

APPENDIX A
SAMPLE MUNICIPAL UTILITY AGREEMENT

EXAMPLE

MUNICIPAL UTILITY AGREEMENT
(SANITARY SEWER, STORM SEWER, WATER, AND ROADS)

THIS AGREEMENT, made this _____ day of _____ 2002, by and between _____, whose address is _____, hereinafter referred to as "DEVELOPER" and THE CITY OF EATON RAPIDS, MICHIGAN, a Michigan Municipal Corporation, whose address is 200 South Main Street, Eaton Rapids, Michigan 48827, hereinafter referred to as "CITY":

WITNESSETH:

WHEREAS, DEVELOPER is desirous of extending the municipal sanitary sewer, storm sewer, water main and/or road facilities to serve its proposed development in accordance with the City of Eaton Rapids Municipal Standards and applicable Ordinances, as amended; and

WHEREAS, the parties hereto intend by this Agreement to aid in the administration of the extension of the municipal sanitary sewer, storm sewer, water main and/or road facilities for the proposed development;

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties hereto and in consideration of the foregoing and the mutual promises hereinafter contained as follows:

1. This Agreement concerns the approved site plan, identified as the _____, XX sheets, dated _____, prepared by _____ and sealed by _____, a professional engineer, licensed in the State of Michigan, a drawing of record as to the sanitary sewer, storm sewer, water and road facilities to be built; same may be revised to incorporate changes in the development of the site plan and any new phases thereof, subject, however, to prior written approval of the City Engineer and the revising of the site plan drawing. Issuances of sewer and water permits for connecting individual buildings to the public sanitary sewer, storm sewer and water mains are subject to satisfactory completion of the proposed mains and related appurtenances as later herein agreed.
2. The DEVELOPER shall pay all charges incurred by the CITY for the engineering services required to conduct _____, as completed by the City Engineer, at the CITY's direction.
3. DEVELOPER shall arrange for the procurement of the necessary materials, labor and equipment to cause the construction of the sanitary sewers, storm sewer, water main and road facilities on private and public properties. Certain of these facilities, upon completion shall be owned by the CITY, in a manner consistent with this Agreement, the plans and specifications and all applicable statutes, ordinances and rules and regulations. DEVELOPER shall pay all costs for installation and construction of the proposed facilities including the sanitary sewer, storm sewers, water and road facilities

to be owned by the CITY upon completion thereof. DEVELOPER shall pay all charges incurred by the CITY for engineering services and inspection services as later herein delineated. DEVELOPER shall be responsible for contractors retained to perform the work, and shall condition final payments to said contractors upon certification of the complete work by the CITY.

4. DEVELOPER agrees that it will supply the CITY with construction plans and specifications for any work covered by this Agreement, which plans shall be prepared by a Professional Engineer, licensed to practice in the State of Michigan, to show the proposed utility and road facilities to become the property of the CITY. The plans and specifications shall be consistent with the City of Eaton Rapids Municipal Standards and ordinances. All construction plans and specifications in connection therewith shall be subject to approval by the City Engineer. The City Engineer shall forward all such plans for approval of the appropriate State agency and the issuance of the necessary permits. When a permit is granted by the appropriate State agency, same shall constitute approval by said agency and the City Engineer. DEVELOPER shall furnish CITY ten (10) complete sets of the plans and specifications for the use of the City Engineer for permit issuance and during construction.
5. That the parties agree a commitment is hereby made on the part of the DEVELOPER to build the facilities herein indicated within eighteen (18) months after execution of this Agreement, and on the part of CITY, to own, operate and maintain the storm and sanitary sewers and the manholes, the water main, valves, hydrants and the roads. The storm and sanitary sewer leads from sewer main to the building, and the water leads from the water main to the building shall be maintained by the owners of the buildings, which are connected.
6. The CITY shall provide an inspector to provide detailed construction inspection, including but not limited to the below listed tasks, and to coordinate density/materials testing; the CITY shall contract with other testing agencies, as required, The full cost of testing shall be paid by the DEVELOPER. The cost of performing the TV inspection of the sanitary sewer shall be paid by the DEVELOPER. The CITY shall not provide layout staking.

SANITARY AND STORM SEWER FACILITIES:

- a. Observe all connections to existing pipes and structures.
- b. Check all manholes upon completion of a substantial portion of the project.
- c. Observe air test and PVC deflection (mandrel) test of the sanitary system.
- d. Observe TV inspection of sanitary sewer
- e. Observe subgrade for each manhole.
- f. Observe any and all concrete encasement of risers (sanitary sewers only).

