Arterial Roadways Overexpenditure Recovery Amount** shall mean the amount by which the Arterial Roadway Assessments exceed the charge per hectare of assessable area, which the Owner is entitled to recover from future developers.
- (e) **CCC Deficiency List** shall mean a written list of all deficiencies found during an inspection for a Construction Completion Certificate in the construction, installation, repair, restoration, or maintenance thereof, reasonable wear and tear excepted, of a Municipal Improvement.
- (f) **City**, for the purposes of this Agreement, shall mean the City of Edmonton, a Municipal Corporation, and shall include all City Departments, EPCOR Water Services Inc. and EPCOR Distribution and Transmission Inc.
- (g) **Construction Completion Certificate** shall mean a document signed and sealed by a Professional Engineer or Landscape Architect, Form 171-3629E, certifying that the Municipal Improvement has been constructed in accordance with the approved Engineering Drawings and the terms of the Agreement, and that requests the maintenance period for that Municipal Improvement to commence.
- (h) **Cost Shareable Arterial Roadway Infrastructure** shall mean infrastructure defined in Bylaw 14380, Arterial Roads for Development.
- (i) **Cost Shareable Drainage Infrastructure** shall mean infrastructure, including but not limited to, storm and sanitary trunk and lateral sewers, stormwater management facilities and lift stations, within a certain benefiting area.
- (j) **Crossing Agreement** shall mean the agreement between the developer and a utility company that permits the developer to construct or install the Municipal Improvements above or within the vicinity of that company's utility or within the utility right of way.

- (k) **Director, Development Coordination** shall mean the City employee appointed to the position of Director, Development Coordination or the individual authorized to act in his place for the purpose of administering this Agreement.
- (l) **Director, Risk Management** shall mean the City employee appointed to the position of Director, Risk Management or the individual authorized to act in his place for the purpose of administering this Agreement.
- (m) **Drainage Assessments** shall mean the charge per hectare of assessable area of the Said Lands which shall be used as a contribution towards the cost of cost shareable drainage infrastructure, from which the Said Lands will benefit, as well as the owner's proportionate share of overexpenditures incurred by previous developers, as determined by Financial Services and Utilities.
- (n) **Engineer** shall mean the City employee within Sustainable Development that is authorized to approve the Engineering Drawings on behalf of the City.
- (o) **Engineering Drawings** shall mean the drawings containing the technical details associated with the design and construction or installation of the Municipal Improvements.
- (p) **FAC Deficiency List** shall mean a written list of all deficiencies found during an inspection for a Final Acceptance Certificate in the construction, installation, repair, restoration, or maintenance thereof, reasonable wear and tear excepted, of a Municipal Improvement.
- (q) **Final Acceptance Certificate** shall mean a document signed and sealed by a Professional Engineer or Landscape Architect, Form 171-3699D, certifying that the Municipal Improvement has been constructed and maintained in accordance with the approved Engineering Drawings and the terms of the Agreement, and that requests that the developer's obligation to maintain the Municipal Improvement be transferred to the City.
- (r) **GST** shall mean the Goods and Services Tax as assessed, charged and levied by the Government of Canada. The City's GST registrant's number is R119326270.
- (s) **Inspection and Drawing Review Fee** shall mean the charge per hectare of assessable area of the Said Lands which shall be used toward the cost of inspection and engineering drawing review for the construction and installation of the Municipal Improvements.
- (t) **Municipal Improvement** shall mean the infrastructure required to be constructed or installed in accordance with the approved Engineering Drawings and the Agreement.
- (u) **Prescribed Rate** shall mean the interest rate that is applied to the unpaid Arterial Roadways Overexpenditure Recovery Amount and Sewer Overexpenditure Recovery Amount and is further described in Article 9.5.
- (v) **Private Utilities** shall mean those utilities required for servicing of land that are not City-owned.

- (w) **Said Lands** shall mean those lands within the City of Edmonton which the Owners intend to develop
- (x) **Sales Taxes** shall mean all taxes and assessments in the nature of sales taxes, goods and services taxes or value added taxes which may be charged, levied or assessed by any Provincial or Federal government, and are further defined in Article 10.
- (y) **Security** shall mean an irrevocable letter of credit or cash in lieu of a letter of credit, provided by the Owners that shall be used to secure their obligations contained in this Agreement.
- (z) **Sewer Overexpenditure Recovery Amount** shall mean the amount by which the Drainage Assessments exceed the charge per hectare of assessable area, which the Owner is entitled to recover from future developers.
- (aa) **Standards** shall mean the City of Edmonton's Design and Construction Standards which contain specifications and standards by which infrastructure is designed and constructed as a condition of subdivision or development of land within the City.
- (bb) **Subdivision Authority** shall mean those employees of the City that are authorized to approve subdivision applications.

ARTICLE 2 CONDITIONS PRECEDENT

2.1 This Agreement is conditional on all of the following being completed by the Owners prior to endorsement of the plan of subdivision for the Said Lands, as provided for in Section 657(3) of the *Municipal Government Act* RSA 2000, Chapter M-26, as amended, and in any event not later than **"Conditions Precedent Date"**, and shall not come into force and effect until the following conditions have been met:

- (a) the Owners have paid to the City the Inspection and Drawing Review Fee in the amount of \$ **"Inspection Fee to the Nearest Dollar"** plus GST in the amount of \$ **"GST Amount on Inspection Fee"** broken down as follows:

Development Engineering, Transportation Services	\$ "Amount"
Drainage Services, Financial Services and Utilities	\$ "Amount"
EPCOR Water Services Inc.	\$ "Amount"
Parks, Sustainable Development	\$ "Amount"

- (b) the Owners have paid to the City the Drainage Assessments in the amount of \$ **"Drainage Assessment Amount"** plus GST in the amount of \$ **"GST on Drainage Assessment"** ;

- (c) the Owners have provided to the City Security in the amount of \$

"Letter of Credit Amount" , in accordance with Article 8;

- (d) the Owners have provided to the City evidence of insurance, in accordance with Article 8;
- (e) the Owners have paid to the City the Arterial Roadway Assessments in the amount of \$ **"ARA Amount"** plus GST in the amount of \$ **"GST on ARA Amount"** ; and
- (f) the Owners have paid to the City the Arterial Roadway Assessment Fund Administration Fee in the amount of \$ **2,000.00** plus GST in the amount of \$ **100.00**.

In the event that the conditions have not been met by the date specified above, this Agreement is void and of no force and effect.

2.2 The Owners confirm that the payments described in Articles 2.1(b) and 2.1(e) above shall be paid voluntarily and not subject to protest. The said payments will not be tendered as a result of any compulsion or duress. The Owners acknowledge that the City will be disbursing the said payments and a proportionate share of the GST, if applicable, to:

- (a) prior developers, which may include the City, who have previously installed and constructed and/or paid for the installation and construction of, certain Cost Shareable Drainage Infrastructure and/or Cost Shareable Arterial Roadway Infrastructure which will service the Said Lands; or
- (b) a trust account in which the funds will remain until future developers, which may include the City, have installed and constructed and/or paid for the installation and construction of, certain Cost Shareable Drainage Infrastructure and/or Cost Shareable Arterial Roadway Infrastructure which will service the Said Lands; or
- (c) both 2.2(a) and 2.2(b) above.

A specific breakdown of the amount paid for each service or roadway and details as to the person or persons to whom such monies and the applicable GST shall be disbursed are more specifically set out in Schedule "C". The Owners shall not seek to recover all or any portion of the said payment from the City, except in accordance with Article 9.

2.3 In accordance with Article 9 herein, the Owners and the City acknowledge and agree that the Sewer Overexpenditure Recovery Amounts are:

- (a) \$ **"Storm OE Amount"** for storm trunk sewers, and/or stormwater management facilities and lift stations;
- (b) \$ **"Sanitary OE Amount"** for sanitary trunk sewers and/or lift stations;
- (c) \$ **"Storm OE Amount"** for storm lateral sewers;

- (d) **\$ "Sanitary OE Amount"** for sanitary lateral sewers;

and that the Arterial Roadways Overexpenditure Recovery Amount is

- (e) **\$ "Arterial OE Amount"** for arterial roadways.

The parties acknowledge that the Sewer Overexpenditure Recovery Amount and the Arterial Roadways Overexpenditure Recovery Amount are based on estimates of construction costs. The Sewer Overexpenditure Recovery Amount and the Arterial Roadways Overexpenditure Recovery Amount will be adjusted to reflect the actual costs of constructing the storm and sanitary trunk and lateral sewers, stormwater management facilities and the arterial roadways. The cost of construction shall include the construction cost, approved by the Director, Development Coordination plus fifteen percent (15%) of such amount to cover all related expenses including engineering, surveying and administration, but shall not include GST. The parties agree that interest shall be paid on the Sewer Overexpenditure Recovery Amount and the Arterial Roadways Overexpenditure Recovery Amount in accordance with Article 9.

ARTICLE 3 CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

3.1 The Owners shall construct, install, and maintain the Municipal Improvements in accordance with the Engineering Drawings and the edition of the Standards in effect at the time such Engineering Drawings were approved by the City. The maintenance period shall be as set out in Schedule "D", unless such period is extended through the operation of Article 3.6 or Article 6.

3.2 The Owners shall have completed the construction and installation of the Municipal Improvements and shall have applied for a Construction Completion Certificate (hereinafter referred to as the "CCC") for each of the Municipal Improvements within two (2) years from the date of the execution of this Agreement, except for the Electrical Distribution System, Paved Roads, Sidewalks, Curb and Gutter, Street Lighting System, Separate Sidewalks, Landscaping and Fencing, which shall be constructed, and a CCC applied for, within three (3) years from the date of the execution of this Agreement.

3.3 Upon completion of the construction and installation of each Municipal Improvement in accordance with this Agreement, the Owners shall:

- (a) contact the City to arrange for an inspection of the Municipal Improvement;
- (b) submit all test results related to the particular Municipal Improvement and any other documentation required by the City; and
- (c) submit to the Engineer the CCC application, signed and sealed by a Professional Engineer or Landscape Architect, whichever is applicable, stating that the said Municipal Improvement has been installed and constructed in accordance with this Agreement.