WATER FACILITIES:

- a. Observe all connections to existing mains.

- b. Coordinate shut down of existing customers as situation(s) dictate(s); operation of existing valves shall be by the CITY.
- c. Observe pressure test, disinfection and thrust restraint devices; water samples shall be collected by the CITY in accordance with the Municipal Standards.

ROADS:

- a. Observe grades for subbase and subgrade.
 - b. Coordinate density testing for subbase, subgrade, and bituminous,
7. The City Engineer shall perform the following activities in assessing general compliance with the requirements of City's Municipal Standards and Ordinances:
- a. Spot check materials, general construction methods and procedures.
 - b. Review sanitary sewer (air and mandrel) tests, videotapes of sanitary sewer TV inspection and water main (pressure) test results, as well as the inspector's daily reports.
8. DEVELOPER shall pay the CITY \$10,000.00 for CITY personnel or representatives of the CITY employed to perform inspection service, DEVELOPER shall also pay the actual cost to the CITY for any testing services utilized by the CITY regarding this project.
9. That the construction shall not commence until the City Engineer shall have given written authorization to the DEVELOPER. Prior to starting construction work, DEVELOPER shall have:
- a. Caused his contractor to furnish certificates of insurance noting CITY as an additional insured for the following minimum coverages: (see attached insurance documents)
 - b. Bulkheaded the existing sanitary sewer main at a location and in the manner approved by the City Engineer to preclude storm water getting into the sanitary sewer system.
 - c. Conducted the pre-construction meeting, including in attendance the City Engineer, City staff and relevant agencies and utilities
 - d. Caused his contractor to have obtained proper permits from other governmental agencies as may be applicable and to have notified the MISS DIG program.
10. It is agreed between the parties that the CITY shall have jurisdiction and control of the water valves in CITY'S existing water mains and that any time the water valves must be turned on or off in order to facilitate the construction of the new water main, same shall be done under the jurisdiction of or by representatives of the CITY. Water meters shall not be installed until after the City Engineer and the Department of Public Works have certified the satisfactory completion of the work; however, at the sole discretion of the CITY, temporary meters may be installed at the expense of the DEVELOPER for water

to be used in the construction of a building, said temporary water meter to be installed by CITY's Water Department personnel only after the pressure testing and "safe" water sampling is complete and with the affirmation of the CITY. If temporary meters are permitted by the CITY, the DEVELOPER shall be liable for any damage or loss, which is incurred due to the DEVELOPER's use of the CITY water system. The CITY shall not draw the "safe" water sample prior to satisfactory completion of that portion of the public sanitary sewer, storm sewer and water systems serving the same buildable parcels of land. Safe water samples shall be drawn by CITY personnel and shall be drawn according to Municipal Standards.

11. That the City Engineer shall certify the satisfactory completion of the work provided for hereunder; said certificate shall be filed with the City Clerk. The following items shall be completed before final certification can be made.
 - a. A satisfactory high pressure hydrostatic testing of the water main shall be made.
 - b. Receipt of tests of water taken from the water main showing same to have been tested "safe" by the Michigan Department of Public Health.
 - c. A satisfactory low pressure air test per standards set by ASTM F1417 on the sanitary sewer mains shall be made.
 - d. A satisfactory PVC deflection (mandrel) test on the sanitary sewer mains shall be made.
 - e. TV inspection of sanitary sewer shall be made and reviewed.
 - f. DEVELOPER shall insure clean-up of construction site within the road right-of-way.
 - g. DEVELOPER shall deliver a deed of grant from DEVELOPER to CITY covering all of the in-ground installation, which is to be owned by CITY.
 - h. Waivers of lien on the project from all suppliers and subcontractors shall be filed with the City Clerk.
 - i. Prior to beginning construction, DEVELOPER shall secure the appropriate approval(s) and permit(s) from the Eaton County Road Commission.
 - j. DEVELOPER shall execute the appropriate agreements with the Eaton County Drain Commissioner for the portions of the storm sewer/storm water drainage system, which are located outside of the public road right-of-way.
 - k. If necessary, easement grants, suitable for recording, granting to CITY access to the utility mains to be owned by CITY for construction, operation and maintenance purposes, including the right to make future hook-ups or connections to any of said lines shall have been delivered for such mains not constructed in public roadways.
 - l. Prepare separate as built drawings for the water, storm sewer and sanitary sewer facilities.