3.4 The maintenance period for each Municipal Improvement shall commence as of the date of issuance of the approved CCC for that Municipal Improvement. The maintenance period may commence as of a date before the issuance of a CCC, if the Engineer, at his sole discretion, so decides

and issues notice of his decision in writing.

3.5 The Owners shall, upon notification in writing given by the Engineer, correct any deficiencies during the maintenance period, as determined by the Engineer. In the event the Owners fail to correct all such deficiencies during the maintenance period within thirty (30) days of receipt of such written notification, the City may do all the work necessary to correct same, in the opinion of the Engineer, and may draw on the Security in accordance with Article 8 for this purpose.

3.6 The Owners shall provide to the Engineer, for approval, "as constructed" drawings of each Municipal Improvement no later than six (6) months prior to the expiration date of the maintenance period for each particular Municipal Improvement. In the event 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 Engineer receives the said drawings.

3.7 Within thirty (30) days of expiry of the maintenance period for each Municipal Improvement in accordance with this Agreement, the Owners shall contact the City to arrange for an inspection of the Municipal Improvement. Upon completion of an inspection and submission of all test results, an Asset Cost Form, and any other documentation required by the City, the Owners shall submit to the City a Final Acceptance Certificate application (hereinafter referred to as the "FAC"), signed and sealed by a Professional Engineer or Landscape Architect, whichever is applicable, stating that the said Municipal Improvement has been installed, constructed, and maintained, reasonable wear and tear only excepted, throughout its maintenance period in accordance with this Agreement, for each Municipal Improvement listed in Schedule "D", excepting only those for which Schedule "D" states that no FAC will be issued. In the event the Owners fail to apply for an FAC for each Municipal Improvement within thirty (30) days after expiry of the maintenance periods prescribed in Schedule "D" herein, or as extended pursuant to Article 3.6 or Article 6 hereof, the City may draw on the Security in accordance with Article 8 for the purpose of obtaining the FAC.

3.8 The Owners acknowledge that they are solely responsible for coordination of the installation of all Private Utilities, including, but not limited to, cable television, telecommunications, and gas. The Owners and the City agree that the Owners are responsible for all costs of construction, design, and fees, and shall save the City harmless from any and all costs, penalties, claims or actions resulting from the design, installation, or construction of the Private Utilities.

3.9 The Owners represent and warrant that they have or will have all of the property rights necessary to construct the Municipal Improvements including, where necessary, easements to build and maintain the Municipal Improvements on lands of which they are not the registered owners.

3.10 The Owners shall pay the City an amount, plus any applicable GST, equal to the City's cost of construction and installation of any required traffic control devices including, but not limited to, traffic signs, and pavement markings. This amount shall be payable thirty (30) days after the City makes a written request to do so or by the date listed in Article 3.1, whichever is sooner.

3.11 The Owners shall, concurrent with the registration of the plan of subdivision for the Said

Lands, register any required easements, utility rights-of-way and restrictive covenants across, over and through the Said Lands, or outside the Said Lands as necessary, for the benefit of the City, in form and content satisfactory to the Law Branch, Corporate Services of the City, to protect the integrity of all the Municipal Improvements shown on the Engineering Drawings.

ARTICLE 4 CONSTRUCTION GUIDELINES

4.1 The Owners shall give written notice to any relevant City Departments, EPCOR Water Services Inc. and EPCOR Distribution and Transmission Inc., of their intention to construct or install each Municipal Improvement at least forty eight (48) hours prior to so doing.

4.2 The Owners shall, during construction and installation of the Municipal Improvements, minimize damage to, and interference with, existing municipal improvements or infrastructure necessarily affected by the carrying out of such work, and upon completion thereof shall restore all damaged municipal improvements or infrastructure, whether on the Said Lands or on lands adjacent thereto, to the condition, as nearly as possible, in which they existed prior to the commencement of construction of the Municipal Improvements by the Owners, reasonable wear and tear excepted. The term infrastructure shall include, but shall not be limited to, ravine areas even if in a natural state.

4.3 At all times during the construction and installation of the Municipal Improvements, and except as authorized by the Director, Development Coordination in writing, the Owners shall maintain or provide alternative means of providing services to buildings or areas receiving services through municipal improvements necessarily disrupted by the Owners in carrying out the construction or installation of the Municipal Improvements and, without restricting the generality of the foregoing, the Owners shall maintain physical access to such buildings or areas for collection of refuse and recyclables and police and fire protection.

4.4 The Owners shall, at their sole expense, remove, relocate, or abandon any municipal improvements already existing on or under the Said Lands, or outside the Said Lands as necessary, if requested to do so by the Engineer. Said removal, relocation, or abandonment shall be performed by the Owners to the satisfaction of the Director, Development Coordination, Engineer or in accordance with the Standards.

4.5 The Owners shall, at their sole expense, connect the water mains installed for servicing of the Said Lands to the existing mains on the adjacent lands. Said connection shall be performed by the Owners in accordance with the Standards.

4.6 The Owners shall, at their sole expense, connect the lateral storm and sanitary sewers installed for servicing of the Said Lands to the existing storm and sanitary sewers on the adjacent lands. Said connection shall be performed by the Owners in accordance with the Standards.

4.7 The Owners and the City may agree that the City shall construct, install, and maintain any of the aforesaid Municipal Improvements upon a one-time payment being made by the Owners to the City in such amount as the City may direct. In such event, the Owners shall be relieved of the obligations to construct, install and maintain the aforesaid Municipal Improvements.

4.8 If the Owners intend to construct any improvements, other than those described in Schedule "D" herein, on a public highway or road allowance (the "Encroaching Improvements"), they shall obtain the applicable written approval from the Engineer. If the Encroaching Improvements are constructed in whole or in part by the Owners without obtaining the aforesaid approval, the City may, in its sole discretion, draw on the Security in accordance with Article 8 for the purpose of removing the Encroaching Improvements.

4.9 If the Owners have not completed construction of the Municipal Improvements or have not applied for a CCC or FAC within the time periods set out in this Agreement, the City may draw on the Security in accordance with Article 8.

ARTICLE 5 CONSTRUCTION COMPLETION CERTIFICATES / FINAL ACCEPTANCE CERTIFICATES

5.1 Within thirty (30) days after receiving a request for either a CCC or FAC inspection, the City shall make an on-site inspection, weather and ground conditions permitting, of the Municipal Improvement and shall provide to the Owners, within two (2) weeks after the aforesaid inspection, a CCC or FAC Deficiency List. In the event the Engineer is satisfied upon carrying out the inspection and review of all applicable tests and documents, demonstrating that the Municipal Improvement has been installed, constructed, and maintained in accordance with this Agreement, the Engineer shall issue the CCC or FAC for that Municipal Improvement.

5.2 Notwithstanding anything herein to the contrary, if, in the sole opinion of the Engineer, weather or ground conditions are so adverse as to prevent him from completing an on-site inspection of the Municipal Improvement, the Engineer shall, within thirty (30) days after receipt of a request for an inspection, notify the Owners in writing that an inspection cannot presently take place, and shall, when in his opinion weather and ground conditions allow, complete the inspection upon twenty four (24) hours notice to the Owners.

5.3 If the Engineer finds deficiencies, the Owners shall repair them and, unless the Owners and the Engineer have agreed the deficiency is a minor deficiency and may be repaired in accordance with Article 6, request a reinspection. Within thirty (30) days after receipt of such a request for a reinspection, the City shall perform a reinspection, weather and ground conditions permitting, and shall provide to the Owners, within two (2) weeks after the aforesaid reinspection, a revised form of the CCC or FAC Deficiency List. In the case of an application for a CCC, the revised CCC Deficiency List may not include deficiencies not noted on the original CCC Deficiency List. In the case of an application for an FAC, the revised FAC Deficiency List may not include deficiencies not noted on the original FAC Deficiency List if the repairs are made and request for a reinspection is received within forty two (42) days of the date of the original FAC Deficiency List. Where the request for a reinspection is received more than forty two (42) days after the original or previous FAC Deficiency List was issued, the next FAC Deficiency List may include deficiencies not previously noted. This process shall continue as often as is necessary until all deficiencies have been rectified.

5.4 Within six (6) months of receipt of notification of the deficiencies in accordance with

Article 5.3, or a later date as specified by the Engineer in writing, the Owners shall:

- (a) perform the required repairs;
- (b) contact the City for a re-inspection of the Municipal Improvement; and
- (c) re-submit to the Engineer the same CCC or FAC form that had been previously rejected, signed and sealed by a Professional Engineer or Landscape Architect, whichever is applicable, certifying that the original reasons for rejection have been corrected.

Where the Owners have failed to repair the specified deficiencies and reapply for the CCC or FAC within the timelines set out herein, the City may draw on the Security in accordance with Article 8 to make the necessary repairs and obtain the CCC or FAC.

5.5 Subject to Articles 5.2 and 5.8, if the Engineer does not give the Owners a CCC or FAC Deficiency List within the time limit and in the manner described above, for a particular Municipal Improvement, then upon receipt of a written request from the Owners, it shall be deemed that the Engineer has issued the CCC or FAC effective the 31st day after receipt by the City of the request for inspection or effective the 31st day after receipt by the City of a request for reinspection, as the case may be.

5.6 Where a Municipal Improvement has been constructed and a CCC or FAC has been applied for, but the Municipal Improvement is not operational due to deficiencies in a portion of the existing system that was not constructed by the Owners under this Agreement, then unless deficiencies also exist for the Municipal Improvement constructed under this Agreement, the Engineer shall issue a CCC or FAC within thirty (30) days of application therefor.

5.7 Subject to Articles 5.2 and 5.8, when all deficiencies have been rectified by the Owners and the Owners have made a written application, the Engineer shall issue a CCC or FAC for the Municipal Improvement in question, effective the date of the inspection which showed that all deficiencies were rectified.

5.8 Notwithstanding Article 5.5 herein, a CCC shall not be issued nor be deemed to have been issued:

- (a) for any Municipal Improvement until all easements, utility rights of way, restrictive covenants and encroachments required by the City with respect to the Municipal Improvements required to service the Said Lands have been registered at the Land Titles Office;
- (b) for a Municipal Improvement crossing a utility right-of-way or located on a utility right of way until the Owners have submitted to the Engineer:
 - i) a copy of a utility Crossing Agreement permitting the Municipal Improvement to cross the utility right of way or in the case of landscaping and multi-use trails on the utility right of way, permitting the landscaping

and multi-use trails to be located on the utility right of way; and

- ii) an assignment of all the rights and liabilities under the said utility Crossing Agreement in favour of the City, in form and content satisfactory to the Law Branch, Corporate Services of the City and the Owners;
- (c) for any Municipal Improvement until all needed test results, Asset Cost Forms, documents and any other relevant materials have been submitted by the Owners to the City, and reviewed to the satisfaction of the Engineer.

5.9 If the City has issued a CCC for Paved Roads, Sidewalks, Curb and Gutter before a CCC has been issued for the Street Lighting System, the Owners shall take reasonable steps to ensure that the roads and sidewalks are not open for the use of the public until the Street Lighting System is operational to the satisfaction of the Transportation Services. Reasonable steps shall include, but not be limited to, the posting of clear signage at the entrance to unlit roads and sidewalks indicating that the roads and sidewalks are open for construction traffic only and are not open for public use. For the purposes of this article "public use" does not include use by:

- (a) the Owners and their invitees;
- (b) the City and its employees or agents;
- (c) anyone engaged in the construction of Municipal Improvements pursuant to this Agreement or any other agreement with the City;
- (d) the owners of land abutting the unlit roads or sidewalks and their invitees.

5.10 Notwithstanding anything herein to the contrary, the Engineer may, in his sole discretion, accept written application for an FAC prior to the expiry of the maintenance period for any Municipal Improvement if the period would expire in the months of November to March, inclusive.

5.11 From and after the date that an FAC for a Municipal Improvement has been issued, or is deemed to have been issued, the City shall assume full responsibility for the maintenance and operation of the particular Municipal Improvement to which the FAC applies.

5.12 Notwithstanding the issuance of an FAC for a Municipal Improvement, the Owners shall repair any and all damage caused to new or previously existing municipal improvements by the Owners, their employees, servants or agents during the process of rectifying deficiencies identified on the FAC Deficiency List or revisions thereto.

ARTICLE 6 **MINOR DEFICIENCIES**

6.1 For the purposes of this Article the term "Repair Period" shall mean:

(a) for a CCC issued prior to September 1st of a given year, sixty (60) days from the date of issuance of the CCC; or

(b) for a CCC issued on or after September 1st of a given year, the period between the date the CCC is issued and June 30th of the following year.

6.2 Notwithstanding Article 5, and in particular Article 5.6, the Engineer shall issue a CCC for a Municipal Improvement notwithstanding the existence of minor deficiencies with the Municipal Improvement if, in his 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 the date of the inspection or reinspection, as the case may be.

6.3 Upon issuing the CCC for any Municipal Improvement having minor deficiencies, the Engineer shall provide the Owners a list of the minor deficiencies that will need to be repaired. The Owners shall repair the minor deficiencies within the Repair Period.

6.4 The final determination of what constitutes a minor deficiency is in the sole and exclusive discretion of the Engineer.

6.5 Minor deficiencies shall be considered repaired when a Professional Engineer or Landscape Architect, whichever is applicable, employed by the Owners, certifies to the Engineer that the repairs have been completed in accordance with the Standards, and the Engineer, upon reinspection of the Municipal Improvement, agrees that the repairs have been completed to his satisfaction.

6.6 If the minor deficiencies are not repaired within the Repair Period, the maintenance period for the particular Municipal Improvement set out in Schedule "D" 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.

6.7 In the event that 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 Security in accordance with Article 8 to complete the repairs.

ARTICLE 7 **SPECIAL PROVISIONS**

7.1 In addition to the provisions set forth in this Agreement governing the servicing of the Said Lands, the Owners and the City agree that the provisions set forth in Schedule "E" are hereby incorporated and form part of this Agreement. The Owners agree that they shall comply with the specific provisions in Schedule "E". Where there is an inconsistency between the general provisions of this Agreement and the provisions of Schedule "E", the provisions of Schedule "E" shall govern.

ARTICLE 8 **SECURITY AND INSURANCE**

8.1 To ensure compliance with the terms and conditions of this Agreement the Owners shall provide such irrevocable and unconditional Security as is acceptable to the Law Branch, Corporate Services of the City, in the amount set out in Article 2.1(c), and keep in good standing the Security until all required CCCs and FACs have been issued for the Municipal Improvements in accordance with this Agreement.

8.2 In the event that the Owners provide the Security to the City by way of a letter of credit (the "Letter of Credit"), the Letter of Credit shall be for an initial term of not less than one (1) year, and shall be renewed by the Owners at least thirty (30) days prior to its expiry, and delivered to the Senior Accountant in Sustainable Development of the City as many times as is necessary until all required CCCs and FACs have been issued. The expiry date for the Letter of Credit shall fall on a weekday, which is not a statutory holiday. The Letter of Credit shall provide that partial draws are permitted and shall state that it is to be available as security for any and all obligations whatsoever of the Owners under this Agreement.

8.3 In the event that the Owners provide the Security to the City by way of cash in lieu of a letter of credit (hereinafter referred to as the "Cash Security"), the City shall hold the Cash Security in an interest bearing account, with interest accruing at the City of Edmonton Short Term Investment Weighted Average Rate less one and one half percent (1.5%). If for any period the City of Edmonton Short Term Investment Weighted Average Rate less one and one half percent (1.5%) is a negative sum, then no interest shall accrue on the Cash Security for such period.

8.4 In addition to the situations specifically identified in other provisions of this Agreement as being circumstances under which the City may draw on the Security, the City may, in its sole discretion, draw on the Security if:

- (a) the Security is provided by way of Letter of Credit, and the Letter of Credit is not renewed to the satisfaction of the Law Branch, Corporate Services of the City and in accordance with Article 8.2 above; or
- (b) the Owners default on any of their obligations under this Agreement and, in the opinion of the City, create an unsafe condition in which event the City may use the proceeds of the Security to do any work required to protect life and property from injury and destruction; or
- (c) the Owners default on any of their obligations under this Agreement, including without limitation:
 - i) the obligation to repair any and all damage to Municipal Improvements caused by the Owners, their employees, servants or agents during the process of rectifying deficiencies identified on the FAC Deficiency List or revisions thereto, in which event the City may use the proceeds of the Security to do any work required to maintain, repair, remove, restore or remedy any defects in the work undertaken by the Owners herein; and
 - ii) the obligation to pay all Sales Taxes, as defined herein, and to indemnify

and save the City harmless from and against such Sales Taxes all in accordance with Article 10.

8.5 In the event that the City draws on the Security, pursuant to Article 8.4 or any other Article of this Agreement which gives the City the right to draw on the Security, the proceeds shall be used to pay:

- (a) the reasonable costs incurred by the City in drawing upon the Security including, but not limited to transportation and actual out of pocket expenses;
- (b) all costs incurred by the City in completing the work required pursuant to the Article giving rise to the City's right to draw on the Security, including, but not limited to:
 - i) administrative costs incurred in arranging to complete the work;
 - ii) consulting and contracting fees required to retain an outside consultant and contractor;
 - iii) costs related to labour, materials, testing and inspection; and
 - iv) administrative and engineering costs required to obtain CCCs and FACs for the Municipal Improvements including documentation, testing, maintenance and deficiency repairs;

and

- (c) any and all Sales Taxes.

If the proceeds of the Security are not sufficient to cover the above noted items, the Owners shall pay any shortfall to the City within thirty (30) days upon being invoiced therefor. In the event that the Owners fail to pay such shortfall within the aforesaid thirty (30) days, the Owners and the City agree that the City shall have the right to offset the shortfall, or such part of the shortfall as remains outstanding, against any Sewer Overexpenditure Recovery Amount and/or Arterial Roadways Overexpenditure Recovery Amount payable to the Owners pursuant to Article 2.3. The City shall provide an accounting to the Owners indicating how the proceeds of the Security were used within sixty (60) days of remedying any deficiency. The City shall pay to the Owners any surplus funds not required to remedy deficiencies within sixty (60) days after the issuance of FACs for all the Municipal Improvements. No interest shall be paid on the surplus funds.

8.6 If and whenever the City, in accordance with the provisions of Article 8.4(c) hereof, draws on the proceeds of the Security to do any work required to maintain, repair, remove, restore, or remedy any deficiencies in the work undertaken by the Owners herein, then, on completion of such works by the City and upon receipt of any shortfall payment required from the Owners to the City, the City shall issue to the Owners, without application therefor, any certificates which the Owners may otherwise be entitled to receive on completion of the maintenance period pursuant to Article 5 and the Owners shall be relieved of any obligations they may otherwise have to maintain, repair, remove, restore, or remedy deficiencies to

the extent that such works have been undertaken by the City.

8.7 When all CCCs and FACs have been issued, and when any and all damage caused to Municipal Improvements by the Owners, their employees, servants, or agents during the process of rectifying deficiencies identified on the FAC Deficiency List or revisions thereto have been repaired, the City, upon request in writing by the Owners, shall release the Security, and if applicable, any interest that has accrued pursuant to Article 8.3.

8.8 The Owners shall maintain in full force and effect, to the satisfaction of the City's Director, Risk Management:

(a) a Commercial General Liability Insurance policy providing coverage of at least five million dollars (\$5,000,000.00) inclusive, per occurrence, for bodily injury, death, and damage to property. This insurance shall include, inter alia, coverage for:

- i) independent contractors;
- ii) completed operations;
- iii) broad form loss of use;
- iv) blanket contractual liability, including this Agreement;
- v) shoring, excavating, work below ground surface, and grading, as applicable;
- vi) non-owned automobiles;
- vii) attached machinery;
- viii) City of Edmonton as additional insured;
- ix) employees as additional insureds;
- x) cross liability;
- xi) contingent employers liability; and
- xii) broad form property damage;

(b) a Standard Automobile Policy providing coverage of at least two million dollars (\$2,000,000.00) inclusive, per occurrence, for bodily injury, death and damage to property, for all vehicles owned, leased or operated by the Owners which are used in conjunction with the work done under this Agreement.

These insurance coverages shall remain in full force and effect until all CCCs and FACs for the Municipal

Improvements have been issued.

8.9 The aforementioned insurance coverages shall be endorsed to provide the City with thirty (30) days prior written notice of cancellation or material change and shall be in a form acceptable to the Director, Risk Management.

8.10 Within thirty (30) days of request by the City, the Owners shall provide additional insurance if it is deemed necessary by the Director, Risk Management. If requested, an explanation will be provided to the Owners for the additional insurance requirement.

8.11 It is further understood and agreed that the policy limits shown under items (a) and (b) of Article 8.8 do not define or limit the Owner's liability to indemnify the City in the event of bodily injury and/or property damage, nor does the City make any representations as to the adequacy of said limits or scope of coverage in the event of a claim.

ARTICLE 9 REBATES

9.1 The City acknowledges that the Owners are required to construct or pay for the construction of all or a portion of Cost Shareable Drainage Infrastructure and Cost Shareable Arterial Roadway Infrastructure in excess of the requirement for the Said Lands. The City shall, at such time as other land benefited by the Cost Shareable Drainage Infrastructure and Cost Shareable Arterial Roadway Infrastructure is developed or subdivided, as the case may be, enter into agreements with the applicants for development permits or subdivision approval for that other land (the "Developers"), requiring the Developers to pay an amount, calculated in accordance with the method outlined in Schedule "F" for Cost Shareable Drainage Infrastructure (the "PAC Payment"), and in accordance with Schedule "H" for Cost Shareable Arterial Roadway Infrastructure (the "ARA Payment"), as a condition of approval of their subdivision or issuance of a development permit. In calculating the amounts to be paid to the City by the Developers, the City shall include applicable Sales Taxes and interest at the rate prescribed in Article 9.5 (the "Prescribed Rate") calculated in the manner provided in Article 9.5. If and at such time as the City receives from the Developers the aforesaid payments and upon fulfilment by the Owners of the requirements described above and provided that the Owners are not otherwise in default under this Agreement, the City agrees to pay to the Owners a pro rata share of the amount the City receives from the Developers within sixty (60) days of receipt by the City. The pro rata share shall be calculated in accordance with the method outlined in Schedule "G" for the PAC Payment and in accordance with the method outlined in Schedule "I" for the ARA Payment. The aggregate amount of such PAC and ARA Payments to the Owners shall not exceed the Sewer Overexpenditure Recovery Amount and the Arterial Roadways Overexpenditure Recovery Amount, respectively. If the City does not pay the said pro rata share to the Owners within the aforesaid sixty (60) days, the City shall also pay to the Owners interest on their pro rata share, calculated at the rate provided in Article 14.2, which interest shall begin to accrue on the said sixtieth (60th) day. Nothing in this Article shall obligate the City to pay to the Owners any amount which the City is prevented by law from recovering from the Developers. Further, in the event that a court orders the City to repay monies to the Developers, which monies had been previously collected from the Developers and paid to the Owners as part of their pro rata share of a PAC or ARA Payment, the Owners shall indemnify the City in respect of such amounts and shall repay to the City any amounts the City is

obligated to repay to the Developers.

9.2 Notwithstanding Article 9.1, in the event the Owners are required to construct all or a portion of Cost Shareable Arterial Roadway Infrastructure in excess of the requirement for the Said Lands, the City shall place in holding the Owners' pro rata share of the ARA Payment (the "ARA Holding Amount"), until such time as:

- (a) the arterial roadway is substantially complete, meaning it has been constructed and operational and open to traffic, to the satisfaction of Transportation Services; and
- (b) the Owner has submitted "as-constructed" costs for the arterial roadway, as well as any costs to complete, to the satisfaction of the Engineer.

The City shall deposit the ARA Holding Amount in an interest bearing account, with interest accruing at the City of Edmonton Short Term Investment Weighted Average Rate beginning on the 1st day of the month in which the ARA Holding Amount was deposited.

Upon fulfilment of 9.2(a) and 9.2(b), the City shall pay the ARA Holding Amount less any costs to complete, plus any accrued interest, to the Owners within sixty (60) days. If the City does not pay the ARA Holding Amount, plus accrued interest, to the Owners within the aforesaid sixty (60) days, the City shall pay to the Owners interest on the ARA Holding Amount calculated at the rate provided in Article 14.2, which interest shall begin to accrue on the said sixtieth (60th) day.

9.3 Notwithstanding Article 9.1, in the event that the Owners are required to construct all or a portion of any Cost Shareable Drainage Infrastructure in excess of the requirement for the Said Lands, and the City is holding an amount in trust collected from previous developers that is to be paid to the Owners through the terms of this Agreement (the "PAC Trust Amount") the City shall pay to the Owners the PAC Trust Amount, plus interest accrued at the City of Edmonton Short Term Investment Weighted Average Rate, within sixty (60) days of issuance of a CCC for the Cost Shareable Drainage Infrastructure that was constructed. If the City does not pay the PAC Trust Amount to the Owners within the aforesaid sixty (60) days, the City shall also pay to the Owners interest on the PAC Trust Amount calculated at the rate provided in Article 14.2, which interest shall begin to accrue on the said sixtieth (60th) day.

9.4 Notwithstanding Articles 9.1 and 9.2, in the event that the Owners are required to construct all or a portion of Cost Shareable Arterial Roadway Infrastructure in excess of the requirement for the Said Lands, and the City is holding an amount in trust collected from previous developers that is to be paid to the Owners through the terms of this Agreement (the "ARA Trust Amount") the City shall place the ARA Trust Amount into holding in accordance with Article 9.2.

9.5

- (a) For the purposes of this Article 9, the Prescribed Rate shall be the lesser of:
 - i) an annual rate equal to the prime rate charged by the Main Branch of the Toronto Dominion Bank in Edmonton plus one per cent (1%), on January

1st of the year for which interest is to be calculated; or

- ii) an annual rate of interest equal to the percentage change in the Edmonton Non Residential Construction Price Index, published from time to time by Statistics Canada, from the third quarter of the previous year to the third quarter of the year for which interest is calculated, expressed as a percentage rate per annum.

The Director, Development Coordination, shall determine the Prescribed Rate. If Statistics Canada shall cease or fail to calculate or publish the Edmonton Non Residential Construction Price Index then the Prescribed Rate shall be determined by reference to the Edmonton Consumer Price Index published by Statistics Canada (in lieu of the Edmonton Non Residential Construction Price Index). Notwithstanding anything herein contained, if the change in the applicable price index hereunder for any period is a negative sum then the Prescribed Rate for such period shall be 0. The said "prime rate" means the reference rate determined by the said bank as its reference rate for demand commercial loans made in Canada in Canadian dollars and published by the said bank as its prime rate.

(b) Interest at the Prescribed Rate shall be calculated on the Owners' unpaid Sewer Overexpenditure Recovery Amount and the Owners' unpaid Arterial Roadway Overexpenditure Recovery Amount from the date that the City issues a CCC for the applicable Municipal Improvement (the "Interest Start Date") to and including December 31st of the year preceding the year in which the last of the Sewer or Arterial Roadways Overexpenditure Recovery Amount (including interest thereon as herein provided for) is paid to the Owners (the "Interest Termination Date"). Interest shall be calculated annually on December 31st in each year from and after the Interest Start Date to and including the Interest Termination Date, and shall be compounded annually on such dates.

(c) Interest calculated at the Prescribed Rate in the manner aforesaid shall be paid to the Owners by the City on all amounts paid to the City by Developers pursuant to Article 9.1, provided that the City shall only be responsible for such interest payments if and to the extent that the City has actually collected such interest from the Developers. Nothing in this Article shall obligate the City to pay to the Owners any amount which the City is prevented by law from recovering from the Developers.

9.6 Upon adjustment of the Sewer Overexpenditure Recovery Amount and the Arterial Roadway Overexpenditure Recovery Amount in accordance with Article 2.3, if any of the Overexpenditure Recovery Amounts becomes lower than what has already been paid to the Owners at the time of the adjustment (the "Previous Rebate Payments"), the Owners agree that they shall repay to the City the difference between the Previous Rebate Payments and the applicable adjusted Overexpenditure Recovery Amount within thirty (30) days of receiving notification from the City. In the event that the Owners fail to pay such difference within the aforesaid thirty (30) days, the City may draw on the Security in accordance with Article 8 to pay such difference.

ARTICLE 10 SALES TAXES

10.1 Notwithstanding any other provision contained in this Agreement, the Owners agree that all taxes and assessments in the nature of sales taxes, goods and services taxes or value added taxes (the "Sales Taxes") which may be charged, levied or assessed by any Provincial or Federal government as a result of or arising out of this Agreement, or anything done under or pursuant to this Agreement, whether levied against the City or some third party, shall be the responsibility of the Owners and the Owners shall (and do hereby) indemnify and save the City harmless from and against such Sales Taxes. Further, the Owners shall, on written demand by the City, pay to the City the net cost to the City of any and all such Sales Taxes as may be charged to, levied upon or paid by the City.

10.2 In addition to the amounts payable pursuant to Article 10.1 the Owners agree that if the City is charged, levied or assessed Sales Taxes with respect to the City's acceptance of the previously installed off site and oversized services and arterial roadways from which the Said Lands will benefit, the Owners shall, within thirty (30) days of receiving a written demand by the City, pay to the City the Owners' pro rata share of the net cost to the City of any and all such Sales Taxes. The Owners pro rata share shall be calculated by the City in the same manner as was used by the City to calculate the amounts payable to the City pursuant to Articles 2.1(b) and 2.1(e). The calculation by the City of the pro rata share payable by the Owners shall be final and binding on the Owners.

10.3 Failing the payment to the City by the Owners of the amounts described in Articles 10.1 or 10.2, such amounts, in addition to any other remedies available pursuant to this Agreement or at law, shall be deemed to be monies owing and collectible in a like manner as any other debt owing by the Owners to the City.

ARTICLE 11 ARBITRATION

11.1 If a dispute arises between the parties in respect of Article 5.1 or 5.3, then such dispute shall be settled by arbitration in accordance with the following terms and conditions. It is agreed that only the matters described in Article 5.1 or 5.3 may be arbitrated.

11.2

(a) The party desiring to refer the dispute for arbitration (the "Disputing Party"), shall notify the other party (the "Other Party") in writing of the details of the nature and extent of the dispute.

(b) Within fifteen (15) days of receipt of such notice, the Other Party shall, by written notice, advise the Disputing Party of all matters referred to in the initial notice except those for which the Other Party admits responsibility and proposes to take remedial action. The Other Party shall then take remedial action.

(c) The terms of reference for arbitration shall be those areas of dispute referred to in the initial notice, which remain in dispute.

(d) Immediately following the identification of the terms of reference, the parties shall meet and attempt to appoint a single arbitrator. If the parties refuse to meet, or having met, are unable to agree on a single arbitrator, then upon written demand of either party, within fifteen (15) days of such date, each party to the arbitration shall appoint one (1) arbitrator in writing and the two (2) arbitrators shall, within five (5) days of their appointment, appoint a third member to be known as the Chairman of the Arbitration Committee.

(e) If either party fails to appoint an arbitrator, then the opposite party may apply to a Justice of the Court of Queen's Bench of Alberta to have such arbitrator appointed.

(f) If the two (2) arbitrators fail to appoint a Chairman, then both parties, or either of them, may apply to a Justice of the Court of Queen's Bench of Alberta to have the Chairman appointed.

(g) Within fifteen (15) days of the appointment of a sole arbitrator or appointment of the Arbitration Committee, as the case may be, or such further time period as may be agreed upon by the parties, the sole arbitrator or the Arbitration Committee, as the case may be, shall resolve all matters and disputes in accordance with the terms of reference.

(h) The sole arbitrator, or the Arbitration Committee, as the case may be, shall have the power to obtain the assistance, advice or opinions of such engineers, surveyors, appraisers, or other experts as they may think fit, and shall have the discretion to act upon any assistance, advice or opinions so obtained.

(i) Each of the arbitrators may provide a separate written decision with full reasons. The decision of the majority of the Arbitration Committee shall be the decision of the Arbitration Committee, provided that if no majority exists, then the decision of the Chairman shall be deemed to be the decision of the Arbitration Committee.

(j) The decision of the sole arbitrator, or the Arbitration Committee, as the case may be, shall be final and binding upon the parties hereto.

(k) Notwithstanding any provisions contained in the *Arbitration Act* RSA 2000, Chapter A-43, as amended, the costs of the Arbitration shall be determined by the sole arbitrator or the Arbitration Committee, as the case may be, and be borne by the party against which the award is made, or as otherwise determined by the sole arbitrator or the Arbitration Committee, as the case may be.

11.3 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 to the intent that no arbitration procedure shall delay the expeditious operation of the terms of this Agreement.

11.4 The time taken for any arbitration that further delays a party in the performance of any thing or act shall be added to the time of performance thereof unless the sole arbitrator or the Arbitration Committee, as the case may be, find that the delay in performance was not beyond the reasonable control of the party required to perform.

ARTICLE 12 NOTICE

12.1 Any notice to be given pursuant to the terms of this Agreement shall be sufficiently given:

(a) in case of notice to the City, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

Director, Development Coordination
Sustainable Development
5th Floor, 10250 - 101 Street NW
Edmonton, AB T5J 3P4

(b) in case of notice to the Owners, if such notice is sent by prepaid registered mail, or personally delivered, in an envelope addressed to:

"Developer Name"
"Developer Address"

or, if the City determines it to be more appropriate, to:

"Consultant Name"
"Consultant Address"

12.2 Notice given as aforesaid, if posted in Alberta, other than during a postal disruption, shall conclusively be deemed to have been given on the fifth business day following the date on which such notice is mailed. Notice during a postal disruption shall be personally delivered. Any notice personally delivered shall be deemed to have been given on the date of actual delivery.

12.3 Either party may, at any time, give notice in writing to the other of any change in address of the party giving such notice and, from and after the giving of such notice, the address therein specified shall be deemed to be the address of the said party for the giving of notice hereunder.

12.4 The word "notice" in this Article 12 shall be deemed to include any requests, applications, information, statements or other writing required or permitted to be given by either party to the other.

ARTICLE 13 RECALCULATION OF THE ASSESSMENTS AND OVEREXPENDITURE

13.1 The Owners acknowledge that the Assessments paid by the Owners pursuant to Articles 2.1(b), 2.1(e) and the Sewer Overexpenditure Recovery Amount and Arterial Overexpenditure Recovery Amount (the "Overexpenditure Recovery Amounts") payable to the Owners pursuant to Article 2.3 have been calculated on the basis of certain assumptions with respect to the order in which development shall proceed within the applicable drainage basin and arterial catchment area for the Said Lands and also with respect to the assessable area of the developments proposed within the drainage basin and arterial catchment area. The Owners expressly agree with the City that, in the event that the assumptions, as to the order of development or assessable area of developments, upon which the calculations have been

based are incorrect, and development in the applicable drainage basin and arterial catchment area does not proceed in the order that was anticipated at the time the calculations were made, or the developments that proceed do not have the assessable area that was anticipated, the City shall recalculate the Drainage Assessments and Arterial Roadway Assessments (the "Assessments") payable under Articles 2.1(b), 2.1(e) and the Overexpenditure Recovery Amounts repayable to the Owners pursuant to Article 2.3 in accordance with either or both the actual ordering or actual assessable area of developments within the drainage basin and arterial catchment area. The recalculations shall be made, and the City shall notify the Owners in writing of any change to the Assessments and Overexpenditure Recovery Amounts as a result of the recalculations within sixty (60) days of the date of execution of this Agreement. In the event the recalculations are not done and the Owner not notified within the said sixty (60) days, the Assessments paid pursuant to Articles 2.1(b), 2.1(e) and the Overexpenditure Recovery Amounts payable pursuant to Article 2.3 shall be deemed to be final. The Owners acknowledge and agree with the City that the Assessments and Overexpenditure Recovery Amounts may be recalculated as many times as may be necessary in order to ensure that the assumptions as to the order or assessable area of developments on which the Assessments and Overexpenditure Recovery Amounts are calculated are correct and reflect the actual order and assessable area of developments within the drainage basin and arterial catchment area for the Said Lands.

13.2 In the event that the recalculations reveal that the Owners have overpaid the Assessments paid pursuant to Articles 2.1(b) and 2.1(e), the City shall repay to the Owners the difference between the Assessments paid by the Owners and the recalculated amount (the "Over Payment"). If the recalculations reveal that the Owners have paid less than what they would have paid had the calculations been done on the basis of the actual ordering of development or assessable area of developments, the Owners agree that they shall pay to the City the difference between the Assessments they had previously paid and the recalculated amount within thirty (30) days of notification of the difference by the City (the "Deficiency Amount").

13.3 Upon receipt by the City of the Deficiency Amount from the Owners, or upon repayment by the City to the Owners of any Over Payment, the Owners and the City agree that Articles 2.1(b), 2.1(e) and 2.3 shall be deemed to be amended to reflect the recalculated amounts.

13.4 In the event that the Owners fail to pay the Deficiency Amount in accordance with Article 13.2, the Owners and the City agree that the City shall have the right to offset the Deficiency Amount or such part of the Deficiency Amount as remains outstanding against any Overexpenditure Recovery Amounts payable to the Owners pursuant to Article 2.3. In the event that the Overexpenditure Recovery Amounts pursuant to Article 2.3 are zero, the City shall be entitled to draw upon the Security, in accordance with Article 8, for the purpose of paying the Deficiency Amount.

ARTICLE 14 GENERAL

14.1 The Owners shall indemnify and save harmless the City, its servants, agents and employees, from and against any and all claims, losses, demands, payments, actions, suits, judgements, damages and expenses of every nature and kind brought or claimed against the City, its servants and agents, by any party whatsoever, which may arise directly, indirectly or incidentally, in tort and in contract,

or either, out of the performance or non performance by the Owners of their obligations under this Agreement, except any such claims which are caused by the wilful misconduct or negligence of the City, its officers or employees. The Owners shall also be responsible and shall indemnify the City for any costs and expenses incurred as a result of any claim under this Article 14.1, including solicitor-client costs.

14.2 Unless otherwise expressly agreed by the parties to this Agreement, any and all amounts owing by one party to the other shall, thirty (30) days after the date of invoicing of any one party by the other and until the date of payment, bear interest at the rate of eighteen per cent (18%) per annum.

14.3 Whenever the singular or neuter or masculine is used in this Agreement, it shall be construed as meaning the plural or feminine or body corporate, where the context so requires.

14.4 If this Agreement is executed by more than one (1) party as an Owner hereunder, all covenants, conditions, obligations and agreements herein contained shall be construed as taken as against all executing parties, as joint and several.

14.5 The parties covenant and agree to do such things, to issue such instructions and to execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

14.6 Whenever any thing or matter is to be done to the approval of, satisfactory to, acceptable to or is subject to similar determination to or by the City, the Director, Development Coordination, the Engineer or their employees or officers, the City, its officers or employees shall act reasonably and in a timely manner.

14.7 This Agreement shall not nullify, replace, circumvent, extend or modify any existing statutes, bylaws, or permit conditions which govern development or construction within the City.

14.8 No condonation, forgiveness, waiver or forbearance by any party of any non observance or non performance by any other party of any of the provisions hereunder will operate as a waiver or forbearance against the first such party in respect of any such provision or any subsequent non observance or non performance by any party of any of the provisions hereunder.

14.9 In the event that one or more articles of this Agreement are declared invalid or unenforceable by a court of competent jurisdiction, the parties agree that such article or articles shall be severable from the remainder of this Agreement, and that the other provisions herein shall continue in full force and effect.

14.10 This Agreement shall not be assigned without consent of the City, and only upon arrangements, satisfactory to the City, made with the assignee of the Owners to secure payment by the assignee of the costs to be borne, and the insurance and Security to be carried, by the Owners pursuant to this Agreement.

14.11 The Owners covenant and agree that they shall obtain the same covenants as are herein contained, including this covenant, from any person to whom they may, in any way, convey the fee simple

estate of the Said Lands, or any part thereof, prior to registration of the plan of subdivision for the Said Lands, so that the said covenants shall be enforceable by the City.

14.12 This Agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, successors and approved assigns.

14.13 This Agreement shall not be modified or amended except by an instrument in writing signed by the parties hereto.

14.14 It is agreed that this written instrument embodies the entire agreement of the parties hereto with regard to the matters dealt with herein, and that no other understandings or agreements, verbal or otherwise, exist between the parties.

14.15 The Owners shall ensure that the provisions of the *Occupational Health and Safety Act* RSA 2000, Chapter O-2, as amended and its Regulations, the *Environmental Protection and Enhancement Act* RSA 2000, Chapter E-12, as amended and its Regulations, the *Fisheries Act* RSC 1985, Chapter F-14, as amended and its Regulations, the *Navigable Waters Protection Act* RSC 1985, Chapter N-22, as amended and its Regulations, the *Water Act* RSA 2000, Chapter W-3, as amended and its Regulations, and any other applicable Acts are complied with and shall at all times ensure that all contractors and subcontractors at the work site comply with the requirements of the said Acts and their Regulations.

14.16 The City does not represent or warrant that the obligations of the Owners under this Agreement are the only obligations related to access or servicing of the Said Lands. The City reserves the right to attach any other lawful conditions relating to servicing or access to the Said Lands as a condition of any future approval relating to the Said Lands. Without limiting the generality of the foregoing, the City reserves the right to impose an off-site levy pursuant to s. 648 of the *Municipal Government Act*, RSA 2000, Chapter M-26, as amended.

14.17 The City shall be entitled to register a caveat under the *Land Titles Act*, RSA 2000, Chapter L-4, as amended, in respect of the within Agreement against the Certificates of Title for the Said Lands. The caveat may be registered for purposes of providing notice of the responsibilities of the parties under the within Agreement. The City will, upon written request from the Owner, postpone this caveat in favour of financing related to the Said Lands. Upon compliance by the Owners with the within Agreement, and upon receipt by the City of a written request for a discharge of the said caveat, the City shall prepare the said discharge of caveat.

14.18 It is expressly agreed that the preambles and all schedules attached hereto are deemed to form an integral part of this Agreement.

14.19 The validity and interpretation of this Agreement and of each article and part hereof, shall be governed by the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their duly authorized officers in that behalf on the day and year first above written.

THE CITY OF EDMONTON
(As represented by the Director of
Development Coordination)

DIRECTOR

Approved:

As to form _____
Corporate Services, Law Branch

As to contents _____
Sustainable Development, Development Coordination

"INSERT DEVELOPER NAME"

PER: _____

PER: _____
[sign and affix corporate seal over signature(s)]

SCHEDULE "A"
LAND TITLE CERTIFICATES

SCHEDULE "B"
PLAN OF SUBDIVISION

SCHEDULE "C"
SUMMARY OF ASSESSMENTS

SCHEDULE "D"
MUNICIPAL IMPROVEMENTS

The Owners shall construct, install, and maintain the following Municipal Improvements in accordance with the conditions set forth in this Agreement:

Municipal Improvement	Maintenance Period
1. The water distribution system, all appurtenances thereto and service connections thereto (the "Water Distribution System").	One (1) Year
2. The storm sewers, the sanitary sewers, all appurtenances thereto and service connections thereto (the "Storm and Sanitary Sewers").	One (1) Year
3. The paved roads, sidewalks, curbs and gutters, catchbasin frames and covers, sewer manhole frames and covers, street identification signs, and berms (the "Paved Roads, Sidewalks, Curb and Gutter").	Two (2) Years
4. The electrical distribution servicing facilities including primary cable, the transformers, all secondary conductors, power bases and pedestals, switching and/or service cubicles, and service connections thereto (the "Electrical Distribution System").	One (1) Year
5. The street lighting system including all secondary conductors, luminaires, controllers, bases, poles and appurtenances thereto (the "Street Lighting System").	Two (2) Years
6. The walkways (the "Walkways").	Two (2) Years
7. The separate sidewalks (the "Separate Sidewalks").	Two (2) Years
8. The landscaping, which shall include such activities as grading, installation of sod or seed, and planting of trees and shrubs, on: boulevards, walkways, public utility lots, berms and road islands (the "Landscaping").	One (1) Year
9. The landscape amenities, which shall include the installation of, but shall not be limited to, such items as benches, picnic tables and waste receptacles on: boulevards, walkways, public utility lots, municipal reserve parcels, berms and road islands (the "Landscape Amenities").	Two (2) Years
10. The fencing, including chain link, wood screen and post and rail (the "Fencing"). The Fencing shall be constructed such that it is located inside the property lines of the individual lots created upon registration of the plan of subdivision for the Said Lands.	An FAC will not be issued for this improvement. The Fencing shall be maintained by the owners of the lots created upon subdivision of the Said Lands.

**SCHEDULE “D”
MUNICIPAL IMPROVEMENTS**

Municipal Improvement	Maintenance Period
11. The noise attenuation fencing (the “Noise Attenuation Fencing”). The Noise Attenuation Fencing shall be constructed such that it is located inside the property lines of the individual lots created upon registration of the plan of subdivision for the Said Lands.	An FAC will not be issued for this improvement. The Noise Attenuation Fencing shall be maintained by the owners of the lots created upon subdivision of the Said Lands.
12. The concrete drainage swales (the “Concrete Drainage Swales”).	One (1) Year
13. The grass drainage swales (the “Grass Drainage Swales”).	One (1) Year
14. The permanent storm water management facility and all appurtenances thereto (the “Storm Water Management Facility”).	Two (2) Years
15. The interim storm water management facility and all appurtenances thereto (the “Interim Storm Water Management Facility”).	An FAC will not be issued for this improvement. The Owners shall maintain the Interim Storm Water Management Facility until a CCC has been issued for the next stage of the permanent storm water management facility.
16. The interim portion of the permanent storm water management facility and all appurtenances thereto (the “Interim Storm Water Management Facility”).	Two (2) Years
17. The temporary storm water management facility and all appurtenances thereto (the “Temporary Storm Water Management Facility”).	An FAC will not be issued for this improvement. The Owners shall maintain the Temporary Storm Water Management Facility until a CCC has been issued for the permanent drainage system which will eliminate the need for the Temporary Storm Water Management Facility.
18. The temporary drainage swale (the “Temporary Drainage Swale”).	An FAC will not be issued for this improvement. The Owners shall maintain the Temporary Drainage Swale until a CCC has been issued for the permanent drainage system that will eliminate the need for the Temporary Drainage Swale.
19. The sanitary lift station (the “Sanitary Lift Station”).	One (1) Year
20. The paved alleys (the “Alleys”).	Two (2) Years
21. The temporary paved turnaround (the “Temporary Paved Turnaround”) The Temporary Paved Turnaround shall have a gravel surface prior to the issuance of a CCC for the Paved Roads, Sidewalks, Curb and Gutter, and shall be fully paved prior to the issuance of an FAC for the Paved Roads, Sidewalks, Curb and Gutter, or earlier, which shall be at the discretion and direction of the Transportation Department of the City.	An FAC will not be issued for this improvement. The Owners shall maintain the Temporary Paved Turnaround until an FAC has been issued for Paved Roads, Sidewalks, Curb and Gutter, or until a CCC has been issued for the permanent paved roads on adjacent lands that will eliminate the need for the Temporary Paved Turnaround, whichever occurs first.

SCHEDULE "D"
MUNICIPAL IMPROVEMENTS

Municipal Improvement	Maintenance Period
22. The temporary gravel turnaround (the "Temporary Gravel Turnaround") The Temporary Gravel Turnaround shall be constructed prior to the issuance of a CCC for the Paved Roads, Sidewalks, Curb and Gutter, or earlier, which shall be at the discretion and direction of the Transportation Department of the City.	An FAC will not be issued for this improvement. The Owners shall maintain the Temporary Gravel Turnaround until a CCC has been issued for the permanent paved roads on adjacent lands that will eliminate the need for the Temporary Gravel Turnaround.
23. The temporary emergency access (the "Temporary Emergency Access").	An FAC will not be issued for this improvement. The Owners shall maintain the Temporary Emergency Access until a CCC has been issued for the permanent paved roads, sidewalks, curb and gutter that will eliminate the need for the Temporary Emergency Access.
24. The temporary/interim "Insert Improvement" (the "Temporary/Interim "Insert Improvement" ").	An FAC will not be issued for this improvement. The Owners shall maintain the Temporary/Interim "Insert Improvement" until a CCC has been issued for the permanent "Insert Permanent Improvement" that will eliminate the need for the Temporary/Interim "Insert Improvement" .
25. The municipal reserve site (the "MR Site"). The MR site shall be undisturbed, free of debris, and in a condition suitable for its intended use.	An FAC will not be issued for this improvement. The MR Site shall be maintained by the Owners until a CCC has been issued for the MR Site.
26. The culverts and ditch re-grading (the "Culverts and Ditch Re-grading").	One (1) Year
27. Any other improvements which may be shown on the Engineering Drawings.	Two (2) Years

-- END OF SCHEDULE "D" --

ARTICLE 1 **NON APPLICABLE AND ADDITIONAL PROVISIONS**

1.1 All references to Articles within Article 1 of this Schedule "E" shall be deemed to be references to Articles in the main body of the Agreement unless otherwise expressly noted.

1.2 For the purposes of this Agreement, Article(s) ____ shall not apply.

1.3 For the purposes of this Agreement the following Article(s) shall be added as follows:

- (a) ARTICLE ____ in substitution for ARTICLE ____ previously deleted:
- (b) ARTICLE 5.13: Notwithstanding Articles 5.5, 5.6 and 5.7, an FAC for Paved Roads, Sidewalks, Curb and Gutter shall not be issued, nor be deemed to have been issued, until the Owners have constructed and a CCC has been issued for the Temporary Paved Turnaround.
- (c) ARTICLE 5.14: Notwithstanding Articles 5.5, 5.6 and 5.7, a CCC for Paved Roads, Sidewalks, Curb and Gutter shall not be issued, nor be deemed to have been issued, until the Owners have constructed the Temporary Paved Turnaround to at least a gravel surface, to the satisfaction of the Transportation Department of the City.
- (d) ARTICLE 5.15: Notwithstanding Articles 5.5, 5.6 and 5.7, a CCC for Paved Roads, Sidewalks, Curb and Gutter shall not be issued, nor be deemed to have been issued, until the Owners have constructed and a CCC has been issued for the Temporary Emergency Access and Temporary Gravel Turnaround.
- (e) ARTICLE 5.16: Notwithstanding Articles 5.5, 5.6 and 5.7, a CCC for Paved Roads, Sidewalks, Curb and Gutter shall not be issued, nor be deemed to have been issued, until the Owners have constructed all permanent emergency access walkways to the satisfaction of the Transportation Department.
- (f) ARTICLE 5.17: Notwithstanding Articles 5.5, 5.6 and 5.7, a CCC for the MR Site shall not be issued, nor be deemed to have been issued, until the Owners have constructed the post and rail fencing to the satisfaction of Parks.
- (g) ARTICLE 8.12: Notwithstanding Articles 8.2 and 8.7, \$ **"100% or 200% of LS Estimate"** of the Security shall be retained for the Landscaping. This security shall not be released until an FAC has been issued for the Landscaping.
- (h) ARTICLE 8.13: Notwithstanding Articles 8.2 and 8.7, \$ **"Swale Security"** of the Security shall be retained for maintenance of the Temporary Drainage Swale. This security shall not be released until a CCC has been issued for the permanent drainage system that will eliminate the need for the Temporary Drainage Swale. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Temporary Drainage Swale.

- (i) ARTICLE 8.14: Notwithstanding Articles 8.2 and 8.7, \$ **"Interim SWMF Security"** of the Security shall be retained for the maintenance of the Interim Storm Water Management Facility. This security shall not be released until a CCC is issued for the next stage of the permanent storm water management facility. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Interim Storm Water Management Facility.
- (j) ARTICLE 8.15: Notwithstanding Articles 8.2 and 8.7, \$ **"Temporary SWMF Security"** of the Security shall be retained for the maintenance of the Temporary Storm Water Management Facility. This security shall not be released until a CCC is issued for the permanent drainage system which will eliminate the need for the Temporary Storm Water Management Facility. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Temporary Storm Water Management Facility.
- (k) ARTICLE 8.16: Notwithstanding Articles 8.2 and 8.7, \$ **"Access Security"** of the Security shall be retained for the maintenance of the Temporary Emergency Access. This security shall not be released until a CCC is issued for the permanent paved roads, sidewalks, curb and gutter which eliminate the need for the Temporary Emergency Access. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Temporary Emergency Access.
- (l) ARTICLE 8.17: Notwithstanding Articles 8.2 and 8.7, \$ **10,000.00** of the Security shall be retained for the maintenance of the Temporary Gravel Turnaround. This security shall not be released until a CCC has been issued for the permanent paved roads on adjacent lands that will eliminate the need for the Temporary Gravel Turnaround. The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Temporary Gravel Turnaround.
- (m) ARTICLE 8.18: Notwithstanding Articles 8.2 and 8.7, \$ **"Traffic Signals Holdback Amount"** of the Security shall be retained as security for the payment for traffic signals located at the intersection of Location (the "Traffic Signals"). This security shall not be released until the City has received the payment for the Traffic Signals from the Owners.
- (n) ARTICLE 8.19: Notwithstanding Articles 8.2 and 8.7, \$ **"Security Amount"** of the Security shall be retained for the maintenance of the Temporary/Interim "Insert Improvement" . This security shall not be released until a CCC is issued for the permanent "Insert Permanent Improvement" which will eliminate the need for the Temporary/Interim "Insert Improvement" . The City shall be entitled to draw on this security at any time for the purpose of doing any work required to maintain or abandon the Temporary/Interim "Insert Improvement" .
- (o) ARTICLE 8.20: Notwithstanding Articles 8.2 and 8.7, upon issuance of all CCCs for the Municipal Improvements listed in Schedule "D", with the exception of

Landscaping, and upon written request from the Owners, the City will accept a reduction in the Security from \$ **"Original LC Amount"** (Category B and C only)" to \$ **"Reduction Amount"** .

1.4 For the purposes of this Agreement the following Article(s) shall be amended as follows:

(a) ARTICLE ____:

adding "____" after "...____," in the ____ line.

ARTICLE 2 **BOUNDARY IMPROVEMENTS – OWNERS AGREEMENT**

2.1 The Owners and the City acknowledge that the Owners are to install certain municipal improvements under this Agreement, including "Insert Boundary Improvement" (the "Boundary Improvements"), which may be in excess of the requirement for the Said Lands, and which may benefit other lands (the "Benefiting Lands"). The Owners further acknowledge and agree that the City shall not make any effort or be under any obligation to collect any monies from the owners of the Benefiting Lands with respect to the construction of the Boundary Improvements. The City is hereby expressly released by the Owners of any obligation, statutory or otherwise, to collect any monies, on behalf of the Owners from the owners of the Benefiting Lands, or their successors, in respect to the benefit that the Benefiting Lands shall receive from the construction of the Boundary Improvements. Further, the Owners agree that they shall and do hereby indemnify and save harmless the City, its servants, agents and employees from any action, cause of action, demand, suit, loss, claim or expense made against the City by the owners of the Benefiting Lands or their successors, in tort or contract or either of them, arising out of any failure, non-performance or delay on the part of the Owners in installing the Boundary Improvements, or arising out of the construction or installation of the Boundary Improvements.

ARTICLE 3 **BOUNDARY IMPROVEMENTS**

3.1 The City acknowledges that the Owners are required to install certain municipal improvements, including "Insert Boundary Improvement" (the "Required Boundary Improvement") in excess of the requirement for the Said Lands, and which may benefit the land shown cross-hatched on Schedule "J" (the "Benefiting Lands"). If within ten (10) years of the date of execution of this Agreement, all or any part of the land shown cross-hatched is developed or subdivided, as the case may be, and provided that those developments or subdivisions benefit from the use of the Required Boundary Improvement, the City shall enter into agreements with the applicants for development permits or subdivision approval (the "Future Developers"), requiring the Future Developers to pay an amount in respect of the Required Boundary Improvement. If the Required Boundary Improvement has been constructed and as-constructed costs are available or can be readily determined, including engineering, surveying and administration, then the City will collect the as-constructed costs from the Future Developers and within sixty (60) days pay those funds to the Owners, or such portion thereof as the City actually collects. If the Required Boundary Improvement has not been constructed, then the City will collect from the Future Developers the estimated costs of construction, including engineering, surveying, administration and contingency, which are estimated to be \$ **"Boundary Improvement Amount"** , plus

the sum of \$ **"GST on Amount"** as payment of GST, and within sixty (60) days pay those funds to the Owners, or such portion thereof as the City actually collects. Notwithstanding anything contained in this Article, the City shall not be liable to pay to the Owners any amount which the City is prevented by law, or otherwise, from recovering from the Future Developers.

3.2 The covenants contained in Article 3.1 of this Schedule "E" are subject to and conditional upon the Owners obtaining a utility easement from the owners of the Benefiting Lands, in a form acceptable to the Corporate Services, Law Branch of the City, permitting the Required Boundary Improvement to be on the aforementioned lands, and permitting its maintenance.

ARTICLE 4 PIPELINE RIGHTS OF WAY

4.1 The Owners acknowledge that they are responsible for ensuring that all surface disturbances in the vicinity of the pipeline rights-of-way within the Said Lands are undertaken in accordance with the *Pipeline Act* RSA 2000, Chapter P-15, as amended, the requirements of the Energy Resources Conservation Board and the City's Interim Guidelines for Pipeline Corridors. Any and all cost incurred in ensuring that the requirements of the Act, Board or Guidelines are met shall be borne solely by the Owners.

4.2 The Owners shall, at their sole cost, demarcate the alignment of all pipelines within the Said Lands prior to any surface disturbance being undertaken within or near the said pipeline rights-of-way.

-- END OF SCHEDULE "E" --

SCHEDULE "F"

**METHOD OF CALCULATING DRAINAGE ASSESSMENTS
TO BE COLLECTED FROM FUTURE DEVELOPERS**

The City shall collect from each future Developer amounts calculated in accordance with the following method for oversized services including, but not limited to, storm trunk sewers, being storm sewers having an internal diameter of 1200 mm or more, oversized storm sewer laterals, being oversized storm sewers having an internal diameter of less than 1200 mm, sanitary trunk sewers, being sanitary sewers having an internal diameter of 375 mm or more, oversized sanitary sewer laterals, being oversized sanitary sewers having an internal diameter of less than 375 mm, and stormwater management facilities.

For the purpose of this Schedule "F" and the following Schedule "G", the following definitions shall apply:

Assessable Area or AA - the area of the Developer's subdivision less the municipal, school and environmental reserves, the area of public utility lots, the area of titled pipeline rights of way, the area of freeways and arterial roads and the area of transit centres.

Construction Cost or CC - the approved amount paid by the Developer to his contractor for the construction of oversized services pursuant to that Developer's subdivision approval or development permit, plus fifteen percent (15%) of such amount to cover engineering, surveying and administration expenses but exclusive of all Sales Taxes.

Developer - any person, who subsequent to the date of this Agreement is granted a development permit or subdivision approval in respect of other land benefited by oversized services installed pursuant to this Agreement.

Overexpenditures - the amount by which costs incurred by or contributed to by a Previous Owner towards the cost of construction of oversized services exceeds that Previous Owner's PAC amount.

Previous Area or PA - the assessable area of the Previous Owner's subdivision.

Previous Owner - an owner who has constructed or paid for the construction of the oversized services which benefit the Developer's lands.

$$\text{Rate} = \left(\frac{\begin{array}{c} \text{Total cost of oversized services remaining} \\ \text{to be paid including interest thereon} \end{array}}{\begin{array}{c} \text{Aggregate assessable area of the drainage} \\ \text{basin then remaining to be developed} \end{array}} \right)$$

In determining future assessments to be collected from Developers the following calculations shall be made:

Interest shall be computed as provided in Article 9.5 of the Servicing Agreement.

SCHEDULE "F"

**METHOD OF CALCULATING FUTURE DRAINAGE ASSESSMENTS
TO BE COLLECTED FROM DEVELOPERS**

Calculation 1

$$PAC = AA \times Rate$$

Calculation 2

The Developer's Construction Cost of the oversized services shall be determined.

Calculation 3

For each Previous Owner the following calculation shall be made:

$$Contribution\ from\ Developers = \left(\frac{AA}{PA + AA} \right) \times \left(\begin{array}{l} \text{Remaining Unpaid Overexpenditures of Previous} \\ \text{Owner plus interest thereon calculated at the Prescribed} \\ \text{Rate as defined in Article 9 of this Agreement} \end{array} \right)$$

When the remaining Overexpenditure of a previous agreement is less than or equal to \$10,000.00, the value of the calculation for that previous agreement shall be equal to the remaining Overexpenditure being carried by that previous agreement.

Calculation 4

The Developer's proportional share calculated on an area basis, of the incremental cost of the construction of oversized for the lateral sewers, which benefit the Developer's lands, incurred by Previous Owners, with interest thereon, shall be determined. Oversizing shall include increased depth requirements.

The assessment to be collected shall be determined in accordance with the following principles:

Assessment I

If the Developer has no Construction Costs (when the results of Calculation 2 are zero) the Developer shall pay to the City the greater of:

- (a) the results of Calculation 1 (the PAC amount); or
- (b) the sum of the calculations made for all of the Previous Owners pursuant to Calculation 3.

Assessment II

If the Developer has incurred Construction Costs the Developer shall pay to the City:

- (a) the amount (if any) by which the results of Calculation 1 (the PAC amount) exceeds Calculation 2 (Construction Costs) and
- (b) the sum of the calculations made for all of the Previous Owners pursuant to Calculation 3.

SCHEDULE "F"

**METHOD OF CALCULATING FUTURE DRAINAGE ASSESSMENTS
TO BE COLLECTED FROM DEVELOPERS**

Assessment III

Notwithstanding I and II above, where the result of Calculation 4 is other than zero, the Developer shall pay that amount to the City in addition to the amount payable pursuant to Assessment I or II.

-- END OF SCHEDULE "F" --

SCHEDULE "G"

**CALCULATION OF PRO RATA REBATE TO THE OWNERS FOR
COST SHAREABLE DRAINAGE INFRASTRUCTURE**

Where the City collects monies pursuant to Article 9.1 and Schedule "F" hereof the monies shall be distributed on a pro rata basis to all Previous Owners within the benefiting area who are then carrying overexpenditures.

The monies shall be distributed in the following manner:

Rebate I

If the monies to be distributed were collected from a Developer who incurred no Construction Costs (the monies were paid in accordance with Assessment I of Schedule "F") the monies shall be distributed to Previous Owners:

- (a) pro rata based on the overexpenditures being carried by the Previous Owners if the Developer paid the PAC amount [reference Assessment I(a)]; or
- (b) in accordance with the calculations pursuant to Calculation 3 if the Developer paid the sum of the Calculation 3 calculations [reference Assessment I(b)].

Rebate II

If the monies to be distributed were collected from a Developer who incurred Construction Costs (the monies were paid in accordance with Assessment II of Schedule "F" hereof) the monies shall be distributed to Previous Owners:

- (a) pro rata based on the Overexpenditures being carried by the Previous Owners for the amount the Developer paid with reference to the difference between the results of Calculation 1 (the PAC amount) and Calculation 2 (the Construction Costs) [reference Assessment II(a)]; and
- (b) in accordance with the calculations pursuant to Calculation 3 for the amount the Developer paid pursuant to Assessment II(b).

Rebate III

If the monies to be distributed were collected from a Developer pursuant to the operation of Assessment III of Schedule "F" the monies shall be distributed on a pro rata basis to those Previous Owners who paid for the construction of the oversized lateral sewers.

-- END OF SCHEDULE "G" --

SCHEDULE “H”

**METHOD OF CALCULATING ARTERIAL ROADWAY ASSESSMENTS
TO BE COLLECTED FROM FUTURE DEVELOPERS**

The City shall collect from each future Developer amounts calculated in accordance with the following method for arterial roadways.

For the purpose of this Schedule “H” and the following Schedule “I”, the following definitions shall apply:

Arterial Roadway – those roadways identified as being major transportation routes between areas of the City that are required to provide access for the lands in the Catchment Area, and more specifically those identified in accordance with Bylaw 14380 as amended.

Assessable Area or AA – the area of the Developer's subdivision less the municipal, school and environmental reserves, the area of public utility lots, the area of titled pipeline rights of way, the area of freeways and arterial roads, and the area of transit centres.

Catchment Area – an area of land that will benefit from a proposed Arterial Roadway, and more specifically those areas defined as an ARA Catchment in accordance with Bylaw 14380 as amended.

Constructing Owner – an owner of land within a Catchment Area who constructs an Arterial Roadway.

Construction Cost or CC – means:

- a) in the case of improvements that have been constructed, the actual cost of constructing the Arterial Roadway, or
- b) in the case of improvements that are the subject of a detailed design prepared by a Professional Engineer, the estimated cost of construction of an Arterial Roadway based on the detailed design, or
- c) in the case of improvements that are the subject of conceptual design, the estimated cost of construction of an Arterial Roadway based on conceptual design.

In all cases the Construction Cost shall include the dollar value assigned to any lands dedicated or to be dedicated for Arterial Roadway right of way and transit centre lands, and a reasonable amount for the costs associated with engineering and administering the design and construction of the Arterial Roadway.

Developer - any person who, subsequent to the date of this Agreement, is granted a development permit or subdivision approval in respect of other land within the Catchment Area benefited by the Arterial Roadway constructed or paid for pursuant to this Agreement.

Land Dedication Credit – the area of land dedicated or to be dedicated for Arterial Roadway right of way and transit centre lands, multiplied by the Land Rate.

Land Rate – the value given to the land for Arterial Roadways within the Catchment Area.

Overexpenditure or OE – the amount by which the sum of a Constructing Owner's cost of Arterial

SCHEDULE "H"

**METHOD OF CALCULATING ARTERIAL ROADWAY ASSESSMENTS
TO BE COLLECTED FROM FUTURE DEVELOPERS**

Roadway construction and a Constructing Owners' contribution to a previous agreement exceeds that Constructing Owner's Arterial Roadway Assessment (ARA).

Previous Area or PA – the Assessable Area of the Constructing Owner's subdivision.

Rate – defined below shall be determined at the beginning of each calendar year.

$$\text{Rate} = \left(\frac{\begin{array}{c} \text{Land Dedication Credit remaining} \\ + \text{Construction Cost to construct remaining Arterial Roads} \\ + \text{Overexpenditures remaining from the previous year} \\ + \text{Interest added to remaining Overexpenditures} \\ - \text{Trust amounts being held} \end{array}}{\begin{array}{c} \text{Aggregate Assessable Area of the remaining lands} \\ \text{to be developed with the Catchment Area} \end{array}} \right)$$

In determining future assessments to be collected from Developers the following calculations shall be made:

Interest shall be computed as provided in Article 9.5 of the Servicing Agreement.

Calculation 1

$$ARA = AA \times \text{Rate}$$

Calculation 2

The Developer's Construction Cost of the Arterial Roadway being constructed, which shall be approved by the City.

Calculation 3

For each previous agreement with OE, the following calculation shall be made:

$$\left(\frac{\text{Contribution From}}{\text{Developer}} \right) = \frac{AA}{AA + PA} \left(\frac{\text{Remaining OE From}}{\text{Previous Agreement}} \right)$$

When the remaining OE of a previous agreement is less than or equal to \$25,000.00, the value of the calculation for that previous agreement shall be equal to the remaining OE being carried by that previous agreement.

Assessment I

If the Developer has no Construction Costs (when the result of Calculation 2 is zero), the Developer shall pay to the City the greater of:

SCHEDULE "H"

**METHOD OF CALCULATING ARTERIAL ROADWAY ASSESSMENTS
TO BE COLLECTED FROM FUTURE DEVELOPERS**

- a) the result of Calculation 1 (the ARA amount); or
- b) the sum of the calculations made for all previous agreements pursuant to Calculation 3.

Assessment II

If the Developer has incurred construction costs (when the result of Calculation 2 is greater than zero), the Developer shall pay to the City the amount (if any) by which the result of Assessment I exceeds Calculation 2 (the Construction Costs). If the result of Calculation 2 exceeds Assessment I, then no ARA shall be collected.

Please refer to City Policy C507 - Arterial Roads for Development, for any exceptions that may apply to the terms of this Schedule "H".

-- END OF SCHEDULE "H" --

SCHEDULE "I"

**CALCULATION OF PRO RATA REBATE TO THE
OWNERS FOR COST SHAREABLE ARTERIAL ROADWAY INFRASTRUCTURE**

Where the City collects monies pursuant to Article 9.1 and Schedule "H" hereof, the monies shall be distributed to all owners within the Catchment Area who are then carrying an Overexpenditure.

The monies shall be distributed in the following manner:

Rebate I

If the monies to be distributed were collected from a Developer who incurred no Construction Costs (the monies were paid in accordance with Assessment I of Schedule "H") the monies shall be distributed to previous agreements:

- a) pro rata based on the Overexpenditure being carried by the previous agreements, if the Developer paid ARAs determined by Assessment I(a) of Schedule "H"; or
- b) in accordance with the calculations pursuant to Calculation 3, if the Developer paid ARAs determined by Assessment I(b) of Schedule "H".

Rebate II

If the monies to be distributed were collected from a Developer who incurred Construction Costs (the monies were paid in accordance with Assessment II of Schedule "H") then the monies paid will be distributed pro rata based on Overexpenditure being carried by previous agreements.

Please refer to City Policy C507 - Arterial Roads for Development, for any exceptions that may apply to the terms of this Schedule "I".

-- END OF SCHEDULE "I" --