12. That no permits for the use of any utilities shall be either requested or issued until after the facilities which are to become the property of the CITY have been certified as satisfactorily complete by the CITY and the proper deeds of grant, waivers of lien and easement agreements are provided to the CITY in accordance with the requirements of paragraph 11 above. In the event of a violation of this paragraph, the CITY may, without notice or liability to the DEVELOPER, disconnect the facilities and/or take any other action necessary to prevent the flowage of sanitary sewage into the public sewer system and/or the flowage of water into the facilities constructed pursuant to this Agreement. The DEVELOPER shall pay all costs, including actual attorney fees, which the CITY incurs in enforcing the provisions of this paragraph.
13. It is further agreed by the parties that no building shall be occupied nor an occupancy permit be issued until after an access road shall be completed to assure access by CITY's fire department apparatus and the City Engineer has certified to the satisfactory completion of the work.
14. CITY agrees that when certification of final approval has been made by the City Engineer, subject to a final financial accounting and any, other applicable considerations which may arise, the Eaton Rapids City Council shall accept the certain facilities which are to be a part of CITY's water, storm sewer or sanitary sewer and road systems.
15. That DEVELOPER guarantees the materials and workmanship in the facilities for a period of one (1) year from the date of final acceptance of said facilities by the Eaton Rapids City Council.
16. That the DEVELOPER shall indemnify and hold harmless, CITY and its agents and employees from and against any and all claims for damages or losses and expenses arising out of or reasonably incidental to construction, installation and/or hook-up operations, irrespective of ownership or control or the specific location of damage or system component involved.
17. Streetlights: DEVELOPER shall install all necessary underground wiring for streetlights. Said underground wiring shall be installed prior to the paving of roads.
18. Sidewalks: DEVELOPER shall be responsible for construction of sidewalks in accordance with city codes applicable to subdivisions. Construction of sidewalks will be required at time of dwelling construction and shall be a requirement for issuance of a building permit.
19. Letter of Credit: DEVELOPER shall provide an irrevocable letter of credit in the amount necessary as estimated by City Engineer to complete this project, naming the CITY as payee, to insure the completion of this project in the event that all requirements of this Agreement are not met within eighteen (18) months after execution of this Municipal Utility Agreement.
20. Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable in any manner, the remaining provisions of this Agreement shall nonetheless continue in full force and effect without being impaired or invalidated in any way. In addition, if any provision of this Agreement may be

modified by a court of competent jurisdiction such that it may be enforced, then said provision shall be modified and, as modified, shall be fully enforced.

21. Applicable Law: This Agreement, together with the rights, duties and obligations hereunder, shall be construed in accordance with the laws of the State of Michigan.
22. Entire Agreement: Except as otherwise stated herein, this Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein, supersedes all prior agreements, understandings and negotiations; and no parole evidence of prior or contemporaneous agreements, understanding and negotiations shall govern or be used to construe or modify this Agreement. No modification or alteration hereof shall be deemed effective unless in writing and signed by all parties to this Agreement.
23. Code of Ordinance: The DEVELOPER shall comply with the provisions of applicable City Ordinances which are in effect at the time when the work is performed under this Agreement, even though there may be changes to these Ordinances after the date that this Agreement is signed by the DEVELOPER.
24. Termination: In the event that the DEVELOPER breaches any of the terms, covenants or conditions contained in this Agreement, the CITY, at its option and without notice to the DEVELOPER, may terminate this Agreement and all of the rights of DEVELOPER hereunder shall cease. The CITY shall be entitled to all costs, including actual attorney fees, which the CITY incurs because of the DEVELOPER's breach of this Agreement.
25. Time: Time is of the essence to this Agreement and each and all of its provisions.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seal the day and year first above written.

IN THE PRESENCE OF:

DEVELOPER:

By:

STATE OF MICHIGAN)
 ss
COUNTY OF EATON)

On this _____ day of _____, 2002 before me appeared _____, to me personally known who being by me duly sworn did say that he executed the within instrument and did acknowledge the same to be the free act and deed of said corporation.

_____, Notary Public
Eaton County, Michigan
My commission expires:

IN THE PRESENCE OF:

CITY: THE CITY OF EATON RAPIDS,
a Michigan Municipal Corporation

By:
Its: Mayor

STATE OF MICHIGAN)
 ss
COUNTY OF EATON)

By:
Its: City Clerk

On this _____ day of _____, 2002 before me appeared Mayor _____ and City Clerk _____, of the City of Eaton Rapids, Michigan, a Michigan Municipal Corporation, to me personally known, who being by me duly sworn, did say that they are respectfully the Mayor and the Clerk of the City of Eaton Rapids, Michigan who executed the within instrument and did acknowledge the same to be their free act and deed of said Michigan Municipal Corporation.

_____, Notary Public
Eaton County, Michigan
My commission expires:

