

### **Policy statement**

Leduc County supports consistent and clear standards for new development and wishes to accommodate new development that makes a positive contribution to the community.

The County adopts a standardized approach to managing new development and assuming ownership of new fixed assets as an outcome of the subdivision and development approval processes. This is accomplished through the adoption of a standard form of *development agreement*.

### **Definitions**

*County* means the municipality of Leduc County in the Province of Alberta.

*Development agreement* means an agreement entered into in accordance with S. 650(1) or S. 655(1)(b) of the *Municipal Government Act*.

*Substantive changes* include any change to the content of Appendix A or B that alters the intent of a provision. This includes, but is not limited to, matters affecting adherence to County design standards, required guarantee periods, dollar amounts specified for deposits, and security requirements, including the form of security required.

### **Policy authority**

*Legislative implications:*

- S. 650(1) of the *Municipal Government Act* enables the municipality to require in a land use bylaw that a developer enter into a *development agreement* as a condition of a development permit.
- S. 655(1)(b) of the *Municipal Government Act* enables a Subdivision Authority to require that a developer enter into a *development agreement* as a condition of subdivision approval.

*Bylaw implications:*

- S. 3.7.2 of *Leduc County Land Use Bylaw No. 7-08* enables the municipality to require that a developer enter into a *development agreement* as a condition of a development permit.

### **Policy standards**

In circumstances where Leduc County requires that a developer enter into a development agreement with the County pursuant to Section 650(1) or Section 655(1)(b) of the *Municipal Government Act* to facilitate the development of an area of land:

1. The County shall use the template attached as Appendix “A” as Leduc County’s form of *development agreement* for residential development.
2. The County shall use the template attached as Appendix “B” as Leduc County’s form of *development agreement* for commercial and industrial development.
3. Prior to a development agreement being signed by a developer, no *substantive changes* shall be made to the terms or conditions set out in Appendices A or B except as authorized in writing by the county manager.

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**Policy responsibilities***Council responsibilities:*

Council will,

- Review and approve this policy;
- Consider any future revisions to this policy at scheduled intervals, or as required.

*Administration responsibilities:*

Administration will,

- Facilitate entering into *development agreements* between Leduc County and individual developers;
- Administer the terms and conditions of *development agreements* once they are in effect.

**Monitoring and updating**

- This policy will be posted on Leduc County's website.
- This policy will be reviewed at least once every four years.

**APPENDIX A**

## Development Agreement Template for Residential Development

DEVELOPMENT AGREEMENT  
(*Residential Development*)

BETWEEN:

Leduc County

And

***DEVELOPER***

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MEMORANDUM OF AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the "Effective Date").

**LEDUC COUNTY**, a municipal corporation, (hereinafter referred to as "the County")

- and -

**Developer**

(hereinafter referred to as "the Developer")

**NOTE: This Development Agreement contemplates that the Developer may proceed with construction of infrastructure prior to registration of the subdivision plan. Purchasers of lots within this subdivision (and others dealing with the Lands) may wish to seek legal advice (in particular see Section 5.17 which states that no building permits or development permits will be issued until all Essential Services have been complete as evidenced by issuance of Construction Completion Certificates, except as agreed to by the County and Section 2.3 which states that the County has the discretion to refuse registration of the subdivision plan if the Developer is in default under this agreement).**

**WHEREAS:**

The Developer is, or is entitled to become, the registered owner of those lands situated in the County as described in Schedule "A" attached to this Agreement (hereinafter referred to as "the Lands");

The Developer proposes to develop a portion of the said lands (hereinafter referred to as "the Development Area") as shown on the Plan attached as Schedule "B" to this Agreement in accordance with Subdivision Approval No. [or Development Permit No. ] dated ;

The County and the Developer are agreeable to the Developer completing or contributing to the Municipal Improvements required throughout and adjacent to the Development Area, in accordance with the provisions of this Agreement, with the Developer, solely, bearing the costs of the Improvements;

The County and the Developer have agreed to enter into an Agreement to ensure adequate and timely provision of required services to the Development Area;

The County is agreeable to the Developer developing the Development Area in accordance with the terms and conditions of this Agreement;

The County and the Developer agree that the Developer shall construct and install the Municipal Improvements required throughout and adjacent to the Development Area;

Upon satisfactory completion of the construction and installation of the Municipal Improvements by the Developer and the issuance of the Construction Completion Certificate for them by the County, the said Municipal Improvements which are on or under Public Property shall become the property of the County;

The County and the Developer have agreed that the said construction and installation of the Municipal Improvements and all matters and things incidental thereto and all other matters or things relating to the development of the Development Area, shall be subject to the terms, conditions and covenants hereinafter set forth:

NOW THEREFORE, in consideration of the premises and mutual terms, conditions and covenants to be observed and performed by each of the parties hereto, the County agrees with the Developer and the Developer agrees with the County as follows:

## **1. INTERPRETATION**

For the purposes of this Agreement, words defined with the Recitals to this Agreement shall have the same meaning ascribed therein and the following words shall have the meaning ascribed below:

- 1.1 "As-Built Drawings" shall mean those drawings or records showing the actual location, length, size, capacity, material, gradient and year of construction of the Municipal Improvements, constructed within the Development Area.
- 1.2 "Commencement of Construction" or "Commence Construction" shall mean the date upon which the Developer commences the actual grading of the Development Area or such other date as may be agreed upon in writing by the County and the Developer; provided, that commencement of grading shall not include the placement of machinery or equipment within the Development Area nor any work preparatory to grading such as the removal of any buildings, materials or things whatsoever within or under the Development Area.
- 1.3 "Common Fencing" shall mean uniform fencing within the Development Area to be constructed by the Developer.
- 1.4 "Construction Completion Certificate" shall mean a Certificate issued by the County, certifying the completion of all or a portion of the Municipal Improvements, or a portion thereof, once the Municipal Improvements have been constructed and installed by the Developer to the satisfaction of the County in accordance with this Agreement.
- 1.5 "Construction Debris" means any building materials, mud, concrete spillage, dust, dirt, garbage, excessive weeds or any other materials that are unsightly or cause an annoyance to property owners within or adjacent to the Development Area.
- 1.6 "Council" shall mean the duly elected Council of the County.
- 1.7 "County" shall mean the municipal corporation of the Leduc County, and the County shall be represented by the County Manager, unless otherwise designated in writing by the County.
- 1.8 "Design Standards" shall mean the procedures, standards and specifications that have been adopted by the County and such other engineering design and construction standards that may be established and revised from time to time by the County's Manager of Planning and Engineering or their designate, or as revised by the County's Council from time to time, and namely that version in place at the time of Commencement of Construction for the Development Area, provided that the County and the Developer may, by written agreement

only, vary or change any of the procedures, standards or specifications set forth in the Design Standards.

- 1.9 "Developer's Consultant" shall mean the consulting professional retained by the Developer and shall include, but not limited to professional engineers, landscape architects, land use planners, and land surveyors.
- 1.10 "Development Area" shall mean the land legally described in Schedule "B" to this Agreement which are delineated and outlined in red on the map attached thereto.
- 1.11 "Essential Services" shall mean those Municipal Improvements and services to be constructed or installed within the Development Area and identified as Essential Services within Schedule "C" of this Agreement:
  - (a) Subsections (a); (b) (but grading completed to rough grading pursuant to section 4.5); (c); (d); (e); (f); (g); (j); (m); (o); (r);
  - (b) but excluding sidewalks, and the second lift of asphalt.
- 1.12 "Final Acceptance Certificate" shall mean a written acceptance, as contemplated in Section 10, issued by the County for the Municipal Improvements, or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Guarantee Period.
- 1.13 "Franchise Utilities" shall mean natural gas, electrical power, telephone, cable television, internet/fiber optic, and any other communication services authorized to occupy the County's easements or rights-of-way.
- 1.14 "Guarantee Period" except where otherwise stated within, shall mean a period of TWO (2) years for all Municipal Improvements, including without restriction landscaping, that are constructed on Public Property and which ownership is transferred to the County, but in any event the Guarantee Period shall not expire before the issuance of a Final Acceptance Certificate.
- 1.15 "Lands" shall mean those lands legally described in Schedule "A" to this Agreement.
- 1.16 "Landscaping" shall mean the modification or enhancement of a site by the preservation of natural features and the enhancement of Public Property within the Development Area, including, but not limited to: grading, turf, trees, shrubs, fencing, inanimate materials (i.e. brick, stone, concrete, tile and wood), walkways, multiways, storm water management facilities, driveways and other site features as designed by a registered landscape architect, and as approved by the County in the Plans.
- 1.17 "Lot Grading Certificate" shall mean the written confirmation issued by the County stating that the finished grade of a development lot conforms with site drainage plans approved by the County.
- 1.18 "Municipal Improvements" shall mean and include, throughout and adjacent to the Development Area, those services and facilities identified in Schedule "C" to this Agreement.
- 1.19 "MGA" shall mean the *Municipal Government Act*, RSA 2000, c M-26, and as amended from time to time.



- 1.20 "Oversizing Costs" shall mean the incremental cost of construction incurred by the Developer that extends or provides capacity for Municipal Improvements in excess of that required for the Development Area and which benefits the future development of lands outside the Development Area together with a FIFTEEN (15%) percent engineering costs allowance.
- 1.21 "Parties" shall mean the County and the Developer, as described above.
- 1.22 "Plans" shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction, location, and installation of all Municipal Improvements, which once approved and accepted in accordance with this Agreement shall be attached as Schedule "G" to this Agreement, and shall include a construction management plan which shall delineate to the County's satisfaction, the procedures and actions for the overall implementation and coordination of activities for the construction and installation of Municipal Improvements.
- 1.23 "Plan of Subdivision" or "Plans of Subdivision" shall mean the subdivision or subdivisions that subdivide the Development Area into separate lots for further development.
- 1.24 "Prime Rate" shall mean the prime lending rate established from time to time at the Leduc Town Centre branch of the Royal Bank.
- 1.25 "Public Property" or "Public Properties" shall include all properties throughout and adjacent to the Development Area to be owned or administered by the County, including road allowances, roadways, utility rights-of-way or easements, both before and after the registration of the Plan or Plans of Subdivision for the Development Area.
- 1.26 "Show Home" shall mean an uninhabited dwelling unit constructed for the purposes of displaying the housing product to be offered for sale within the Development Area.

## **2. PLAN OF SUBDIVISION**

- 2.1 The Developer covenants and agrees that it shall register in the Land Titles Office a Plan of Subdivision for the Development Area within TWELVE (12) months of the date of this Agreement, and further, the Developer agrees:
- (a) that in the event that the Plan of Subdivision for the Development Area is not registered within the said TWELVE (12) months, then the County shall be entitled to terminate this Agreement;
  - (b) that the termination of this Agreement in whole or in part as provided in Clause (a) shall be effective upon the County serving written notice of termination on the Developer;
  - (c) that in the event that this Agreement is terminated in whole or in part as provided in Clause (a), then the Developer shall not be entitled to register any Plans of Subdivision for any portion of the Development Area unless and until a further written agreement is entered into between the Developer and the County; and
  - (d) that in the event that the County terminates this Agreement in whole or in part pursuant to the provisions of this Section, it is understood and agreed that any financial obligations

of the Developer to the County shall survive and the County shall be entitled to enforce such financial obligations as if this Agreement remained in full force and effect.

2.2 The Developer covenants and agrees that it shall comply fully with all conditions of any subdivision approval which may be imposed by the subdivision authority (or if the subdivision authority's decision is appealed, the final decision upon appeal).

2.3 No subdivision shall either be endorsed by the County, or permitted to be registered, unless and until:

(a) the County in its discretion has:

- (i) redistricted the Development Area a district that the County deems appropriate;
- (ii) passed amendments to the County's Land Use Bylaw relating to the regulations applicable to the development within the Development Area that the County deems appropriate;
- (iii) passed any new statutory plans or amendments to any existing statutory plans that the County deems appropriate;
- (iv) has received all necessary approvals from all other orders of government respecting the proposed subdivision or development, the Municipal Improvements, or the Plans;
- (v) approved of all Plans respecting with the construction and installation of all the Municipal Improvements;
- (vi) received confirmation of, or otherwise confirmed, the satisfaction of all conditions contained within the applicable subdivision approval or development permit; and
- (vii) confirmed that registered ownership of the lands comprising the Development Area is satisfactory to the County, including, without restriction, confirmation that the registered owner is the Developer; and

(b) the Developer:

- (i) has provided security satisfactory to the County (as required pursuant to Section 22) and has executed a contract for installation of underground Municipal Improvements; and
- (ii) is not in default of any material obligations (regardless of whether the County has issued a Notice of Default) under the Development Agreement.

2.4 The Developer covenants and agrees that in the event that a Plan of Subdivision for the Development Area is not registered as prescribed herein, or in the event that the Developer does not commence the development of the Development Area within the time limits prescribed specified, THEN the County shall be at liberty, in the County's sole discretion, to re-district the lands within the Development Area back to the land use district in place prior to the Development Area being districted for development purposes.

- 2.5 In the event that the Plan of Subdivision for the Development Area has been registered by the Developer, and the Developer fails to proceed with the construction and installation of the Municipal Improvements for the Development Area within the time limits herein specified, the Developer shall, upon receiving written notice from the County to do so, immediately proceed to take all steps necessary to cancel the registration of the Plan of Subdivision, and further, the Developer, in all events, shall have obtained the cancellation of the registration of the Plan of Subdivision within THREE (3) months of the County providing written notice to the Developer as herein provided.
- 2.6 Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby irrevocably appoints the County as its attorney in fact and in law for the purposes of making all necessary or desirable (in the County's discretion or opinion) applications, executing all necessary or advisable (in the County's discretion or opinion) documents, and taking all further necessary or advisable (in the County's discretion or opinion) steps or actions in order to obtain the cancellation of the registration of the Plan of Subdivision in accordance with the preceding Section of this Agreement.
- 2.7 The power of attorney conferred upon the County by the Developer in Section 2.6 of this Agreement may be exercised by the County in the event that the Developer has not applied for the cancellation of the registration of the Plan of Subdivision within ONE (1) month of the County providing written notice to the Developer pursuant to Section 2.6 of this Agreement, or may be exercised in the event that the Developer has not obtained the cancellation of the registration of the Plan of Subdivision within THREE (3) months of the County providing written notice to the Developer pursuant to Section 2.6 of this Agreement.
- 2.8 The County in its discretion may extend the time limits specified in Section 2.7, but the County and the Developer agree that no act or omission on the part of the County, intentional or unintentional, shall constitute a waiver of the County's right to exercise the power of attorney conferred upon the County by the Developer pursuant to Sections 2.6 and 2.7 of this Agreement.
- 2.9 In the event that the Plan of Subdivision has not been registered by the Developer within the time limits herein specified, the Developer shall, upon receiving written request from the County to do so, immediately proceed to take all steps necessary to register the Plan of Subdivision within THREE (3) MONTHS of the County's written notice.
- 2.10 Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby irrevocably appoints the County as its attorney in fact and in law for the purposes of making all necessary or desirable (in the County's discretion or opinion) applications, executing all necessary or advisable (in the County's discretion or opinion) documents, and taking all further necessary or advisable (in the County's discretion or opinion) steps or actions in order to obtain the registration of the Plan of Subdivision in accordance with the preceding Section of this Agreement.
- 2.11 The power of attorney conferred upon the County by the Developer in Section 2.10 of this Agreement may be exercised by the County in the event that the Developer has not applied for the registration of the Plan of Subdivision within THREE (3) months of the County providing written notice to the Developer pursuant to Section 2.9.

- 2.12 The County in its discretion may extend the time limits specified in Section 2.10, but the County and the Developer agree that no act or omission on the part of the County, intentional or unintentional, shall constitute a waiver of the County's right to exercise the power of attorney conferred upon the County by the Developer pursuant to this section.
- 2.13 Subject to the other requirements of this Agreement, the Developer may proceed with construction of the Municipal Improvements prior to registering a Plan of Subdivision (see section 5.2).

### **3. PLANS**

- 3.1 The Developer shall submit Plans to the County for approval not less than FORTY-FIVE (45) days prior to Commencing Construction and installation of the Municipal Improvements. The Plans shall give all necessary details of Municipal Improvements to be constructed by the Developer, including necessary specifications to be attached thereto.
- 3.2 The Developer covenants and agrees that the Plans shall include a construction timetable for the construction and installation of Municipal Improvements within and adjacent to the Development Area and the Developer shall, upon approval of the Plans by the County, comply with all the time limits and complete all the Developer's work within the dates specified in the construction timetable. The Developer may amend the timetable from time to time with the approval of the County, such approval is not to be unreasonably withheld. Except as otherwise specified in the construction timetable approved, the Developer shall, on or before the DATE, commence construction and installation of the Municipal Improvements within and adjacent of the subdivision and shall complete the construction and installation of the Municipal Improvements, at the Developer's own cost and expense, within and adjacent to the Development Area on or before the DATE.
- 3.3 In regards to Landscaping, the Developer covenants and agrees that the Plans for Landscaping of Public Properties shall comply with the requirements of the County and shall include, but not limited to the generality of the foregoing, Landscaping of all roadways, utility rights-of-ways and public walkways, construction of berms, constructing uniform fencing, installation of recreational equipment and facilities and Landscaping of other Public properties. The Developer agrees that it shall submit the Plans for Landscaping on Public Properties, to be completed by a qualified landscape architect, for the County's approval in conjunction with the balance of the Plans referred to in section 3.1.
- 3.4 The Plans for the construction and installation of the Municipal Improvements for the Development Area shall conform strictly to the Design Standards.
- 3.5 Subject to the terms of this Agreement, it is understood and agreed between the County and the Developer that the Developer shall be entitled to construct the Municipal Improvements in accordance with the Plans approved by the County.
- 3.6 The Developer shall not Commence Construction or commence installation of the Municipal Improvements or any portion, until such time as the County has issued written approval of the Plans. The County may, in its sole discretion, allow the Developer to Commence Construction if only a minor issue is outstanding in relation to written approval of the Plans.

- 3.7 The County agrees that it shall not unduly delay in granting its approval, or in rejecting Plans which have been submitted by the Developer to the County. If the County does not approve whatever Plans may be required to be submitted to the County by the Developer, the Developer shall be entitled to refer any matter in dispute to the County's Council and the decision of the County's Council shall be final and binding and such dispute or difference shall not be subject to arbitration.
- 3.8 It is understood and agreed that the County's approval of the Plans for the Municipal Improvements, are in principle only and, in the case of unforeseen conditions which may adversely affect development, or in the case where a Municipal Improvement to be built in accordance with the Plans would not be suitable for the purposes intended, the detailed design specifications for any of the Municipal Improvements shall be subject to review and revision, from time to time, by the County in accordance with the Design Standards and in accordance with accepted engineering and construction practices.
- 3.9 The Developer acknowledges and agrees that the County's approval of the Plans is in no way intended to be a warranty, representation or guarantee by the County or its professional engineer respecting the content of the Plans, including, without restricting the generality of the foregoing:
- (a) whether the Plans are suitable for the intended purpose;
  - (b) whether the Plans comply with any required federal, provincial or municipal legislation or regulation;
  - (c) whether the Plans comply with the Design Standards; and
  - (d) whether the Plans are in accordance with standard acceptable engineering practices.

#### **4. LOT GRADING AND DRAINAGE STANDARDS**

- 4.1 The Developer covenants that the preparation of the lot grading and drainage Plans, the construction and installation of and all storm water management systems both within private lands and Public Property, all testing associated with storm water management systems (including testing for the height of water tables, soil alkalinity and soil compaction) and the maintenance of all storm water management systems during the Guarantee Period shall be undertaken and conducted in accordance with accepted engineering and construction practices and in accordance with the County Lot Grading Policy and the Design Standards both in place at the time of approval of the Plans and/or the Commencement of Construction.
- 4.2 The Developer shall prepare a surface drainage Plan for the entire Development Area, including public and private lands, to be approved by the County, which shall include grades and drainage patterns for the entire Development Area. The Developer shall obtain and provide to the County all necessary approvals, permits and licenses from Alberta Environment prior to proceeding with any construction within or adjacent to the Development Area.
- 4.3 The Developer covenants that all proposed purchasers and optionees of any of the lots within the Development Area shall be fully advised of the requirements of the County relating to the management and disposal of storm water within lots in the Development Area.

- 4.4 The Developer further covenants and agrees to ensure that all lots that have fill area in excess of ONE (1) metre shall be compacted in accordance with engineered plans, and the Developer shall ensure that the County shall be provided with engineer stamped certified proctor test results to ensure compliance with this Section and further, will provide the County a plan of all such lots that have fill in excess of said ONE (1) metre.
- 4.5 The Developer further covenants and agrees that prior to the issuance of any Construction Completion Certificate for any Municipal Improvements to be constructed and installed within the Development Area, that the Developer shall undertake and complete to the satisfaction of the County such grading work (rough grading) as may be necessary to ensure that all lots within the Development Area have positive drainage and that there will not be any excessive ponding of water within any lots within the Development Area.
- 4.6 It is further agreed and hereby declared by the Parties that the obligation of the Developer to the County to provide surface drainage in accordance with the drainage plan for the Development Area constitutes a covenant running with the lands and binding upon subsequent owners and leaseholders of all or any portion of the Development Area.
- 4.7 The Developer shall provide a copy of the approved surface drainage plan for each lot to its proposed purchaser or others acquiring an ownership interest in that lot within the Development Area. The Developer further agrees to include, as a condition of purchase of any lot within the Development Area, that the purchaser provide in trust to the County a refundable lot grading and private lot Landscaping deposit according to the terms of the County Policy and Fees and Charges Bylaw for single residential lots multi-family lots. This lot grading and private lot Landscaping deposit shall not be refunded to a purchaser until the County has received a copy of an approved Lot Grading Certificate and completion of private lot Landscaping, that meets the aesthetic and design requirements of the County, and the Developer and/or House Builder.
- 4.8 The Developer covenants and agrees that any sale or transfer agreement for any or all lots within the Development Area entered into by the Developer shall include the following provisions related to drainage and Landscaping:
- (a) The finished elevations at all corners of the lot and the ground next to the building shall conform to the approved surface drainage plan. Any changes must be approved, in writing, by the County.
  - (b) House builders will be required to supply a Lot Grading Certificate prepared by an Alberta Land Surveyor, showing compliance with finished grade requirements, within TWO (2) years of issuance of their development permit.
  - (c) Positive drainage must be established away from the building to the gutter or drainage channels as designed.
  - (d) Disposal of water from weeping tile and other foundation drainage shall be subject to The County approval. Disposal of water from weeping tile and other foundation drainage into the sanitary sewerage system is prohibited, in all cases. This will require the provision of sump pump discharge into a storm sewer system designed to accommodate the anticipated weeping tile flow, or, where storm system connections are not available, into swales alongside and between lots, ultimately discharging into the gutter.

- (e) Site improvements shall not alter or disrupt the drainage pattern as established in the surface drainage plan.
- (f) Landscaping and structures such as solid fences, retaining walls and permanent or temporary buildings which may disrupt the surface drainage shall not be permitted without proper engineering to allow drainage flows.
- (g) The County shall at its sole discretion charge to the private lot owner any costs or expenses related to repair of any damages incurred to or on Public Property and Municipal Improvements that is contiguous to private lots which result work done by or on behalf of the private lot owner.

The standards specified herein will apply to construction within the building sites and are to supplement the Alberta Building Code and the County's Land Use Bylaw, and all other applicable policies. All necessary approvals shall be obtained from Alberta Environment and all other affected approving authorities.

## **5. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS**

5.1 Except as otherwise specified in this agreement and in the construction timetable approved under Section 3.2, the Developer shall, at the Developer's own cost and expense:

- (a) Commence Construction and installation of Municipal Improvements, within TWELVE (12) months of execution of this Development Agreement;
- (b) Complete the construction and installation of the Municipal Improvements (excluding Franchise Utilities and Common Fencing on private lands and boulevards with separate sidewalks) to the Construction Completion Certificate stage, within Twenty-Four (24) months of execution of this Development Agreement;
- (c) Complete the construction and installation of Franchise Utilities and Common Fencing on private lands and boulevards with separate sidewalks to a point where they comply with the Plans, and with respect to the Franchise Utilities, the owner of the Franchise Utility has confirmed that the Franchise Utility is operable and the Developer has completed all of its obligations in relation to the Franchise Utility within Twenty-Four (24) months of execution of this Development Agreement;
- (d) Complete the construction and installation of Landscaping to the Construction Completion Certificate stage for boulevards with separate sidewalks within THIRTY-SIX (36) months of execution of this Agreement.

5.2 The Developer, shall not Commence Construction of the Municipal Improvements (or any of them) or otherwise disturb the Lands unless and until the following obligations have been satisfied, namely:

- (a) All obligations required on execution of this Development Agreement including, without limiting the generality of the foregoing:

- (i) payment of costs from oversized constructed by others (section 16, Schedule “D”); and
    - (ii) payment of levies and fees (section 17 and Schedule “E”);
  - (b) Approval of all Plans (section 3);
  - (c) Provision of security (section 22 and Schedule “F”).
- 5.3 The Developer warrants to the County that all of the Municipal Improvements shall be constructed and installed at the Developer’s own cost and expense, in a good and workmanlike manner, in strict conformance with the Plans and proper and accepted engineering and construction practices, in accordance with the terms of this Agreement, in accordance with the Design Standards, and in accordance with the requirements of law applicable to the work, including without limitation, all applicable Federal and Provincial approvals.
- 5.4 The Developer covenants and agrees that it shall within THIRTY (30) days of being directed by the County to do so, and in any event, it shall, prior to the public having access within the Development Area and prior to the application for any Construction Completion Certificate for surface Improvements, complete the installation of all traffic control signs, street identification signs, development identification signs, park signs and any temporary signage required by the County. In regards to the street identification signs, the Developer shall provide the County with the proposed subdivision and road names for approval SIXTY (60) days prior to the subdivision endorsement. Properties in the Development Area shall be assigned a municipal address by the County following confirmation of the registration of the Subdivision Plan for the Development Area with Land Titles. Responsibility for the posting and general maintenance of individual property address signs shall be that of the property owner.
- 5.5 The Developer shall provide a temporary free-standing sign within the Development Area containing a map showing the proposed layout of the entire area including notations regarding the location of municipal reserve, public utility lots, recreational areas, pathways, pond areas, subdivision phasing, and so on in order that residents will have a clear indication of the plans for the Development Area and area surroundings. Such signage will be subject to the approval of the County prior to installation and must be erected within THREE (3) months of the Commencement of Construction of roads and underground Municipal Improvements.
- 5.6 In the event that the Developer has not Commenced Construction of the Municipal Improvements within the time limits specified in Section 5.1, then the County shall be entitled at its sole option terminate this Agreement in whole or in part, and further, the Developer agrees:
- (a) that the termination of this Agreement in whole or in part as provided in this paragraph shall be effective upon the County serving written notice of termination on the Developer;
  - (b) that in the event that this Agreement is terminated in whole or in part as provided in this paragraph, the provisions of Section 2 relating to the cancellation of the Plan of Subdivision shall apply to the Development Area;



- (c) that in the event that this Agreement is terminated in whole or in part as provided in this paragraph, then the Developer shall not be entitled to Commence Construction of the Municipal Improvements for the Development Area unless and until a further written agreement is entered into between the Developer and the County; and
  - (d) That such termination shall be without prejudice to any and all other obligations then due, outstanding and owed by the Developer to the County in relation to the Lands or their development (including, without restriction, any financial obligations of the Developer and the security provisions contained within this Agreement).
- 5.7 In the event that it is necessary or reasonable, in the opinion of the County, to construct or install any temporary or emergency access during the construction and installation of the Municipal Improvements the Developer shall construct and install any such temporary or emergency accesses in accordance to specifications, and in such locations, as determined by the County acting reasonably and the Developer shall grant to the County an easement, in a form acceptable to the County, across the required land for the period for which the access is required.
- 5.8 At all times during the construction and installation of the Municipal Improvements and during all work by the Developer or its agents related thereto:
- (a) the County shall have free and immediate access to all records of or available to the Developer and the Developer's Consultant relating to the performance of the work, including, but without limiting the generality of the foregoing, all design, inspection, material testing and "as constructed" records.
  - (b) the County may:
    - (i) exercise such inspection of the performance of the work as the County may deem necessary and advisable to ensure to the County the full and proper compliance by the Developer with the Developer's undertakings to the County, and to ensure the proper performance of the work;
    - (ii) reject any design, material or work which is not in accordance with the Design Standards or accepted engineering and construction practices;
    - (iii) order that any unsatisfactory work be re-executed at the Developer's cost;
    - (iv) order the re-execution of any unsatisfactory design and the replacement of any unsatisfactory material, at the Developer's cost;
    - (v) order the Developer within a reasonable time to bring on the job and use additional labour, machinery and equipment, at the Developer's cost, as the County deems reasonably necessary to the proper performance of the work;
    - (vi) order that the performance of the work or part thereof be stopped until the said orders can be obeyed;
    - (vii) order the testing of any materials to be incorporated in the work and the testing of any Improvements;

and the Developer at its own cost and expense shall comply with the said orders and requirements of the County unless the Developer takes issue with any such order or requirement, in which case the Developer shall request, in writing, that such issue be arbitrated in accordance with the provisions of Section 21 hereof; PROVIDED, that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the County pursuant to clauses (b)(v), (b)(vi) or (b)(vii); AND PROVIDED FURTHER, that the affected work, except as otherwise agreed by the County in writing, shall stop until such arbitration has taken place.

5.9 Notwithstanding anything expressed or implied in the preceding Section, it is agreed between the County and the Developer:

- (a) that the County shall have no obligation or duty to exercise any of the County's powers of inspection nor any obligation or duty to discover or advise the Developer of any deficiencies in construction or workmanship during the course of the construction and installation of the Improvements;
- (b) that the Developer shall during the course of the construction and installation of the Municipal Improvements provide and maintain adequate inspection services, supervised by a professional engineer; and
- (c) that nothing set forth in the preceding Section shall in any way be construed so as to relieve the Developer of any responsibilities as set forth in this Agreement, and without restricting the generality of the foregoing, the Developer shall fulfill all responsibilities in respect to the design, construction, installation and maintenance of the Municipal Improvements as required by the terms of this Agreement.

5.10 The Developer covenants and agrees that during the construction and installation of the Municipal Improvements, and during the Guarantee Period for the Municipal Improvements, that the Developer shall pay all contractors and other parties hired by the Developer to fulfill the Developer's obligations under this Agreement and that the failure of the Developer to pay any proper account or accounts of its contractors or other parties for whose accounts the Developer is responsible in respect to work or materials supplied to the job, when such account or accounts fall due, shall constitute a breach of this Agreement by the Developer.

5.11 The Developer shall take all effective measures to reasonably control dust, dirt, and Construction Debris in and around the Development Area, including, and without limiting the generality of the foregoing, any building and Landscaping so that dust, dirt, Construction Debris, and garbage originating therein shall not cause annoyance or become a nuisance to property owners and others within or adjacent to the Development Area. The Developer at its own expense shall provide onsite dumpsters or other such containers suitable for the collection and containment of garbage within the Development Area. The Developer shall also at its own expense ensure that Construction Debris is removed from the Development Area by a contracted waste management company. In the event that the County considers that any cleanup or removal of Construction Debris is required, the Developer shall, within FORTY-EIGHT (48) hours of receiving notice from the County, take all necessary action, as determined by the County, failing which the County may take such action and charge all costs and expenses to the Developer. The FORTY EIGHT (48) hours' notice may be waived or shortened by the County:

- (a) in an emergency (as deemed solely by the County);

- (b) if the County is not able to contact the Developer or its Consultant; or
- (c) if the County in its sole discretion and acting under a reasonable apprehension upon the Developer's conduct or statements made that the Developer will not perform the necessary work within the required time frames.

The County may take effective measures to control the Construction Debris after expiry of the notification period, or if the notice is waived; such measures shall be at the expense of the Developer and the County shall within FORTY EIGHT (48) hours notify the Developer of the action taken by the County.

The Developer's obligation under this Section shall continue until ONE HUNDRED (100%) PERCENT of the homes in the Development Area have been completed to the stage where they are ready for occupancy, or the Final Acceptance Certificate for all Improvements has been issued, whichever date occurs latest.

- 5.12 Upon the completion of the work by the Developer, and prior to the issuance of Construction Completion Certificates for the Municipal Improvements, the Developer's Consultant shall submit to the County a statement under their professional seal certifying that the Developer's Consultant has provided adequate periodic inspection services during the course of the work and that the Developer's Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans; in accordance with accepted engineering and construction practices; and in accordance with the Design Standards.
- 5.13 It is understood and agreed between the County and the Developer that during the course of constructing the Municipal Improvements, the re-execution or replacement of unsatisfactory work which is of a minor nature (as determined by the County at its sole discretion) and which does not pose a health or safety danger, may be re-executed or replaced by the Developer, in its discretion, at any time prior to the request by the Developer for a Construction Completion Certificate for the Municipal Improvements in question. The Developer acknowledges and agrees to immediately repair or replace unsatisfactory work of a major nature, as determined by the County at its sole discretion.
- 5.14 The Developer shall ensure that consideration be given to controlling noise, dust and traffic on the site in addition to operating within reasonable hours to limit negative effects on nearby residents. The Developer or its contractors shall not operate equipment outside of the following times: **Monday to Friday 7:00 a.m. to 7:00 p.m. and Saturday 8:00 a.m. to 6:00 p.m. and no construction on Sundays and Statutory Holidays unless written approval is provided by the County.**
- 5.15 In addition to whatever other testing requirements may be imposed upon the Developer by the County, the Developer shall undertake camera video inspection of all storm and sanitary sewer lines shall provide the video and corresponding report prior to the issuance of the Construction Completion Certificate of such lines by the County and no less than SIXTY (60) days prior to the issuance of the Final Acceptance Certificate of any such lines by the County.
- 5.16 If required, the Developer or its contractors shall enter into one or more agreements with the County to address Range Road, Township Road and local subdivision road usage during construction and development of the Development Area.

- 5.17 Notwithstanding anything hereinbefore contained to the contrary, the Developer covenants and agrees (such covenant being of the essence of this Agreement) that it shall plan and complete the development of the Development Area so as to guarantee and ensure to the County that all Essential Services have been installed and rendered operative as evidenced by the issuance of Construction Completion Certificates for the Essential Services and as-built drawings have been delivered to the County, in any part of the Development Area prior to issuance of building permits or development permits.

The County may, in its sole and absolute discretion, issue development and/or building permits:

- (a) for Show Homes at any time prior to the completion of the Essential Services;
- (b) for residences or other structures, if there is in the County's view, only a minor deficiency respecting the issuance of a Construction Completion Certificate for all Essential Services;

but this shall in no way oblige the County to otherwise issue development or building permits or approve occupancy.

- 5.18 The Developer shall submit a proposal for the location of Canada Post community mailboxes to the County for review and approval in accordance with Canada Post design requirements.
- 5.19 Without limiting the generality of Section 24, the Developer shall at all times ensure that all work conducted within the Development Area is done in accordance with all applicable legislation and regulations, including but not limited to the Occupational Health and Safety Code, Alta Reg 191/2021, as amended from time to time. Without limiting the generality of this section, it is expressly understood that the Developer will ensure there is adequate and sufficient toilet facilities on all work sites within the Development Area, and at minimum shall ensure there is no less than the required number of toilet facilities as specified under Section 357 of the Occupational Health and Safety Code.

## **6. USE OF PUBLIC PROPERTIES IN THE PERFORMANCE OF THE WORK**

- 6.1 The County hereby grants to the Developer the right, permission and power to use, break-up, dig, trench, or excavate in the public streets, roads, lanes, boulevards, parks and similar Public Places under the control of the County, within or adjacent to the Development Area, and otherwise to do such work therein and thereon as may be necessary from time to time to construct, develop, erect, lay, operate, maintain, repair, extend, relay and remove any Improvements forming part of the work of the Developer, as may be necessary for the purpose of this Agreement, PROVIDED:
- (a) That not less than FOURTEEN (14) days prior to the date that the Developer intends to enter upon any Public Property (except in the case of emergency repair work) the Developer shall provide to the County detailed written proposals, for approval by the County, for the work to be done within any such property, including:
    - (i) a specific work schedule and procedures proposed to be followed;
    - (ii) detailed engineering drawings of all connections to existing municipal services;

- (iii) provisions to be implemented for temporary access and services;
  - (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption;
  - (v) form and schedule of notification and public relation strategy to be utilized.
- (b) No such work shall be commenced prior to the Developer obtaining the written consent of the County to enter upon such Public Properties; and the County shall not unreasonably delay or withhold such written consent;
  - (c) That the work within Public Properties by the Developer and its agents, contractors and subcontractors shall be subject to the inspection rights of the County as set forth in this Agreement and all directions and requirements of the County shall be obeyed;
  - (d) That the Developer shall do as little damage as possible in the performance of such work, and will cause as little obstruction to such Public Properties as possible;
  - (e) That upon completion of such work the Developer shall restore all such Public Properties to a condition and state of repair equivalent to that which prevailed prior to the performance of such work, including, where necessary, the re-planting or replacement of trees and shrubs, and shall maintain such restored portions of such Public Properties, including such replaced or re-planted trees and shrubs, for a period of TWO (2) years thereafter, ordinary wear and tear excepted;
  - (f) That the restoration of Public Properties shall be part of the Municipal Improvements to be constructed and installed by the Developer and the Developer shall be required to obtain Construction Completion Certificates and Final Acceptance Certificates for the restoration work;
  - (g) That the Developer shall indemnify and save harmless the County from and against all losses, costs, claims, suits or demands of any nature (including all legal costs and disbursements on a solicitor and client basis) which may arise by reason of the performance of work by the Developer; and
  - (h) In the event of emergency repair work, the Developer shall notify the County in writing as soon as possible, and in any event within and no later than 24 hours of such work being commenced.

## **7. INSTALLATION OF FRANCHISE UTILITIES**

- 7.1 The Developer shall at its own expense be solely responsible for all costs and expenses relating to the installation, to the County's satisfaction, of Franchise Utilities to the Development Area and within the roadways, utility lots or easement areas adjoining the lots to be created in the Development Area. The Developer shall indemnify and save harmless the County from and against all losses, costs, claims, suits or demands of any nature (including all legal costs for disbursements on a solicitor and client basis) which may arise by reason of the performance or non-performance of such installation of such services.

- 7.2 The said Franchise Utilities within the Development Area shall be installed within Public Properties, in accordance with the Plans, adjacent to the lots that are intended to be served by such services and shall be installed in a manner and in locations which will permit lot owners within the Development Area to hook up to such services upon paying the normal hook-up fees charged by the Utility Company or franchise holder.
- 7.3 Prior to issuance of Construction Completion Certificates for any Municipal Improvements, the Developer shall provide the County for each of the Franchise Utilities:
- (a) written evidence of the payment in full of the capital charges payable to the owners of the Franchise Utilities in order to obtain their unconditional commitment to construct and install all of the Franchise Utilities;
  - (b) assignment of the agreements with the owners of the Franchise Utilities, providing if the Developer defaults in any of its obligations under this Agreement and the County opts to undertake performance of any of the Developer's obligations the County will have the full benefit of the agreements; and
  - (c) acknowledgement of the assignment from each of the owners of the Franchise Utilities.

## **8. CONTRACTS FOR INSTALLATION OF THE MUNICIPAL IMPROVEMENTS**

- 8.1 Notwithstanding anything contained in this Section, the Developer acknowledges, understands and agrees that the Developer shall be fully responsible to the County for the performance by the Developer of all the Developer's obligations as set forth in this Agreement; AND FURTHER the Developer acknowledges, understands and agrees that the County shall not be obligated in any circumstances whatsoever to commence or prosecute any claim, demand, action or remedy whatsoever against any person with whom the Developer may contract for the performance of the Developer's obligations.
- 8.2 The Developer covenants and agrees that any contract entered into between the Developer and a Third Party in respect to the performance of all or any of the Developer's obligations as set out in this Agreement to construct and maintain the Municipal Improvements, or any of them, shall provide:
- (a) That the Third Party shall indemnify and save harmless the County and the Developer from and with respect to any damages, claims or demands whatsoever (including all legal costs and disbursements on a solicitor and client basis) arising out of the performance of any work undertaken by the Third Party or arising in any way from the negligence of the Third Party's servants, agents or employees;
  - (b) That the Third Party shall provide reasonable proof of financial responsibility;
  - (c) That the Third Party shall comply with the provisions of the *Workers Compensation Act* and the *Occupational Health and Safety Act* for the Province of Alberta;
  - (d) That the Third Party will allow the County access to the work for the purpose of inspection;

- (e) That the works to be performed by the Third Party shall not be deemed to be duly and adequately completed under the contract except upon the issuance of a Construction Completion Certificate for the same by the County;
- (f) The Third Party shall coordinate with the County work forces and others to facilitate the installation of utilities and shall protect such utilities from damage;
- (g) That the Third Party will carry adequate public liability insurance of an amount and coverage satisfactory to the County to protect the Third Party and the County from any claims, actions or demands arising from the pursuance or purported pursuance of the work being performed by such Third Party; and
- (h) That, at the option of the County, the Developer will ensure that the Third Party shall carry a Labour and Materials Payment Bond in the amount of Fifty (50%) percent of the contract price.

## **9. COMPLIANCE WITH ALL PLANS AND SPECIFICATIONS**

- 9.1 The Developer shall, at all times during the construction and installation of the Municipal Improvements, comply fully with all terms, conditions, provisions, covenants and details as may be set out in the Plans, as approved by the County, and such terms and conditions as may otherwise be required pursuant to this Agreement or be agreed upon in writing between the County and the Developer.
- 9.2 The provisions of this Agreement shall be additional to and not in substitution for any law, whether Federal, Provincial or Municipal, prescribing requirements relating to construction standards and the granting of permits under the terms of the Land Use Bylaw of the County and the *Safety Codes Act* and Regulations thereunder. Prior to Commencing Construction and installation of the Municipal Improvements, the Developer shall provide proof that all applicable Federal and Provincial approvals have been obtained.

## **10. ACCEPTANCE OF IMPROVEMENTS - TRANSFER OF IMPROVEMENTS TO THE COUNTY**

### *Construction Completion Certificate*

- 10.1 For purposes of this Section, the County and the Developer agree that no Improvement shall be considered complete unless and until:
  - (a) the Improvement has been fully constructed and installed in accordance with the approved Plans;
  - (b) the Improvement has been constructed and installed in accordance with the Design Standards and accepted engineering and constructed practices;
  - (c) all testing has been completed and the results approved by the County;
  - (d) all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the County;

- (e) all Public Properties which have been disturbed or damaged have been fully restored by the Developer;
  - (f) the Municipal Improvement is suitable for the purpose intended; and
  - (g) the Developer has provided the Municipality with the actual costs and sufficient supporting documentation of all Municipal Improvements located on, in or under Public Properties (including utility rights-of-way and easements) in order that the Municipality is able to meet its accounting and reporting requirements for the acquisition of Tangible Capital Assets. Sufficiency of supporting documentation and costs information shall be determined by the Municipality and its auditors.
- 10.2 When the Developer claims that the Municipal Improvements of the Development Area have been constructed and installed in accordance with the requirements of this Agreement, then the Developer shall give notice in writing of such claimed completion to the County by submitting the Construction Completion Certificate(s) with the Developer's portion completed.
- 10.3 Within SIXTY (60) days of receipt of such claim of completion, the County may undertake an inspection of the Municipal Improvements or may rely on certified as-built drawings of the Municipal Improvements and will notify the Developer in writing of its acceptance (by the issuance of a Construction Completion Certificate) or rejection of the Municipal Improvements so completed.
- 10.4 Notwithstanding the preceding Section, the County may give notice to the Developer of the County's inability to conduct an inspection within the said SIXTY (60) days due to adverse site or weather conditions, and in such an event the time limit for such an inspection shall be extended until SIXTY (60) days following the elimination of such adverse site or weather conditions.
- 10.5 It is understood and agreed between the Developer and the County that the notices required under Sections 10.2, 10.3 and 10.4 shall be given only between the County and the Developer and in no event shall either the County or the Developer give such notices through any contractor or sub-trade which may be engaged by the Developer in the construction of the Improvements.
- 10.6 In the event that any inspection contemplated in Section 10.3 or 10.4 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement, the County may refuse to issue a Construction Completion Certificate for the Municipal Improvement and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request a further inspection and issuance of a Construction Completion Certificate.
- 10.7 It is understood and agreed between the Developer and the County that the County shall be at liberty in its sole discretion to issue a written conditional Construction Completion Certificate for the Municipal Improvements and such Certificate shall be conditional upon the completion of minor deficiencies by the Developer within a time specified by the County; PROVIDED, that the commencement of the Guarantee Period in relation to any such deficiency, if rectified within THIRTY (30) days, shall be back-dated to the date of the said conditional Construction Completion Certificate; AND PROVIDED FURTHER, that the Guarantee Period in relation to any



such deficiency, if not rectified within the said THIRTY (30) days, shall not commence until such time as such deficiency has been rectified by the Developer and received acceptance of the County in accordance with this Agreement

- 10.8 In addition to the default provisions provided by this Agreement, in the event that the Developer fails to apply for Construction Completion Certificates and provide the necessary as-built drawings and other related documents within the timeframes provided for under this Agreement, the County may, at its sole discretion, undertake its own inspection of the Municipal Improvements, at the Developer's sole cost and expense, and issue any necessary Construction Completion Certificates or notices regarding deficiencies as if the Developer itself had applied for Construction Completion Certificates in accordance with Section 10.2.

*Final Acceptance Certificate*

- 10.9 Not more than NINETY (90) days nor less than SIXTY (60) days prior to the expiration of any Guarantee Period for the Municipal Improvements or any portion the Developer shall give notice to the County of expiration of the Guarantee Period for the Municipal Improvements and the Developer shall request a Final Acceptance Certificate in respect to the Municipal Improvements.
- 10.10 Within SIXTY (60) days of the receipt by the County of a request for a Final Acceptance Certificate, the County shall undertake an inspection of the Municipal Improvements and the County shall within the said SIXTY (60) days advise the Developer in writing of any deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements; PROVIDED, that the provisions of Section 10.4 shall also apply to any request for the issuance of a Final Acceptance Certificate.
- 10.11 In the event that any inspection contemplated in Section 10.10 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement the County may refuse to issue the Final Acceptance Certificate of the Municipal Improvements and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request that a further inspection and issuance of a Final Acceptance Certificate.
- 10.12 In the event that any inspection contemplated in Section 10.10 reveals that there are no deficiencies in relation to the Municipal Improvements, the County shall issue in writing its Final Acceptance Certificate for the Municipal Improvements.
- 10.13 It is understood between the County and the Developer that the County shall be at liberty to issue a conditional Final Acceptance Certificate for the Municipal Improvements and such acceptance shall be conditional upon the completion of minor deficiencies by the Developer within THIRTY (30) days.
- 10.14 Upon the issuance of a Construction Completion Certificate by the County for the Municipal Improvements, the Developer hereby acknowledges that all right, title and interest in the Municipal Improvements (excluding facilities owned by private utility companies) located on or under Public Properties (including utility rights-of-way and easement areas) vests in the County without any cost or expense to the County therefore, and the Municipal Improvements shall become the property of the County.

10.15 Notwithstanding anything contained in this Agreement to the contrary, the Developer acknowledges and agrees that the Guarantee Period for the Municipal Improvements shall not expire before the issuance of a Final Acceptance Certificate for the Municipal Improvements by the County to the Developer; PROVIDED, that in the event that either party refers to arbitration the Developer's right to the issuance of a Final Acceptance Certificate for the Municipal Improvement, the arbitrator shall, in accordance with the terms of this Agreement, determine the date upon which any such Final Acceptance Certificate is to be effective.

10.16 Following the issuance of a Construction Completion Certificate for the Municipal Improvements, the County agrees that it shall assume the normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the Municipal Improvements excluding landscaping, fencing and facilities owned by private utility companies. The Developer agrees to be responsible for the maintenance and repair of all Landscaping until the issuance of the Final Acceptance Certificate for Landscaping.

10.17 The County and the Developer agree, notwithstanding the issuance of a Final Acceptance Certificate for the Municipal Improvements, that the developer shall be responsible, for a period of FIVE (5) years following the issuance of a Final Acceptance Certificate for the Municipal Improvements, to repair or replace any of the Municipal Improvements where there were any hidden or latent defects (which were reasonably not detected by inspections or tests actually undertaken) in any of the Municipal Improvements which are causally connected to the performance or non-performance of the obligations under this Agreement and were not discovered prior to the issuance of the Final Acceptance Certificate. In the event of a dispute regarding this provision, and in addition to Section 21 on Arbitration, the Parties may mutually agree to resolve any dispute under this provision by means of mutually hiring an independent engineering firm to determine causation of hidden or latent defects in any Municipal Improvements installed and constructed pursuant to this Agreement.

10.18 It is understood and agreed that the County may in its discretion issue up to NINE (9) separate Construction Completion Certificates for the Municipal Improvements, namely:

- (a) the underground Municipal Improvements referred to in Sections (a), (b), (c), (f) and (m) of Schedule "C" of this Agreement;
- (b) the surface Municipal Improvements referred to in Sections (d, except the top lift of asphalt), (e), (g), (j), (k), of Schedule "C" of this Agreement;
- (c) the separate sidewalk Municipal Improvements referred to in Section (h), (i), (n) and (r) of Schedule "C" of this Agreement;
- (d) the Landscaping referred to in Sections (h), (k) and (p) of Schedule "C" of this Agreement;
- (e) the Landscaping for boulevards on separate sidewalks, referred to in Section (i) of Schedule "C" of this Agreement;
- (f) the Landscaping of open space site amenities and playgrounds (including equipment), referred to in Section (l) of Schedule "C" of this Agreement;

- (g) the Common Fencing on private lands referred to in Section (q) of Schedule "C" of this Agreement; and
- (h) the Common Fencing on Public Property referred to in Section (q) of Schedule "C" of this Agreement.
- (i) The Second Lift of roadway asphalt referred to in Sections (d) and (j) of Schedule "C"

Likewise, the County may in its discretion issue up to NINE (9) Final Acceptance Certificates for those portions of the Municipal Improvements referred to above. Notwithstanding, the County will not issue a Final Acceptance Certificate for Common Fencing on private lands, referred to in subsection (g) above, and for Franchise Utilities, referred to in subsection (a) above.

10.19 It is understood by the Developer and agreed that the County shall at its sole discretion issue a Construction Completion Certificate and a Final Acceptance Certificate for the First Lift of roadway asphalt in the Development Area. Further, it is understood by the Developer and agreed that the County shall issue at its sole discretion a Construction Completion Certificate for the Second Lift of roadway asphalt, followed by a TWO (2) year Guarantee Period, after which the County at its sole discretion will issue a Final Acceptance Certificate. The Developer shall provide a separate construction cost estimate, based on tendered costs, for the Second Lift of roadway asphalt, within which a TWENTY (20%) percent cost escalation shall be accounted for. The Developer shall deposit with the County, Security for the Second Lift of Roadway asphalt in accordance with Section 22 of this Agreement.

## **11. MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER**

- 11.1 The Guarantee Period in respect to any of the Municipal Improvements shall commence with the County's written Construction Completion Certificate for any such Municipal Improvements in good condition and repair (ordinary wear and tear excepted), and the Developer shall, subject to Section 10.17, repair or replace the whole or any portion thereof during such Guarantee Period where such repair or replacement is required, as determined by the County, as a result of any cause other than the neglect by the County, its servants, agents or contractors in the use and operation thereof.
- 11.2 The Developer acknowledges and agrees that prior to the issuance of a Final Acceptance Certificate for any Landscaping, or portion thereof, the County shall be entitled to require the Developer to replace any trees, shrubs or grass which may have died or failed to achieve proper growth, as determined by the County in its sole discretion; AND FURTHER, the County shall be entitled to require the replacement or repair of any other Landscaping such as berming, noise attenuation, rip-rap, screen fencing, or fencing which is not in accordance with the Plans as a result of any cause other than neglect by the County, its servants, agents or contractors in the use and operation thereof.
- 11.3 The Developer covenants that it shall fully comply with the Design Standards and accepted engineering and construction practices, in undertaking and completing the repair or replacement of any of the Municipal Improvements pursuant to the requirements of this Section.

- 11.4 The Developer agrees that in the event of any emergency arising during the Guarantee Period, the County being the sole judge of what constitutes an emergency, then the County shall have the right in its discretion to undertake any repair or remedial work to the Municipal Improvements deemed necessary or appropriate by the County and all costs and expenses incurred by the County in that regard shall be paid by the Developer to the County upon demand.
- 11.5 The County and the Developer agree that during the Guarantee Period, the County shall perform the normal maintenance requirements of the County for all Municipal Improvements, with the exception of Landscaping. With respect to the sanitary sewers, the Developer shall pay the County's costs and expenses for final cleaning and removal of debris prior to issuance of the Final Acceptance Certificate.
- 11.6 Without limiting any of the foregoing, maintenance for which the Developer shall be responsible shall include, without restriction, failure of or damage to the underground Municipal Improvements resulting from defective materials or improper installation or workmanship, settlement of ditches, storm water management facilities, grading, gravelling, repairs or replacement of road and lane surfaces, sidewalks, curbs, and gutters, catch basins and leads, road surfaces constructed by the Developer or its contractor, adjustment and repairs to water mains, main valves, water hydrants, hydrant valves, service lines and valves and valve operating mechanisms; repairs, replacements and adjustments to sewer mains, sewer services, manholes, manhole frames and covers, but shall not include ordinary wear and tear. The Developer covenants that during the Guarantee Period that the Developer shall be responsible, at the Developer's own cost and expense, for adjusting and maintaining all hydrants, valve boxes (for both hydrants and mains) manholes and catch basins and appurtenances thereto and any crack filling of roadways until the County has issued the Final Acceptance Certificate for all aspects of roadway improvements.
- 11.7 The Developer covenants and agrees that in the event that the County is of the opinion that any repair or replacement required during the Guarantee Period is of a major nature, the County shall be entitled, in its discretion, to require a further full Guarantee Period for the particular Municipal Improvement, or portion thereof, and such further Guarantee Period shall commence upon the County issuing a Construction Completion Certificate for the repair or replacement work.

## **12. UTILITY EASEMENTS AND OTHER INSTRUMENTS**

- 12.1 The Plans, as approved by the County, shall designate, public utility lots, easements road allowances, or rights-of-way of widths adequate to the needs of the County and utility companies, for the construction and installation of Municipal Improvements and Franchise Utilities to and through the Development Area, and for storm drainage systems, and shall be of a width and in such locations as required by the County.
- 12.2 The public utility lots, easements, road allowances and utility rights-of-way shall be granted and registered to the County (without further compensation payable to the Developer, except as stated in this Agreement) upon the submission for registration of a Plan of Subdivision or in accordance with section 12.8 for the Development Area.
- 12.3 Where subdivision is contemplated as part of the development of the Development Area, the Developer shall within ONE (1) month of registration of the Plan of Subdivision, and prior to the

sale of any lots within the Development Area, provide to the County proof of the registration of all easements and utility rights-of-way required by the County.

- 12.4 The Developer agrees that the easements, road allowances, utility rights-of-way shall be in a form acceptable to the County and shall be a first charge (excepting other easements and utility rights-of-way) and that the Developer shall obtain and register postponements of all liens, charges and encumbrances in favour of the easements.
- 12.5 Such road easements, road allowances or utility rights-of-way shall provide that the County shall have the right either:
- (a) to assign all or any parts of the rights thereby granted to owners of the Franchise Utilities; or
  - (b) to grant permits or licenses to install, repair and replace gas, power, telephone, cable and communication lines, and all Municipal Improvements, including drainage systems.
- 12.6 All Public Utility lots shall have a 1.5 metre registered easement on adjacent properties for maintenance purposes. Further, the Developer shall construct 1.8 metre pathways in all Public Utility lots, Municipal Reserves or Storm Water Management Facilities where pedestrian/maintenance vehicle access is required to ponds, parks/playgrounds or other walkways (and where not prohibited pursuant to the requirements of any pipeline right of way or the Alberta Utilities Commission).
- 12.7 The Developer covenants that it shall register or cause to be registered against the title to any or all lots in the Development Area or other lands controlled by the Developer, in a form acceptable to the County, restrictive covenants and other instruments which are required by any subdivision approval for the Development Area or otherwise required under the terms of this Agreement.
- 12.8 The Developer hereby grants, conveys, transfers and sets over to and unto the County, its servants, agents, contractors, successors, assigns and licensees:
- (a) the right, license, liberty, privilege and easement across, over, under, on and through and within the Lands, described within Schedule "A" of this Agreement, in accordance with the alignments in the approved Plans (if any), for the purposes of laying down, installing, constructing, operating, inspecting, maintaining, repairing, replacing, altering, removing and reconstructing from time to time sanitary sewer, storm sewer, drainage, water, gas, electrical, telephone, telecommunications, and cable television lines, services or distribution systems, and temporary roadways, together with any and all appurtenances incidental or necessary in relation to the above, together with the right of ingress and egress over the Lands with vehicles, supplies and equipment for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the rights and privileges granted within this Agreement; and
  - (b) the dedication of all roads shown within the subdivision approval for the Lands, as amended by this Agreement or the Plans subsequently approved by the County, which dedications may be registered at any time by the County by road plan in accordance with Section 16.1 of the *Municipal Government Act*.

The grant of the right of way provided above is and shall be for as long as is necessary for the County and is intended to be a covenant that runs with the Lands, until such time as the Plan of Subdivision and/or any applicable and required public utility lots, easements, road allowances and utility rights-of-way have been registered with Land Titles, and shall survive termination of this Agreement.

### **13. MUNICIPAL SERVICES**

- 13.1 As lots are developed in parts of the Development Area, the County will provide thereto, as required, subject to the terms of this Agreement, all municipal services which are normally supplied to all other similar parts of the County and to the same standards and costs, subject to such limitations that may be imposed by reason of the progress of the Developer's work, the availability of such services, the number of lots requiring services, and the configuration of the lots requiring services.
- 13.2 Notwithstanding the preceding Section, the County shall not provide any services related to the maintenance or snow ploughing of any private roads or driveways constructed on the lots.
- 13.3 Prior to the issuance of the Final Acceptance Certificate for all surface Municipal Improvements in the Development Area, the Developer shall at all times after any premises are occupied and used within the Development Area, provide and ensure continuous access to such occupied premises from both the front street and, where applicable, the rear lane, for police, fire and other emergency services.
- 13.4 The Developer, prior to issuance of the appropriate Construction Completion Certificate, covenants and agrees to be responsible for and pay all tolls, rates and fees applicable to street lighting or decorative lighting within the Development Area and to be responsible for and to pay for all street cleaning, snow removal and street sweeping within the Development Area upon the following terms and conditions:
- (a) the Developer shall within THIRTY (30) days of being invoiced by the County, pay to the County any costs incurred by the County for outside forces in connection with street lighting or decorative lighting, street cleaning, snow removal or street sweeping; and
  - (b) where Municipal work forces and equipment are used to provide any such services, the costs to be charged back to the Developer shall be calculated at the existing hourly rates for equipment and labour and the cost of employee benefits then utilized by the County plus an additional FIFTEEN (15%) per cent of all such costs to cover the administrative costs incurred by the County.
- 13.5 The Developer acknowledges and agrees that if any portion of the Development Area is subdivided by way of condominium plan rather than Conventional Subdivision Plan, the County is not obligated to provide its regular services within that portion of the Development Area. Without limiting the generality of the foregoing, the County will not be obligated to provide services (including provision of public utilities, garbage removal or maintenance or internal access roads) to any portion of lands that is within the boundaries of the Condominium plan. With that said, while not obligated the County has the full authority to enter into a separate agreement for the provision of the services for the area of the condominium plan, and the entering of such an agreement is solely in the discretion of the County.

## **14. FENCING**

- 14.1 The Developer shall, at its own expense, as part of the development of the Development Area, construct fences, including wildlife fencing, of the type hereinafter referred to where required by the County, including public utility lots and walkways. The Plans shall include a description of the location of fences, and the design and construction.
- 14.2 All fences to be constructed by the Developer pursuant to the requirements hereof shall be of uniform design and the design and construction thereof shall be subject to the approval of the County in its sole and absolute discretion.
- 14.3 Any Common Fencing as contemplated herein which is wholly located upon Public Properties and does not abut upon other properties, shall be maintained by the Developer during the Guarantee Period as provided in this Agreement.
- 14.4 Any Common Fencing which is intended to separate Public Properties from other abutting lands shall be constructed not less than FIFTEEN (15) centimetres within the boundary of such other lands and shall not be constructed on the boundary line between the Public Properties and the other lands.
- 14.5 Any Common Fencing that is not wholly located upon Public Properties shall be maintained by the Developer until the expiration of the Guarantee Period for such Common Fencing and thereafter shall be maintained by the owners of the properties upon which the Common Fencing is located, and further, in order to ensure the maintenance obligations of such owners, the Developer shall, prior to selling or transferring any such properties, register against such properties a restrictive covenant, in a form acceptable to the County, which shall impose such maintenance obligations upon the future owners of such properties.
- 14.6 The Developer covenants that in addition to the requirements of any permanent fencing within the Development Area, that the Developer shall prior to the issuance of a Construction Completion Certificate for the above ground Municipal Improvements, at the Developer's own cost and expense, construct and maintain temporary fencing of a type and to a standard acceptable to the County around all municipal and environmental reserve parcels within the Development Area.

## **15. MAINTENANCE OF BOULEVARDS AND OTHER PUBLIC AREAS**

- 15.1 The Developer shall be responsible, at the Developer's sole expense, except where limited within this Agreement, to maintain the Developer's lands and all Public Properties within the Development Area in such condition as may be reasonably required by the County, by mowing grass thereon, and eliminating weeds, refuse, litter and undesirable vegetation.
- 15.2 Where the Developer has sold a lot (and transferred possession) within the Development Area, the Developer's obligations under Section 15.1, in respect only to such lot, shall cease.
- 15.3 The Developer covenants and agrees that it shall, at the Developer's own cost and expense, be responsible for the cleanup and removal of all Construction Debris, foreign material and dirt from all Public Properties, including roadways, within and adjacent to the Development Area, subject to the following conditions:

- (a) prior to Commencement of Construction of the Municipal Improvements, the Developer shall provide a Construction Debris management plan for the Development Area to the County for approval, and the Developer shall be responsible for adhering to and for ensuring that all builders within the Development Area adhere to the approved Construction Debris management plan;
  - (b) it shall be the responsibility of the Developer to monitor the condition of Public Properties and take immediate action as necessary to comply with the provisions of this Section;
  - (c) in the event that the County considers that any cleanup or removal of construction debris, foreign material or dirt is required, the Developer shall, within FORTY-EIGHT (48) hours of receiving notice from the County, take all necessary action as determined by the County, failing which, the County may take action and charge back all costs and expenses to the Developer.
  - (d) The Developer's obligations under this Section shall cease and terminate in respect to the Development Area upon the latter of issuance of FACs for all Improvements or completion of housing construction on seventy five (75%) of the private lots within the Development Area.
- 15.4 The County shall assume the normal maintenance of all other Public Properties which have been seeded to grass, such as parks, buffer strips, and the like, after satisfactory germination and establishment of grass sown by the Developer on such Public Properties, and after the latter of either the expiration of the Guarantee Period or upon issuance of the Final Acceptance Certificate.

## **16. OVERSIZING AND SHARING OF SERVICING COSTS**

- 16.1 The Developer recognizes and agrees that the Development within the Development Area will benefit from the oversizing or construction of Municipal Improvements that have been or will be constructed by parties other than the Developer in areas adjacent to the Development Area and other benefiting areas, and therefore, the Developer agrees that it shall bear and pay its proportionate share of such other Municipal Improvements as determined in the discretion of the County. Accordingly, the Developer covenants and agrees to pay to the County such shared costs for oversizing or completed Municipal Improvements upon execution of this Agreement and as provided within Schedule "E".
- 16.2 In the event that the Developer's proportionate share of existing or currently contemplated oversizing is not determined as of the date of this Agreement, the method of calculating the Developer's proportionate share of such Municipal Improvements constructed by other parties shall be determined solely by the County in accordance with good engineering and construction practices, the provisions of any relevant bylaws of the County and in accordance with any agreements which the County has entered into, or may enter into, with contractors, other developers or other persons in respect to the construction of such Municipal Improvements. In such case, the Developer covenants and agrees to pay to the County such shared costs for oversizing or completed Municipal Improvements in accordance with the Schedule "D" and Schedule "E" of this Agreement.



- 16.3 Nothing in this Agreement shall preclude the County from levying in a lawful manner any special frontage assessment or uniform unit rate assessment or special local benefit assessment for the construction, expansion or extension of Municipal Improvements, other than such Municipal Improvements or portions of such Municipal Improvements, which are covered by the provisions of this Agreement.
- 16.4 The Developer, in constructing the Municipal Improvements as contemplated herein, shall bear the costs of oversizing and extending Municipal Improvements designed and installed to accommodate future developments on land adjacent to the Development Area and other benefiting areas, and shall design, construct and install the Municipal Improvements so that such future developments can utilize or benefit from such oversizing or extensions. The County's requirements for oversizing shall be evidenced within the Design Standards or otherwise required to be shown within the Developer's Plans at the time of the County's review and approval.
- 16.5 The costs of the oversizing or extensions contemplated in section 16.4 shall be shared costs and the County and the Developer acknowledge that the Developer shall be entitled to recover such shared costs in accordance with this Agreement.
- 16.6 The County shall not be responsible for payment of any portion of the shared costs, except as may be specifically provided elsewhere in this Agreement, or except in respect to lands owned or acquired by the County, but the County shall use reasonable efforts to give such assistance to the Developer as it can legally give in the recovery of shared costs by making it a term of any Development Agreement between the County and owners of any future benefiting developments that such owners pay their proportionate share of such shared costs to the Developer and by requiring payment of the same by such owners as a condition of the use of the Improvements or as a condition of the approval of any development applications.
- 16.7 The Developer shall, so soon as reasonably possible, provide the County with the details of the costs of oversizing or extension of the Municipal Improvements that accommodate future development on land adjacent to the Development Area and in other benefiting areas for approval by the County, and upon the County approving the said details, the same shall govern for the purpose of determining the amount of shared costs to be paid by such benefiting owners pursuant to section 16.6.
- 16.8 The County agrees that in the event any land adjacent to the Development Area, and other benefiting areas which may benefit from the Municipal Improvements oversized or extended by the Developer, is intended to be developed and the County is advised of any such development, the County will endeavour to notify the Developer in writing of the intended development. The Developer agrees that upon notice of such intended development being sent by the County, the Developer shall notify the County in writing of any claims it has in writing under this Agreement for recovery of shared costs with detailed calculations setting out the amount claimed by the Developer. Until such notice has been delivered by the Developer to the County, the County shall not be required to request from the owners of adjacent lands the payment to the Developer of the shared costs attributable to the lands intended to be developed. Upon receipt of any such notice from the Developer to the County, the County will take the steps contemplated by this Agreement to facilitate the recovery by the Developer of the applicable shared costs.

- 16.9 The County agrees that in calculating any shared costs payable to the Developer, the County shall include interest, calculated from the date of Construction Completion Certificate of all of the Municipal Improvements, compounded annually, at the Prime Rate plus TWO (2%) per cent; PROVIDED, that interest shall cease to accrue FIVE (5) years from the date of the issuance of Construction Completion Certificates for all of the Municipal Improvements.
- 16.10 For purposes of calculating interest payable under section 16.9, the Prime Rate established on the first business day of a particular month shall be utilized and shall be deemed to be the Prime Rate for that entire month.
- 16.11 Notwithstanding anything to the contrary within this Agreement, the Developer shall only be entitled to recover any payment of shared costs within ten (10) years from the date of this Agreement and the Developer shall make no demands against the County or any other developer for payment thereafter. In addition and in that regard, the Developer and the County acknowledge and agree that there exists the potential for significant passage of time between the development of the Development Area and the development of other properties, as well as the corresponding potential for change in development and servicing needs in the near and long term (including, without restriction, alternative servicing based upon proper planning and servicing principles resulting in some oversized Municipal Improvements becoming obsolete or requiring replacement or renewal prior to payment of all potential proportionate shares by other developers). For these and other reasons (including, without restriction, the simple lack of further and other development in general), there shall always exist the potential for adjacent or other lands never becoming benefited by some or all oversized Municipal Improvements. Consequently, and notwithstanding the foregoing and anything to the contrary contained within this Agreement, the County cannot and will not guarantee eventual recovery of proportionate shares of oversizing costs.

## **17. LEVIES AND FEES**

- 17.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water and arterial roadway that will be utilized to provide municipal services to the Development Area, and accordingly, the Developer covenants and agrees to pay to the County off-site levies upon execution of this Agreement and as provided within Schedule "E".
- 17.2 The Developer covenants and agrees that the off-site levies currently established by the County and payable by the Developer to the County are the amounts specified in Schedule "E" of this Agreement. Unless otherwise required by the applicable bylaw, or otherwise already apportioned and applied within Schedule "E" to the lands contained within the Development Area, the County shall distribute any off-site levies specified in Schedule "E" which are shown or levied on the basis of gross hectares in the manner the County considers equitable amongst the parcels within the Development Area (excluding any lands to be owned by the County) so that a specified amount shall be attributed to each parcel within the Development Area.
- 17.3 The Developer acknowledges that the County will incur costs and expenses in the checking of the Plans for the Municipal Improvements, as well as costs and expenses for the testing and inspection of the Municipal Improvements, which costs and expenses are properly part of the costs of constructing and installing the Municipal Improvements and shall properly be borne by the Developer. The County and the Developer agree that unless otherwise required by a Section of this Agreement, any applicable fees bylaw, or any other bylaw of general

application, or unless otherwise stipulated within Schedule "E", upon the execution of this Agreement the Developer shall pay to the County approval and inspection fees as per the fees established from time to time by the County. Such fees may be applied on a flat rate basis or for each hectare within the gross area of the Development Area, or applied on the rate and/or basis required by any applicable fee bylaw or other applicable bylaw of general application, as set forth in Schedule "E", and failing those as may be established from time to time by the County.

17.4 The Developer acknowledges that the amount of the approval and inspection fees payable, whether specified in Schedule "E", are subject to adjustment by the County, and the Developer and the County further covenant and agree that the following provisions shall apply:

- (a) that in the event that at the time of the payment of the approval and inspection fees for the Development Area the County has not as yet established the approval and inspection fees for the applicable calendar year, the Developer shall pay to the County an amount equal to the approval and inspection fees calculated on the basis of then current rate as required within this Agreement;
- (b) within Thirty (30) days of the new approval and inspection fees being established by the County for the applicable calendar year, the amount of the payment shall be adjusted upwards or downwards and the difference shall be paid by the Developer to the County, or paid by the County to the Developer, as the case may be; and
- (c) that the amount of the approval and inspection fees shall only be adjusted so that the new approval and inspection fees are of general application within the County.

## **18. INTEREST ON MONIES OWED TO THE COUNTY**

18.1 Except as otherwise specifically provided in this Agreement, all sums or monies owed by the Developer to the County shall bear interest calculated semi-annually and calculated from the date upon which such sum or monies are due and payable and such interest shall be calculated at a rate per annum equal to the Prime Rate plus TWO (2%) per cent and such interest rate shall be adjusted from time to time in accordance with any change to the Prime Rate.

18.2 In the event that the County, pursuant to this Agreement, is holding any monies, for the purposes of security, belonging to the Developer, the County shall invest such monies and upon the County returning such monies, the Developer shall only be entitled to the principal amount provided (less any amounts lawfully owing from the Developer to the County), with any accumulated interest being the sole property of the County.

18.3 For purposes of calculating interest under Sections 18.1 the Prime Rate established on the first business day of a particular month shall be utilized and shall be deemed to be the Prime Rate for that entire month.

## **19. AMOUNTS PAYABLE UNDER THIS AGREEMENT**

19.1 The Developer acknowledges and agrees that the County and the Developer are properly and legally entitled to make provision in this Agreement, for the purposes specified herein, for the

payment by the Developer to the County of the various sums prescribed in this Agreement, AND FURTHER:

- (a) the Developer acknowledges and agrees that the Agreement by the Developer to pay the said sums is an inducement offered by the Developer to the County to enter into this Agreement;
- (b) the Developer acknowledges that the County has agreed to enter into this Agreement on the representation and agreement by the Developer to pay to the County the sums specified in this Agreement;
- (c) the Developer agrees that the County is fully entitled in law to recover from the Developer the sums specified in this Agreement;
- (d) the Developer hereby waives for itself and its successors and assigns any and all rights, defenses, actions, causes of action, claims, demands, suits and proceedings of any nature or kind whatsoever, which the Developer has, or hereafter may have, against the County in respect to the Developer's refusal to pay the sums specified in this Agreement; and
- (e) the Developer for itself and its successors and assigns hereby releases and forever discharges the County from all actions, claims, demands, suits and proceedings of any nature or kind whatsoever which the Developer has, or may hereinafter have, if any, against the County in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the County pursuant to this Agreement.

19.2 The County and the Developer agree that any amounts of money presently or hereafter owing by the Developer to the County pursuant to the provisions of this Agreement, whether by way of a liquidated or unliquidated claim, and howsoever arising, shall be a charge and encumbrance against the lands described in Schedule "A" of this Agreement, the Developer does hereby mortgage, charge and encumber the said lands as security for the payment or performance of the Developer's obligations within this Agreement, and further, that the County shall be entitled to recover any such monies owing, together with all costs on a solicitor and client basis, by enforcing the charge and encumbrance against the lands described in Schedule "A" of this Agreement.

19.3 The Developer acknowledges and agrees that the County may offset any remaining portion of the any funds paid by the Developer to the County under this Agreement to satisfying any other outstanding payments due and owing to the County.

19.4 Should the Developer become defunct, dissolved, or otherwise ceases to exist, any monies paid or security provided to the County under this Agreement vest in the County and become the County's sole property as if it always had been the County's property. Furthermore, the Developer hereby agrees now that any monies paid or securities provided pursuant to this Agreement in the event the Developer becomes defunct, dissolved, or otherwise ceases to exist, then any other party the Developer may have a relationship or agreement with shall not be entitled to any portion of, or at all, the monies or securities the Developer paid or provided to the County under this Agreement.

## **20. DEFAULT BY THE DEVELOPER**

- 20.1 In the event that the County claims that the Developer is in default in the observance and performance of any of the terms, covenants or conditions of this Agreement, the County may give the Developer THIRTY (30) days' notice in writing of such claimed default and requiring the Developer to rectify same within the said period of THIRTY (30) days.
- 20.2 If the Developer denies that it is in default as claimed in such notice, the Developer shall within TEN (10) days of receipt of such notice request a reference to arbitration pursuant to the provisions of Section 21 hereof. If arbitration is mutually consented to and occurs, and the Arbitrator confirms the claimed default, the Developer shall, notwithstanding the provisions of Section 20.1, have a period of THIRTY (30) days from the receipt of the arbitration ruling within which to rectify such default.
- 20.3 The Developer agrees that in the event that the County has given the Developer written notice of default and the Developer does not, within TEN (10) days of receipt of the written notice, dispute that it is in default, then the Developer shall conclusively be deemed to have acknowledged the default.
- 20.4 In the event that the Developer has failed to rectify such default within the period of THIRTY (30) days from the receipt of the notice of default provided by the County pursuant to Section 20.1 and no arbitration been requested by the Developer, or from confirmation of the default by the Arbitrator pursuant to Section 20.2, the County may, but shall not be obligated to, undertake any work it considers necessary in order to remedy such default and any costs or liability incurred by the County in respect thereof shall be at the Developer's sole cost and expense. The Developer shall pay such costs to the County within Thirty (30) days of receiving demand for payment from the County.
- 20.5 Notwithstanding anything to the contrary herein, in the event that the County, in its discretion, considers it necessary to undertake any immediate work in connection with the construction, installation or repair of the Municipal Improvements, including in a situation which the County considers to be an emergency, the County shall immediately notify the Developer of such situation and shall be entitled to then cause such work to be done and invoice the Developer for said work; PROVIDED, that upon completion of said work, the County shall give notice in writing to the Developer of the County's claims that such repair work was made necessary by reason of a default on the part of the Developer in the observance or performance of the terms, covenants and conditions of this Agreement, and if the Developer denies the claimed default, it shall within TEN (10) days request a reference to arbitration pursuant to the provisions of Section 21 hereof.
- 20.6 The Developer agrees that the County shall, for purposes of undertaking any work under this Section, have free and uninterrupted access to all portions of the Development Area and any other areas under the control of the Developer and that the County shall not be hindered nor restricted in any manner whatsoever in obtaining or exercising such right of access.
- 20.7 The decision of the Arbitrator in any reference respecting a claimed default on the part of the Developer shall be final and binding upon the County and the Developer.
- 20.8 The County and the Developer agree that any rights and remedies available to the County whether specified in this Agreement or otherwise available at law, are cumulative and not

alternative and the County shall be entitled to enforce any right or remedy in any manner the County deems appropriate in its discretion without prejudicing or waiving any other right or remedy otherwise available to the County.

20.9 In the event that, and without restricting the provisions of the foregoing:

- (a) a default by the Developer has not been rectified by the Developer in accordance with the foregoing provisions; or
- (b) a default by the Developer has been rectified by the County in accordance with the foregoing provisions and the Developer fails to pay the cost and expense of this rectification within FIVE (5) DAYS after receipt from the County of an account therefore; or
- (c) emergency repair work has been done by the County, and the Developer fails to pay the cost and expense of the repair work within FIVE (5) DAYS of the demand for payment; or
- (d) the subdivision approval for the Development Area has been suspended, cancelled or lapsed; or
- (e) the Plan of Subdivision contemplated by the subdivision approval is not registered with Land Titles in the time period provided by section 2.1 of this Agreement; or
- (f) the Developer has become insolvent, there is a filing or presenting of a petition in bankruptcy against the Developer, there is an appointment of a receiver or a receiver-manager of the Developer or any of its assets either privately or by court appointment, or there are any proceedings or proposal with respect to the Developer commenced under either the *Companies Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any successor legislation;

then the County, in its sole discretion may:

- (i) demand as Payee under any security provided by the Developer pursuant to section 22.11 of the Agreement in such amounts as the County deems appropriate in its sole discretion; or
- (ii) terminate this Agreement, which termination shall be effective the date notice is given to the Developer, provided that termination shall not release the Developer from any financial obligations under this Agreement, any liability arising out of or in connection with this Agreement, of its obligations to indemnify the County, or from any damage claim available to the County for breach of this Agreement; or
- (iii) revoke its endorsement of the Plan of Subdivision if the such Plan of Subdivision has been submitted for registered with Land Titles; or
- (iv) invoke any two or more of the above remedies, which shall be cumulative remedies and not exclusive.

## **21. ARBITRATION**

- 21.1 Subject to any other provisions of this Agreement to the contrary, if any dispute or difference between the Parties shall arise under this Agreement, either party may give to the other notice of such dispute or difference and refer such dispute or difference to arbitration in accordance with the provisions of this Agreement.
- 21.2 Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the County and the Developer, and his decision shall be final and binding. In the event that the County and the Developer shall fail to agree on an arbitrator within FORTY-EIGHT (48) hours of either party giving notice to the other party notice of a dispute or difference pursuant to Section 21.1 hereof, then an application shall be made to a Justice of the Court of King's Bench of Alberta to select the arbitrator.
- 21.3 All charges, fees and expenses of the arbitrator shall be borne and paid by the County or the Developer, or proportionately by both the County and the Developer, depending upon their respective fault as found by the arbitrator.
- 21.4 Nothing in this Agreement shall authorize any reference to arbitration as to any matter or question which under this Agreement is expressly or by implication required or permitted to be decided by the County, the Committee of the Whole or the Council of the County or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by the County, the Committee of the Whole or the Council of the County. In any such instance the discretion, decision, opinion or determination of the County, the Committee of the Whole or the Council of the County, as the case may be, shall be final and binding upon the Developer.

## **22. INDEMNITY AND SECURITY**

- 22.1 The Developer shall indemnify, defend and hold harmless the County, and all of its respective officials, officers, employees and authorized representatives from and against any and all suits, actions, payments, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, legal fees, costs and expenses sustained by the County of every nature and description, whether arising before or after the completion of any activity, work, maintenance or construction as contemplated in this Agreement and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, error, omission or fault whether active or passive of the Developer, its employees, contractors, sub-contractors, engineers, agents or anyone acting under the Developer's direction or control or on its behalf in connection with or incidental to any activity, work, maintenance or construction contemplated herein.
- 22.2 The Developer covenants and agrees that it shall carry comprehensive liability insurance and that the following provisions shall apply to such insurance:
- (a) the County shall be an additional named insured in all public liability policies;
  - (b) all policies shall provide that an event of default on the part of the Developer, its servants or agents, shall not be an event of default on the part of the County;

- (c) none of the policies shall be cancelled unless THIRTY (30) days prior written notice of cancellation is first given to the County;
- (d) copies of all policies of insurance shall immediately be provided to the County upon written request by the County;
- (e) the insurance policies shall have the minimum limits of coverage of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence for such period as the Developer has any rights or obligations hereunder with respect to the Development Area, and a comprehensive liability policy, including extended coverage and malicious damage endorsement, as per industry standard, insuring the full value of the work undertaken by the Developer pursuant to this Agreement.

22.3 In order to ensure to the County full compliance by the Developer with the terms, covenants and conditions of this Agreement, the Developer hereby covenants and agrees that it shall deliver and deposit with the County security in the form hereinafter prescribed and that the following provisions shall apply to determining the amount of the security and the time or times at which the security shall be deposited with the County:

- (a) the security shall be deposited by the Developer with the County prior to the commencement of construction;
- (b) the security shall be an amount equal to the sum of the following amounts:
  - (i) 100% of the estimated cost for constructing and installing all Municipal Improvements, including Landscaping (but excluding Franchise Utilities) where the Construction Completion Certificate has not been issued;
  - (ii) 100% of the estimated cost for constructing and installing each and every Franchise Utility (unless the County has been advised by the respective franchise owner in writing that the Franchise Utility complies with the Plans, is operable and the Developer has completed all of its obligations in relation to the Franchise Utility);
  - (iii) 100% of the estimated cost for constructing and installing the second lift of asphalt as calculated pursuant to section 10.19;
  - (iv) 100% of the Common Fencing on private lands;
  - (v) 15% of the estimated costs for constructing and installing all Municipal Improvements including Landscaping (but excluding Franchise Utilities and Common Fencing on Private Lands) for which a Construction Completion Certificate has been issued. However if a Construction Completion Certificate has been issued with deficiencies noted, 125% of the estimated cost for completing such deficiencies shall be required;
  - (vi) 100% of the cost any other incomplete obligation or default of the Developer under the Development Agreement, whether or not a Notice of Default has been issued; and



- (vii) such other amounts as are required elsewhere under the provisions of this Agreement.
  - (c) for purposes of this paragraph, the estimated cost for the Municipal Improvements shall be determined as follows:
    - (i) where actual tendered costs are available, the tendered costs shall be used;
    - (ii) where actual tendered costs are not available, the Developer's Consultant shall prepare cost estimates which shall be submitted to the County for approval, and if approved by the County, such cost estimates shall be used.
- 22.4 It is understood and agreed by the Developer that the Developer shall, during the currency of this Agreement (including the Guarantee Period maintain in full force and effect all security and liability insurance prescribed herein.
- 22.5 The said security as above referred to shall consist of an Irrevocable Letter of Credit issued by a Chartered Bank in Canada or ATB Financial; PROVIDED, that all security shall be in terms and form to be approved by the County's solicitors.
- 22.6 Any Irrevocable Letter of Credit provided as security by the Developer shall contain a covenant by the issuer that if the issuer has not received a release from the County SIXTY (60) days prior to the expiry date of the security, then the security shall automatically be renewed, upon the same terms and conditions, for a further period of ONE (1) year.
- 22.7 In regards to security provided under this Agreement, the following terms and conditions shall apply:
- (a) any cash security deposit, Irrevocable Letter of Credit or other security required or otherwise provided by the Developer to the County pursuant to this Agreement is hereby assigned and pledged to the County as security for the performance of the Developer's obligations as contemplated herein (such assignment and pledge to be perfected by possession and/or registration);
  - (b) the Developer acknowledges having received a copy of this Agreement, and the security terms contemplated herein, and waives any right it may have to receive a copy of any Financing Statement or Financing Charge Statement in relation hereto; and
  - (c) notwithstanding any other provision of this Agreement and further, without prejudice to any other right or remedy of the County, the obligation of the County or its solicitor to release any security deposit funds held by it under or in connection with this Agreement (including, without restriction, any cash security) is subject to the County's right to deduct or set off any amount which may be due by the Developer to the County or the amount of any claim by the County against the Developer under this Agreement (including, without limitation, the amount of any liquidated damages). Without limitation, if the Developer is in breach or default of any provision of this Agreement and, after receiving notice thereof, the Developer does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the County may (but shall not be obligated to) take any measures it considers necessary to remedy

such default or breach and any costs or liabilities incurred by the County in respect thereof may be deducted from or set off against any amount(s) to be paid or released to the Developer under this Agreement. This provision shall survive the termination of this Agreement for any reason whatsoever.

- 22.8 Any security or insurance herein required to be deposited by the Developer may be required to be increased or decreased by the County upon written notice to the Developer at any time during the currency of this Agreement if it shall appear to the County in its discretion that the security or insurance deposited is excessive or insufficient in relation to the costs or protection to the County, for which security or insurance has been provided.
- 22.9 The amount of insurance to be provided by the Developer to the County may, in the sole and absolute discretion of the County, be reduced on application by the Developer upon the Developer having received a Construction Completion Certificate or Final Acceptance Certificate for the Municipal Improvements or any of them, so completed.
- 22.10 The amount of security to be provided by the Developer to the County may, in the sole and absolute discretion of the County, be reduced on application by the Developer upon the Developer having received a Construction Completion Certificate or Final Acceptance Certificate for the Municipal Improvements, or any of them, so completed; PROVIDED THAT, the security maintained by the County shall not be less than the percentages prescribed in section 22.3 above. Upon the issuance of all Final Acceptance Certificates for the Improvements, the County shall return to the Developer all remaining security held by the County pursuant to this Agreement.
- 22.11 In the event that the County is of the opinion that:
- (a) a default by the Developer has not been rectified by the Developer in accordance with the provisions of this Agreement.
  - (b) a default by the Developer has been rectified by the County in accordance with the provisions of this Agreement and the Developer has failed to pay the costs and expenses of such rectification within THIRTY (30) days after receipt from the County of an account therefore;
  - (c) emergency repair work has been done to Improvements by the County in accordance with the provisions of this Agreement and the Developer fails to pay the costs and expenses of such repair work within THIRTY (30) days after receipt from the County of an account therefore;
  - (d) the Developer by any act or omission is in default of any term, condition or covenant of this Agreement;
  - (e) the security to be provided by the Developer to the County pursuant to this Agreement is due to expire within a period of SIXTY (60) days and the Developer has not deposited with the County a renewal or replacement of such security in terms and form acceptable to the County's solicitors;

the County may invoke the provisions of this Section, and make demands as payee and beneficiary under the Irrevocable Letter of Credit provided by the Developer to the County pursuant to the requirements of this Agreement.

- 22.12 In the event that the County has negotiated or called upon the security to be deposited by the Developer with the County in circumstances where the said security was due to expire within the said SIXTY (60) day period, then the County shall be entitled to hold any funds thereby obtained in lieu of the security which has been negotiated or called upon.
- 22.13 In the event that the County has negotiated or called upon the security to be deposited by the Developer with the County, the County may, at its option and discretion, use any funds thereby obtained in any manner the County deems fit to discharge the obligations of the Developer pursuant to this Agreement.
- 22.14 The security requirement contained within and provided by the Developer is without prejudice to the Developer's responsibility under this Agreement. Nothing shall prevent the County from demanding payment or performance by the Developer in excess of the required security, and without having to call upon or otherwise exhaust its remedies in respect of the required security prior to making such demand.
- 22.15 The Developer shall forfeit all remaining security provided to the County under this Agreement after four (4) year from the date of the Agreement, if in the sole opinion of the County, the Developer has not acted in a reasonable manner to complete the obligations of this Agreement, including without restriction any outstanding Municipal Improvements and/or deficiencies or the Developer has become defunct, dissolved, or otherwise ceases to exist.

### **23. DELIVERY OF DOCUMENTS TO THE COUNTY**

- 23.1 Prior to the issuance of a Construction Completion Certificate for the above ground Improvements, the Developer shall, in addition to the requirements specified elsewhere in this Section, deliver to the County all other documentation and information relating to the development of the Development Area which the County considers, in its discretion, necessary or desirable for the delivery of County services to the Development Area and the Developer agrees that not less than thirty (30) days prior to its application for a Construction Completion Certificate for the above ground Improvements that the Developer shall request from the County a list of all documents and information required by the County.
- 23.2 Forthwith upon the completion of the construction and installation of the Improvements and the issuance of a Construction Completion Certificate for the same by the County, the Developer shall deliver immediately to the County all inspection and testing records and As-Built Drawings and records, as herein required, in a form and to standards specified by the County which may include paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the County. Such As-Built Drawings shall include detailed information on the underground and surface Improvements constructed for the Development Area, including, but not limited to, such information such as grading elevations, length of asphalt, length of pipes, fire hydrants, length of sidewalks and multi-way trails, etc.
- 23.3 Notwithstanding any other provision of this Agreement, the Final Acceptance Certificate shall not be issued until SIX (6) months have elapsed subsequent to the date of receipt of the records

AND PROVIDED, that the Final Acceptance Certificate shall not be issued prior to the expiration of the Guarantee Period.

- 23.4 Any and all documents provided by the Developer to the County, including the Plans and as-built drawings, pursuant to this Agreement shall become and are the property of the County, including any proprietary, copyright or moral rights to the same, and the County shall be entitled to utilize such documents in any manner that it sees fit.

## **24. COMPLIANCE WITH LAW**

- 24.1 The Developer shall at all times comply with all legislation (including any applicable Provincial or Federal legislation), regulations and County bylaws and resolutions relating to the development of the Development Area by the Developer.
- 24.2 This Agreement does not constitute approval of any subdivision and is not a development permit, building permit or other permit granted by the County, and it is understood and agreed that the Developer shall obtain all approvals and permits which may be required by the County or any governmental authority.
- 24.3 Where anything provided for herein cannot lawfully be done without the approval or permission of any authority, person or board, the rights or obligations to do it do not come into force until such approval or permission is obtained; PROVIDED, that the parties will do all things necessary by way of application or otherwise in an effort to obtain such approval or permission.
- 24.4 If any provision hereof is contrary to law, the same shall be severed and the remainder of this Agreement shall be of full force and effect.

## **25. GENERAL**

- 25.1 The validity and interpretation of this Agreement and of each clause and part hereof shall be governed by the laws of the Province of Alberta.
- 25.2 The headings in this Agreement are for convenience only and not intended to affect interpretation of this Agreement.
- 25.3 Words impacting the singular number only shall include the plural and vice versa. A reference to any gender includes reference to the other genders. Words impacting persons shall include corporations.
- 25.4 The parties to this Agreement shall execute and deliver all further documents and assurances necessary to give effect to this Agreement and to discharge the respective obligations of the parties.
- 25.5 A waiver by either party hereto of the strict performance by the other of any covenant or provision of this Agreement shall not, of itself, constitute a waiver of any subsequent breach of such covenant or provision or any other covenant or provision of this Agreement.
- 25.6 Whenever under the provisions of this Agreement any notice, demand or request is required to be given by either party to the other, such notice, demand or request may be given by delivery

by hand to, by courier, by email, or by registered mail sent to, the respective addresses of the parties being:

LEDUC COUNTY	AND	NAME OF DEVELOPER
#101, 1101 - 5 Street		ADDRESS
Nisku, AB T9E 2X3		EMAIL
EMAIL		

provided, however, that such addresses may be changed upon Ten (10) days' notice; and provided, further, that if in the event that notice is to be served at a time when there is an actual or anticipated interruption of mail service affecting the delivery of such mail, the notice shall not be mailed but shall be delivered by courier, by hand, or by email. If sent by email, the notice shall be deemed to have been received on the first business day following the day it was dispatched.

- 25.7 The Developer covenants and agrees that in addition to the provisions contained in the text of this Agreement, the Developer shall be bound by the additional provisions found in the Schedules of this Agreement as if the provisions of the Schedules were contained in the text of this Agreement. This Agreement is intended to have EIGHT (8) Schedules, titled: Schedule "A", "B", "C", "D", "E", "F", "G", and "H".
- 25.8 The Developer acknowledges and agrees that the County shall be at liberty, pursuant to the *Municipal Government Act*, upon the execution of this Agreement, to file at the Land Titles Office for the North Alberta Land Registration District a caveat against the Development Area and against the undeveloped portion of the lands described in Schedule "A" for purposes of protecting the County's interests and rights pursuant to this Agreement.
- 25.9 This Agreement shall enure to the benefit of, and shall remain binding upon (jointly and severally, where multiple parties comprising the Developer), the heirs, executors, administrators, attorney under a power of attorney, and other personal representatives of all individual parties and their representative estates, and shall enure to the benefit of and shall remain binding upon, all successors and assigns (if and when assignment permitted herein) of all corporate parties.
- 25.10 This Agreement shall not be assignable by the Developer without the express written approval of the County. Such approval shall be subject to Section 25.11 and may be withheld by the County in its discretion.
- 25.11 It is understood between the County and the Developer that no assignment of this Agreement by the Developer shall be permitted by the County unless and until:
- (a) The proposed assignee enters into a further agreement with the County whereby such assignee undertakes to assume and perform all of the obligations and responsibilities of the Developer as set forth in this Agreement;
  - (b) The proposed assignee has deposited with the County all insurance and security as required by the terms of this Agreement.

25.12 Time shall in all respects be of the essence in this Agreement.

25.13 The Developer shall be responsible for, and within THIRTY (30) days of the presentation of an account or invoice, paying the County all legal and engineering costs, fees, expenses and disbursements, incurred by the County through its solicitors and engineers for all services rendered in connection with the preparation, fulfillment, execution and enforcement of this agreement in full.

25.14 The Parties agree that in the event of one or more of the provisions of this Agreement being subsequently declared invalid, unenforceable, or contrary to law by a court or other binding authority then the same shall be severed and the remainder of this Agreement shall be full force and effect.

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

25.16 In the event that either party is rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder, such party shall give written notice to the other party stating full particulars of such force majeure. The obligation of the party giving such notice shall be suspended during the duration of the delay resulting from such force majeure, to a maximum of ONE HUNDRED AND EIGHTY (180) days. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances of a general nature affecting an industry critical to the performance of the Work, acts of the King's enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, inability with reasonable diligence to obtain materials and any other cause not within the control of the party claiming a suspension, which, by the exercise of due diligence, such party shall not have been able to avoid or overcome; provided however, the term "force majeure" does not include a lack of financial resources or available funds or similar financial predicament or economic circumstances or any other event, the occurrence or existence of which is due to the financial inability of a party to pay any amount that a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid or discontinue such event.

## **26. EXECUTION OF AGREEMENT**

26.1 The Developer hereby acknowledges that it is hereby executing this Agreement having been given the full opportunity to review the same and seek proper and independent legal advice and that the Developer is executing this Agreement freely and voluntarily and of its own accord without any duress or coercion whatsoever and that the Developer is fully aware of the terms, conditions and covenants contained herein and the legal effects thereof.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals, duly attested by the hands of their respective proper officers in that behalf, as of the day and year first above written.

**LEDUC COUNTY**

Per: \_\_\_\_\_

c/s

Per: \_\_\_\_\_

Per: \_\_\_\_\_

c/s

Per: \_\_\_\_\_

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF THE LANDS**

The subject Lands have the legal description of:

**NTD: LEGAL ADDRESS**



**SCHEDULE "B"**  
**THE DEVELOPMENT AREA**

**SCHEDULE "C"**  
**MUNICIPAL IMPROVEMENTS**

Subject to confirmation from the County with respect to either the current existence of any of the following satisfactory to the County, or confirmation that the County has assumed responsibility to initially construct and install them, Municipal Improvements shall mean and include the following to be constructed in and adjacent to the Development Area.

- (a) all sanitary sewer systems including holding tanks, service lines, manholes, mains, lift stations and appurtenances;
- (b) all drainage systems, including storm sewers, storm sewer connections, pumping stations, provisions for weeping tile flow where a high water table or other subsurface conditions cause continuous flow in the weeping tile, storm retention ponds/ storm water management facilities, catch basins, catch basin leads, manholes and associated works, all as and where required by the County;
- (c) all water wells, pumps and lines, including all fittings, valves, and hydrants and looping as required by the County, in order to safeguard and ensure the continuous and safe supply of water in the Development Area;
- (d) all concrete curbs and gutters, sidewalks and sub-grade, base gravel and base asphalt and all surface asphalt;
- (e) all lighting systems for streets, walkways, parking areas and Public Properties as and where required by the County;
- (f) such electrical conduit as may be required by the County for the installation of traffic control signals and traffic control devices;
- (g) all traffic signs, street signs, development identification signs, zoning signs, and directional signs, berming and noise attenuation devices all as and where required by the County;
- (h) subject to subsection (i) below, all walkway systems and Landscaping on both private property and public property which are to be constructed and installed to the satisfaction of the County, and in accordance with the approved landscaping plans;
- (i) all walkway systems and Landscaping on boulevards adjacent to separate sidewalks which are to be constructed and installed to the satisfaction of the County, and in accordance with the approved landscaping plans;
- (j) such construction or development of roads, including lanes, as may be required by the County; and shall include, but in no manner be limited to, a second or temporary access for construction, emergency and vehicular traffic from the Development Area;
- (k) the restoration of all Public Properties to the County's satisfaction which are disturbed or damaged in the course of the Developer's work;

- (l) all open space site amenities and playgrounds, including landscaping and playground equipment, on public lands which are to be constructed and installed to the satisfaction of the County, and in accordance with the approved landscaping plans;
- (m) the relocation, to the County's satisfaction, of all existing utilities and Improvements as required by the County as a result of the installation and construction of the Improvements pursuant to this Agreement;
- (n) the establishment, or re-establishment, of any survey monuments or iron posts (including pins on individual lots) as and where and when required by the County throughout and adjacent to the Development Area;
- (o) public information signs, of a size and location to be approved by the County, and to contain such public information regarding the completion of services and the completion of construction of other facilities as may be required by the County in order to provide proper and complete up to the date information to proposed purchasers and residents within the Development Area;
- (p) major entrance features shall be located either on an added dedication to the required road right-of-way or on private property. The required dedication of road right-of-way shall be defined at the time the Plan of Subdivision for the development is submitted for approval. Any major entrance feature located on private property shall require the registration of an easement to provide for maintenance access to the feature and shall be approved by the County. The easement shall be to the satisfaction of the County;
- (q) such uniform fencing, such as noise attenuation or screening, of either permanent or temporary, and of a standard and design satisfactory to the County, all of which is to be constructed and located to the satisfaction of the County; and
- (r) all utilities including electricity, natural gas, cable television, telephone and internet. Such utilities to be provided in a location and a standard to be approved by the appropriate utility company and the County.

**SCHEDULE "D"**  
**ADDITIONAL PROVISIONS**

In addition to the terms, covenants and conditions contained within this Agreement, the Developer shall be responsible, at its sole cost, for the satisfaction of the following additional conditions:

(i) Landscaping of Public Lands

Further to the Municipal Improvements in Schedule "C" of this Agreement, the Developer shall, at the Developer's sole cost and expense:

- (a) Use a seed mix that consists of 40% Kentucky Bluegrass, 40% Creeping Red Fescue, and 20% Perennial Ryegrass for Landscaping Public Lands;
- (b) Include in the Landscaping Plans, to be approved by the County, and construct and install: Park Amenities; trail types, trail road crossings and connections signage; location of fencing on private lands that abuts public lands; tree planting/other vegetation and configuration of planting beds; riparian plantings for the storm water management facility; and any other requirements of the Leduc County Parks and Recreation Department deems necessary to approve the plans; and
- (c) Surface all trails in asphalt, in accordance with Design Standards.

(ii) Building and Development Permits

The timing of issuance of building and development permits shall be in accordance with Section 5.17. No Development or Building Permits shall be issued until Construction Completion Certificates have been issued and as built drawings have been provided to the County.

(iii) Lot Plans

The Developer shall provide to the County individual lot plans illustrating grades, building pockets, as built, underground service locations and elevations along with street furniture.

(iv) Cost Contribution for Oversized Costs

The Developer recognizes and agrees that the Development within the Development Area will benefit from the Oversizing or construction of Municipal Improvements which have been or will be constructed by parties other than the Developer in areas adjacent to the Development Area and other benefiting areas, and therefore, the Developer agrees that it shall bear and pay its proportionate share of such other Municipal Improvements as determined in the discretion of the County. The Developer's proportionate share of existing or currently contemplated oversizing be calculated and paid upon execution of this Agreement and in any event prior to Commencement of Construction.

The Developer agrees as a benefiting developer, to contribute and pay to the County in the amount of \$\_\_\_\_\_ for the oversizing of the storm water management facilities which accommodate future development on other lands as per below. The cost of the oversized storm water management pond is apportioned on an area basis over the benefiting lands, including the Development Area, as provided in the table below;

<u>Benefiting Lands</u>	<u>Area (ha)</u>	<u>Cost Share/Recoveries</u>
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**SCHEDULE "E"**  
**OVERSIZING, LEVIES AND FEES**

**(a) Offsite Levies**

Levy and Calculation – the Developer shall pay the following servicing contribution and/or Off-Site Levies, pursuant to the County's Off Site Levy Bylaw No. 09-25, as amended, Section 16 and 17 of this Agreement and Sections 650 or 655 of the MGA. Levies in the amount of \$ \_\_\_\_\_ are due and payable to the County:

Water Off-Site Levy	\$20,600/hectare x _____ hectares = \$
Arterial Road Off-Site Levy	\$88,367/hectare x _____ hectares = \$
Sanitary Sewer	\$9,676/hectare x _____ hectares = \$
<hr/>	
Total Off-site Levies	
\$	

**(b) Development Agreement Preparation Fees**

Fees and Calculation – the Developer shall pay the following fees in accordance with the Fees and Charges Bylaw currently due and payable by the Developer pursuant to Section 17 of this Agreement:

- (i) Administrative Development Agreement Preparation Fee - \$ \_\_\_\_\_ per lot, paid in full upon execution of this Agreement;
  
- (iii) Subdivision Requiring New Water Main - \$ \_\_\_\_\_ per lot paid in full at the time of registration of the plan of subdivision, which comes first.

**SCHEDULE "F"**  
**SECURITY**

1. For purposes of calculating the security required to be deposited by the Developer pursuant to Section 22, and subject to the provisions below, the cost estimates for the construction and installation of the Municipal Improvements \_\_\_\_\_ for the following Municipal Improvements only.

Stripping and Grading ( <b>YEAR</b> ) 15%	\$
Underground Utilities - water, sanitary, storm	\$
Surface Works - roads, lanes, and concrete	\$
Power & Communications	\$
Landscaping and Fencing	\$
Subdivision Signage	\$
Legal Survey (\$___/lot)	\$
Construction Engineering	\$
Construction Testing (1.5% items 1, 2, & 3)	\$
 Total	 \$

2. Upon execution of this Agreement, the Developer agrees to provide additional security for the remaining Municipal Improvements based on the actual costs at the time that the work is to be undertaken for the construction and installation of the Municipal Improvements.
3. The Parties hereby represent, warrant, covenant and agree that all of the costs for the construction and installation of the Municipal Improvements for the Development Area, as set out above, are estimates, and as such shall in no way limit or restrict the Developer's responsibility under this Agreement, nor in any way whatsoever establish or otherwise suggest a maximum amount of the Developer's obligations under this Agreement.
4. Where estimates are not available as at the date of this Agreement, the Developer shall provide such estimates as contemplated within Section 22, and the amount of the security shall be established by the County at that time.
5. In the event that any of the actual or tendered costs for the construction and installation of the Municipal Improvements for the Development Area are higher or lower than as estimated above, the security to be provided by the Developer shall be adjusted in accordance with Section 22 so as to be based upon those actual or tendered costs.

**SCHEDULE "G"**  
**SCHEDULE OF PLANS**

\_\_\_\_\_.

Sheet No.      Title of Drawing



**SCHEDULE "H"**  
**INAPPLICABLE PROVISIONS**

*(NTD: Specify any provisions which shall not have effect under this Development Agreement)*

**APPENDIX B**

Development Agreement Template for Commercial and Industrial Development

DEVELOPMENT AGREEMENT  
(*Commercial/Industrial Development*)

BETWEEN:

Leduc County

And

***DEVELOPER***

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MEMORANDUM OF AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the "Effective Date").

**LEDUC COUNTY**, a municipal corporation, (hereinafter referred to as "the County")

- and -

**Developer**

(hereinafter referred to as "the Developer")

**WHEREAS:**

The Developer is, or is entitled to become, the registered owner of those lands situated in the County as described in Schedule "A" attached to this Agreement (hereinafter referred to as "the Lands");

The Developer proposes to develop a portion of the said lands (hereinafter referred to as "the Development Area") as shown on the Plan attached as Schedule "B" to this Agreement in accordance with Subdivision Approval No. [or Development Permit No. ] dated ;

The County and the Developer are agreeable to the Developer completing or contributing to the Municipal Improvements required throughout and adjacent to the Development Area, in accordance with the provisions of this Agreement, with the Developer, solely, bearing the costs of the Improvements;

The County and the Developer have agreed to enter into an Agreement to ensure adequate and timely provision of required services to the Development Area;

The County is agreeable to the Developer developing the Development Area in accordance with the terms and conditions of this Agreement;

The County and the Developer agree that the Developer shall construct and install the Municipal Improvements required throughout and adjacent to the Development Area;

Upon satisfactory completion of the construction and installation of the Municipal Improvements by the Developer and the issuance of the Construction Completion Certificate for them by the County, the said Municipal Improvements which are on or under Public Property shall become the property of the County;

The County and the Developer have agreed that the said construction and installation of the Municipal Improvements and all matters and things incidental thereto and all other matters or things relating to the development of the Development Area, shall be subject to the terms, conditions and covenants hereinafter set forth:

NOW THEREFORE, in consideration of the premises and mutual terms, conditions and covenants to be observed and performed by each of the parties hereto, the County agrees with the Developer and the Developer agrees with the County as follows:

## **1. INTERPRETATION**

For the purposes of this Agreement, words defined with the Recitals to this Agreement shall have the same meaning ascribed therein and the following words shall have the meaning ascribed below:

- 1.1 "As-Built Drawings" shall mean those drawings or records showing the actual location, length, size, capacity, material, gradient and year of construction of the Municipal Improvements, constructed within the Development Area.
- 1.2 "Commencement of Construction" or "Commence Construction" shall mean the date upon which the Developer commences the actual grading of the Development Area or such other date as may be agreed upon in writing by the County and the Developer; provided, that commencement of grading shall not include the placement of machinery or equipment within the Development Area nor any work preparatory to grading such as the removal of any buildings, materials or things whatsoever within or under the Development Area.
- 1.3 "Common Fencing" shall mean uniform fencing within the Development Area to be constructed by the Developer.
- 1.4 "Construction Completion Certificate" shall mean a Certificate issued by the County, certifying the completion of all or a portion of the Municipal Improvements, or a portion thereof, once the Municipal Improvements have been constructed and installed by the Developer to the satisfaction of the County in accordance with this Agreement.
- 1.5 "Construction Debris" means any building materials, mud, concrete spillage, dust, dirt, garbage, excessive weeds or any other materials that are unsightly or cause an annoyance to property owners within or adjacent to the Development Area.
- 1.6 "Council" shall mean the duly elected Council of the County.
- 1.7 "County" shall mean the municipal corporation of the Leduc County, and the County shall be represented by the County Manager, unless otherwise designated in writing by the County.
- 1.8 "Design Standards" shall mean the procedures, standards and specifications that have been adopted by the County and such other engineering design and construction standards that may be established and revised from time to time by the County's Director of Engineering and Utilities or their designate, or as revised by the County's Council from time to time, and namely that version in place at the time of Commencement of Construction for the Development Area, provided that the County and the Developer may, by written agreement only, vary or change any of the procedures, standards or specifications set forth in the Design Standards.
- 1.9 "Developer's Consultant" shall mean the consulting professional retained by the Developer and shall include, but not limited to professional engineers, landscape architects, land use planners, and land surveyors.
- 1.10 "Development Area" shall mean the land legally described in Schedule "B" to this Agreement which are delineated and outlined in red on the map attached thereto.

- 1.11 "Essential Services" shall mean those Municipal Improvements and services to be constructed or installed within the Development Area and identified as Essential Services within Schedule "C" of this Agreement:
- (a) Subsections (a); (b) (but grading completed to rough grading pursuant to section 4.5); (c); (d); (e); (f); (g); (j); (m); (o); (r);
  - (b) but excluding sidewalks, and the second lift of asphalt.
- 1.12 "Final Acceptance Certificate" shall mean a written acceptance, as contemplated in Section 10, issued by the County for the Municipal Improvements, or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Guarantee Period.
- 1.13 "Franchise Utilities" shall mean natural gas, electrical power, telephone, cable television, internet/fiber optic, and any other communication services authorized to occupy the County's easements or rights-of-way.
- 1.14 "Guarantee Period" except where otherwise stated within, shall mean a period of TWO (2) years for all Municipal Improvements, including without restriction landscaping, that are constructed on Public Property and which ownership is transferred to the County, but in any event the Guarantee Period shall not expire before the issuance of a Final Acceptance Certificate.
- 1.15 "Lands" shall mean those lands legally described in Schedule "A" to this Agreement.
- 1.16 "Landscaping" shall mean the modification or enhancement of a site by the preservation of natural features and the enhancement of Public Property within the Development Area, including, but not limited to: grading, turf, trees, shrubs, fencing, inanimate materials (i.e. brick, stone, concrete, tile and wood), walkways, multiways, storm water management facilities, driveways and other site features as designed by a registered landscape architect, and as approved by the County in the Plans.
- 1.17 "Lot Grading Certificate" shall mean the written confirmation issued by the County stating that the finished grade of a development lot conforms with site drainage plans approved by the County.
- 1.18 "Municipal Improvements" shall mean and include, throughout and adjacent to the Development Area, those services and facilities identified in Schedule "C" to this Agreement.
- 1.19 "MGA" shall mean the *Municipal Government Act*, RSA 2000, c M-26, and as amended from time to time.
- 1.20 "Oversizing Costs" shall mean the incremental cost of construction incurred by the Developer that extends or provides capacity for Municipal Improvements in excess of that required for the Development Area and which benefits the future development of lands outside the Development Area together with a FIFTEEN (15%) percent engineering costs allowance.
- 1.21 "Parties" shall mean the County and the Developer, as described above.
- 1.22 "Plans" shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction, location, and installation of all Municipal Improvements, which once

approved and accepted in accordance with this Agreement shall be attached as Schedule "G" to this Agreement, and shall include a construction management plan which shall delineate to the County's satisfaction, the procedures and actions for the overall implementation and coordination of activities for the construction and installation of Municipal Improvements.

- 1.23 "Plan of Subdivision" or "Plans of Subdivision" shall mean the subdivision or subdivisions that subdivide the Development Area into separate lots for further development.
- 1.24 "Prime Rate" shall mean the prime lending rate established from time to time at the Leduc Town Centre branch of the Royal Bank.
- 1.25 "Public Property" or "Public Properties" shall include all properties throughout and adjacent to the Development Area to be owned or administered by the County, including road allowances, roadways, utility rights-of-way or easements, both before and after the registration of the Plan or Plans of Subdivision for the Development Area.

## **2. PLAN OF SUBDIVISION**

- 2.1 The Developer covenants and agrees that it shall register in the Land Titles Office a Plan of Subdivision for the Development Area within TWELVE (12) months of the date of this Agreement, and further, the Developer agrees:
  - (a) that in the event that the Plan of Subdivision for the Development Area is not registered within the said TWELVE (12) months, then the County shall be entitled to terminate this Agreement;
  - (b) that the termination of this Agreement in whole or in part as provided in Clause (a) shall be effective upon the County serving written notice of termination on the Developer;
  - (c) that in the event that this Agreement is terminated in whole or in part as provided in Clause (a), then the Developer shall not be entitled to register any Plans of Subdivision for any portion of the Development Area unless and until a further written agreement is entered into between the Developer and the County; and
  - (d) that in the event that the County terminates this Agreement in whole or in part pursuant to the provisions of this Section, it is understood and agreed that any financial obligations of the Developer to the County shall survive and the County shall be entitled to enforce such financial obligations as if this Agreement remained in full force and effect.
- 2.2 The Developer covenants and agrees that it shall comply fully with all conditions of any subdivision approval which may be imposed by the subdivision authority (or if the subdivision authority's decision is appealed, the final decision upon appeal).
- 2.3 No subdivision shall either be endorsed by the County, or permitted to be registered, unless and until:
  - (a) the County in its discretion has:
    - (i) redistricted the Development Area a district that the County deems appropriate;



- (ii) passed amendments to the County's Land Use Bylaw relating to the regulations applicable to the development within the Development Area that the County deems appropriate;
  - (iii) passed any new statutory plans or amendments to any existing statutory plans that the County deems appropriate;
  - (iv) has received all necessary approvals from all other orders of government respecting the proposed subdivision or development, the Municipal Improvements, or the Plans;
  - (v) approved of all Plans respecting the construction and installation of all the Municipal Improvements;
  - (vi) received confirmation of, or otherwise confirmed, the satisfaction of all conditions contained within the applicable subdivision approval or development permit; and
  - (vii) confirmed that registered ownership of the lands comprising the Development Area is satisfactory to the County, including, without restriction, confirmation that the registered owner is the Developer; and
- (b) the Developer:
- (i) has provided security satisfactory to the County (as required pursuant to Section 22) and has executed a contract for installation of underground Municipal Improvements; and
  - (ii) is not in default of any material obligations (regardless of whether the County has issued a Notice of Default) under the Development Agreement.

2.4 The Developer covenants and agrees that in the event that a Plan of Subdivision for the Development Area is not registered as prescribed herein, or in the event that the Developer does not commence the development of the Development Area within the time limits prescribed specified, THEN the County shall be at liberty, in the County's sole discretion, to re-district the lands within the Development Area back to the land use district in place prior to the Development Area being districted for development purposes.

2.5 In the event that the Plan of Subdivision for the Development Area has been registered by the Developer, and the Developer fails to proceed with the construction and installation of the Municipal Improvements for the Development Area within the time limits herein specified, the Developer shall, upon receiving written notice from the County to do so, immediately proceed to take all steps necessary to cancel the registration of the Plan of Subdivision, and further, the Developer, in all events, shall have obtained the cancellation of the registration of the Plan of Subdivision within THREE (3) months of the County providing written notice to the Developer as herein provided.

2.6 Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby irrevocably appoints the County as its attorney in fact and in law for the purposes of making all necessary or desirable (in the County's discretion or opinion) applications, executing all necessary or advisable (in the County's discretion or opinion) documents, and taking all further

necessary or advisable (in the County's discretion or opinion) steps or actions in order to obtain the cancellation of the registration of the Plan of Subdivision in accordance with the preceding Section of this Agreement.

- 2.7 The power of attorney conferred upon the County by the Developer in Section 2.6 of this Agreement may be exercised by the County in the event that the Developer has not applied for the cancellation of the registration of the Plan of Subdivision within ONE (1) month of the County providing written notice to the Developer pursuant to Section 2.6 of this Agreement, or may be exercised in the event that the Developer has not obtained the cancellation of the registration of the Plan of Subdivision within THREE (3) months of the County providing written notice to the Developer pursuant to Section 2.6 of this Agreement.
- 2.8 The County in its discretion may extend the time limits specified in Section 2.7, but the County and the Developer agree that no act or omission on the part of the County, intentional or unintentional, shall constitute a waiver of the County's right to exercise the power of attorney conferred upon the County by the Developer pursuant to Sections 2.6 and 2.7 of this Agreement.
- 2.9 In the event that the Plan of Subdivision has not been registered by the Developer within the time limits specified, the Developer shall, upon receiving written request from the County to do so, immediately proceed to take all steps necessary to register the Plan of Subdivision within THREE (3) MONTHS of the County's written notice.
- 2.10 Notwithstanding anything to the contrary contained in this Agreement, the Developer hereby irrevocably appoints the County as its attorney in fact and in law for the purposes of making all necessary or desirable (in the County's discretion or opinion) applications, executing all necessary or advisable (in the County's discretion or opinion) documents, and taking all further necessary or advisable (in the County's discretion or opinion) steps or actions in order to obtain the registration of the Plan of Subdivision in accordance with the preceding Section of this Agreement.
- 2.11 The power of attorney conferred upon the County by the Developer in Section 2.10 of this Agreement may be exercised by the County in the event that the Developer has not applied for the registration of the Plan of Subdivision within THREE (3) months of the County providing written notice to the Developer pursuant to Section 2.9.
- 2.12 The County in its discretion may extend the time limits specified in Section 2.10, but the County and the Developer agree that no act or omission on the part of the County, intentional or unintentional, shall constitute a waiver of the County's right to exercise the power of attorney conferred upon the County by the Developer pursuant to this Section.
- 2.13 Subject to the other requirements of this Agreement, the Developer may proceed with construction of the Municipal Improvements prior to registering a Plan of Subdivision (see Section 5.2).

### **3. PLANS**

- 3.1 The Developer shall submit Plans to the County for approval not less than FORTY-FIVE (45) days prior to Commencing Construction and installation of the Municipal Improvements. The Plans

shall give all necessary details of Municipal Improvements to be constructed by the Developer, including necessary specifications to be attached thereto.

- 3.2 The Developer covenants and agrees that the Plans shall include a construction timetable for the construction and installation of Municipal Improvements within and adjacent to the Development Area and the Developer shall, upon approval of the Plans by the County, comply with all the time limits and complete all the Developer's work within the dates specified in the construction timetable. The Developer may amend the timetable from time to time with the approval of the County, such approval is not to be unreasonably withheld. Except as otherwise specified in the construction timetable approved, the Developer shall, on or before the DATE, commence construction and installation of the Municipal Improvements within and adjacent of the subdivision and shall complete the construction and installation of the Municipal Improvements, at the Developer's own cost and expense, within and adjacent to the Development Area on or before the DATE.
- 3.3 In regards to Landscaping, the Developer covenants and agrees that the Plans for Landscaping of Public Properties shall comply with the requirements of the County and shall include, but not limited to the generality of the foregoing, Landscaping of all roadways, utility rights-of-ways and public walkways, construction of berms, constructing uniform fencing, installation of recreational equipment and facilities and Landscaping of other Public properties. The Developer agrees that it shall submit the Plans for Landscaping on Public Properties, to be completed by a qualified landscape architect, for the County's approval in conjunction with the balance of the Plans referred to in Section 3.1.
- 3.4 The Plans for the construction and installation of the Municipal Improvements for the Development Area shall conform strictly to the Design Standards.
- 3.5 Subject to the terms of this Agreement, it is understood and agreed between the County and the Developer that the Developer shall be entitled to construct the Municipal Improvements in accordance with the Plans approved by the County.
- 3.6 The Developer shall not Commence Construction or commence installation of the Municipal Improvements or any portion, until such time as the County has issued written approval of the Plans. The County may, in its sole discretion, allow the Developer to Commence Construction if only a minor issue is outstanding in relation to written approval of the Plans.
- 3.7 The County agrees that it shall not unduly delay in granting its approval, or in rejecting Plans which have been submitted by the Developer to the County. If the County does not approve whatever Plans may be required to be submitted to the County by the Developer, the Developer shall be entitled to refer any matter in dispute to the County Manager and the decision of the County Manager shall be final and binding and such dispute or difference shall not be subject to arbitration.
- 3.8 It is understood and agreed that the County's approval of the Plans for the Municipal Improvements, are in principle only and, in the case of unforeseen conditions which may adversely affect development, or in the case where a Municipal Improvement to be built in accordance with the Plans would not be suitable for the purposes intended, the detailed design specifications for any of the Municipal Improvements shall be subject to review and revision, from time to time, by the County in accordance with the Design Standards and in accordance with accepted engineering and construction practices.

- 3.9 The Developer acknowledges and agrees that the County's approval of the Plans is in no way intended to be a warranty, representation or guarantee by the County or its professional engineer respecting the content of the Plans, including, without restricting the generality of the foregoing:
- (a) whether the Plans are suitable for the intended purpose;
  - (b) whether the Plans comply with any required federal, provincial or municipal legislation or regulation;
  - (c) whether the Plans comply with the Design Standards; and
  - (d) whether the Plans are in accordance with standard acceptable engineering practices.

#### **4. LOT GRADING AND DRAINAGE STANDARDS**

- 4.1 The Developer covenants that the preparation of the lot grading and drainage Plans, the construction and installation of and all storm water management systems both within private lands and Public Property, all testing associated with storm water management systems (including testing for the height of water tables, soil alkalinity and soil compaction) and the maintenance of all storm water management systems during the Guarantee Period shall be undertaken and conducted in accordance with accepted engineering and construction practices and in accordance with the County Lot Grading Policy and the Design Standards both in place at the time of approval of the Plans and/or the Commencement of Construction.
- 4.2 The Developer shall prepare a surface drainage Plan for the entire Development Area, including public and private lands, to be approved by the County, which shall include grades and drainage patterns for the entire Development Area. The Developer shall obtain and provide to the County all necessary approvals, permits and licenses from Alberta Environment prior to proceeding with any construction within or adjacent to the Development Area.
- 4.3 The Developer covenants that all proposed purchasers and optionees of any of the lots within the Development Area shall be fully advised of the requirements of the County relating to the management and disposal of storm water within lots in the Development Area.
- 4.4 The Developer further covenants and agrees to ensure that all lots that have fill area in excess of ONE (1) metre shall be compacted in accordance with engineered plans, and the Developer shall ensure that the County shall be provided with engineer stamped certified proctor test results to ensure compliance with this Section and further, will provide the County a plan of all such lots that have fill in excess of said ONE (1) metre.
- 4.5 The Developer further covenants and agrees that prior to the issuance of any Construction Completion Certificate for any Municipal Improvements to be constructed and installed within the Development Area, that the Developer shall undertake and complete to the satisfaction of the County such grading work (rough grading) as may be necessary to ensure that all lots within the Development Area have positive drainage and that there will not be any excessive ponding of water within any lots within the Development Area.

- 4.6 It is further agreed and hereby declared by the Parties that the obligation of the Developer to the County to provide surface drainage in accordance with the drainage plan for the Development Area constitutes a covenant running with the lands and binding upon subsequent owners and leaseholders of all or any portion of the Development Area.
- 4.7 The Developer covenants and agrees that any sale or transfer agreement for any or all lots within the Development Area entered into by the Developer shall include the following provisions related to drainage and Landscaping:
- (a) The finished elevations at all corners of the lot and the ground next to the building shall conform to the approved surface drainage plan. Any changes must be approved, in writing, by the County.
  - (b) Positive drainage must be established away from the building to the gutter or drainage channels as designed.
  - (c) Disposal of water from weeping tile and other foundation drainage shall be subject to The County approval. Disposal of water from weeping tile and other foundation drainage into the sanitary sewerage system is prohibited, in all cases. This will require the provision of sump pump discharge into a storm sewer system designed to accommodate the anticipated weeping tile flow, or, where storm system connections are not available, into swales alongside and between lots, ultimately discharging into the gutter.
  - (d) Site improvements shall not alter or disrupt the drainage pattern as established in the surface drainage plan.
  - (e) Landscaping and structures such as solid fences, retaining walls and permanent or temporary buildings which may disrupt the surface drainage shall not be permitted without proper engineering to allow drainage flows.
  - (f) The County shall at its sole discretion charge to the private lot owner any costs or expenses related to repair of any damages incurred to or on Public Property and Municipal Improvements that is contiguous to private lots which result work done by or on behalf of the private lot owner.

The standards specified herein will apply to construction within the building sites and are to supplement the Alberta Building Code and the County's Land Use Bylaw, and all other applicable policies. All necessary approvals shall be obtained from Alberta Environment and all other affected approving authorities.

## **5. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS**

- 5.1 Except as otherwise specified in this agreement and in the construction timetable approved under Section 3.2, the Developer shall, at the Developer's own cost and expense:
- (a) Commence Construction and installation of Municipal Improvements, within TWELVE (12) months of execution of this Development Agreement;
  - (b) Complete the construction and installation of the Municipal Improvements (excluding Franchise Utilities and Common Fencing on private lands and boulevards with separate

sidewalks) to the Construction Completion Certificate stage, within Twenty-Four (24) months of execution of this Development Agreement;

- (c) Complete the construction and installation of Franchise Utilities and Common Fencing on private lands and boulevards with separate sidewalks to a point where they comply with the Plans, and with respect to the Franchise Utilities, the owner of the Franchise Utility has confirmed that the Franchise Utility is operable and the Developer has completed all of its obligations in relation to the Franchise Utility within Twenty-Four (24) months of execution of this Development Agreement;
- (d) Complete the construction and installation of Landscaping to the Construction Completion Certificate stage for boulevards with separate sidewalks within THIRTY-SIX (36) months of execution of this Agreement.

5.2 The Developer, shall not Commence Construction of the Municipal Improvements (or any of them) or otherwise disturb the Lands unless and until the following obligations have been satisfied, namely:

- (a) All obligations required on execution of this Development Agreement including, without limiting the generality of the foregoing:
  - (i) payment of costs from oversizing constructed by others (section 16, Schedule “E”); and
  - (ii) payment of levies and fees (section 17 and Schedule “E”);
- (b) Approval of all Plans (section 3);
- (c) Provision of security (section 22 and Schedule “F”).

5.3 The Developer warrants to the County that all of the Municipal Improvements shall be constructed and installed at the Developer’s own cost and expense, in a good and workmanlike manner, in strict conformance with the Plans and proper and accepted engineering and construction practices, in accordance with the terms of this Agreement, in accordance with the Design Standards, and in accordance with the requirements of law applicable to the work, including without limitation, all applicable Federal and Provincial approvals.

5.4 The Developer covenants and agrees that it shall within THIRTY (30) days of being directed by the County to do so, and in any event, it shall, prior to the public having access within the Development Area and prior to the application for any Construction Completion Certificate for surface Improvements, complete the installation of all traffic control signs, street identification signs, development identification signs, park signs and any temporary signage required by the County. In regards to the street identification signs, the Developer shall provide the County with the proposed subdivision and road names for approval SIXTY (60) days prior to the subdivision endorsement. Properties in the Development Area shall be assigned a municipal address by the County following confirmation of the registration of the Subdivision Plan for the Development Area with Land Titles. Responsibility for the posting and general maintenance of individual property address signs shall be that of the property owner.

- 5.5 In the event that the Developer has not Commenced Construction of the Municipal Improvements within the time limits specified in Section 5.1, then the County shall be entitled at its sole option terminate this Agreement in whole or in part, and further, the Developer agrees:
- (a) that the termination of this Agreement in whole or in part as provided in this paragraph shall be effective upon the County serving written notice of termination on the Developer;
  - (b) that in the event that this Agreement is terminated in whole or in part as provided in this paragraph, the provisions of Section 2 relating to the cancellation of the Plan of Subdivision shall apply to the Development Area;
  - (c) that in the event that this Agreement is terminated in whole or in part as provided in this paragraph, then the Developer shall not be entitled to Commence Construction of the Municipal Improvements for the Development Area unless and until a further written agreement is entered into between the Developer and the County; and
  - (d) That such termination shall be without prejudice to any and all other obligations then due, outstanding and owed by the Developer to the County in relation to the Lands or their development (including, without restriction, any financial obligations of the Developer and the security provisions contained within this Agreement).
- 5.6 In the event that it is necessary or reasonable, in the opinion of the County, to construct or install any temporary or emergency access during the construction and installation of the Municipal Improvements the Developer shall construct and install any such temporary or emergency accesses in accordance to specifications, and in such locations, as determined by the County acting reasonably and the Developer shall grant to the County an easement, in a form acceptable to the County, across the required land for the period for which the access is required.
- 5.7 At all times during the construction and installation of the Municipal Improvements and during all work by the Developer or its agents related thereto:
- (a) the County shall have free and immediate access to all records of or available to the Developer and the Developer's Consultant relating to the performance of the work, including, but without limiting the generality of the foregoing, all design, inspection, material testing and "as constructed" records.
  - (b) the County may:
    - (i) exercise such inspection of the performance of the work as the County may deem necessary and advisable to ensure to the County the full and proper compliance by the Developer with the Developer's undertakings to the County, and to ensure the proper performance of the work;
    - (ii) reject any design, material or work which is not in accordance with the Design Standards or accepted engineering and construction practices;
    - (iii) order that any unsatisfactory work be re-executed at the Developer's cost;

- (iv) order the re-execution of any unsatisfactory design and the replacement of any unsatisfactory material, at the Developer's cost;
- (v) order the Developer within a reasonable time to bring on the job and use additional labour, machinery and equipment, at the Developer's cost, as the County deems reasonably necessary to the proper performance of the work;
- (vi) order that the performance of the work or part thereof be stopped until the said orders can be obeyed;
- (vii) order the testing of any materials to be incorporated in the work and the testing of any Improvements;

and the Developer at its own cost and expense shall comply with the said orders and requirements of the County unless the Developer takes issue with any such order or requirement, in which case the Developer shall request, in writing, that such issue be arbitrated in accordance with the provisions of Section 21 hereof; PROVIDED, that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the County pursuant to clauses (b)(v), (b)(vi) or (b)(vii); AND PROVIDED FURTHER, that the affected work, except as otherwise agreed by the County in writing, shall stop until such arbitration has taken place.

5.8 Notwithstanding anything expressed or implied in the preceding Section, it is agreed between the County and the Developer:

- (a) that the County shall have no obligation or duty to exercise any of the County's powers of inspection nor any obligation or duty to discover or advise the Developer of any deficiencies in construction or workmanship during the course of the construction and installation of the Improvements;
- (b) that the Developer shall during the course of the construction and installation of the Municipal Improvements provide and maintain adequate inspection services, supervised by a professional engineer; and
- (c) that nothing set forth in the preceding Section shall in any way be construed so as to relieve the Developer of any responsibilities as set forth in this Agreement, and without restricting the generality of the foregoing, the Developer shall fulfill all responsibilities in respect to the design, construction, installation and maintenance of the Municipal Improvements as required by the terms of this Agreement.

5.9 The Developer covenants and agrees that during the construction and installation of the Municipal Improvements, and during the Guarantee Period for the Municipal Improvements, that the Developer shall pay all contractors and other parties hired by the Developer to fulfill the Developer's obligations under this Agreement and that the failure of the Developer to pay any proper account or accounts of its contractors or other parties for whose accounts the Developer is responsible in respect to work or materials supplied to the job, when such account or accounts fall due, shall constitute a breach of this Agreement by the Developer.

5.10 The Developer shall take all effective measures to reasonably control dust, dirt, and Construction Debris in and around the Development Area, including, and without limiting the



generality of the foregoing, any building and Landscaping so that dust, dirt, Construction Debris, and garbage originating therein shall not cause annoyance or become a nuisance to property owners and others within or adjacent to the Development Area. The Developer at its own expense shall provide onsite dumpsters or other such containers suitable for the collection and containment of garbage within the Development Area. The Developer shall also at its own expense ensure that Construction Debris is removed from the Development Area by a contracted waste management company. In the event that the County considers that any cleanup or removal of Construction Debris is required, the Developer shall, within FORTY-EIGHT (48) hours of receiving notice from the County, take all necessary action, as determined by the County, failing which the County may take such action and charge all costs and expenses to the Developer. The FORTY EIGHT (48) hours notice may be waived or shortened by the County:

- (a) in an emergency (as deemed solely by the County);
- (b) if the County is not able to contact the Developer or its Consultant; or
- (c) if the County in its sole discretion and acting under a reasonable apprehension upon the Developer's conduct or statements made that the Developer will not perform the necessary work within the required time frames.

The County may take effective measures to control the Construction Debris after expiry of the notification period, or if the notice is waived; such measures shall be at the expense of the Developer and the County shall within FORTY EIGHT (48) hours notify the Developer of the action taken by the County.

The Developer's obligation under this Section shall continue until the Final Acceptance Certificate for all Improvements has been issued.

- 5.11 Upon the completion of the work by the Developer, and prior to the issuance of Construction Completion Certificates for the Municipal Improvements, the Developer's Consultant shall submit to the County a statement under their professional seal certifying that the Developer's Consultant has provided adequate periodic inspection services during the course of the work and that the Developer's Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans; in accordance with accepted engineering and construction practices; and in accordance with the Design Standards.
- 5.12 It is understood and agreed between the County and the Developer that during the course of constructing the Municipal Improvements, the re-execution or replacement of unsatisfactory work which is of a minor nature (as determined by the County at its sole discretion) and which does not pose a health or safety danger, may be re-executed or replaced by the Developer, in its discretion, at any time prior to the request by the Developer for a Construction Completion Certificate for the Municipal Improvements in question. The Developer acknowledges and agrees to immediately repair or replace unsatisfactory work of a major nature, as determined by the County at its sole discretion.
- 5.13 The Developer shall ensure that consideration be given to controlling noise, dust and traffic on the site in addition to operating within reasonable hours to limit negative effects on nearby residents. The Developer or its contractors shall not operate equipment outside of the following times: **Monday to Friday 7:00 a.m. to 7:00 p.m. and Saturday 8:00 a.m. to 6:00 p.m. and no**

**construction on Sundays and Statutory Holidays unless written approval is provided by the County.**

- 5.14 In addition to whatever other testing requirements may be imposed upon the Developer by the County, the Developer shall undertake camera video inspection of all storm and sanitary sewer lines shall provide the video and corresponding report prior to the issuance of the Construction Completion Certificate of such lines by the County and no less than SIXTY (60) days prior to the issuance of the Final Acceptance Certificate of any such lines by the County.
- 5.15 If required, the Developer or its contractors shall enter into one or more agreements with the County to address Range Road, Township Road and local subdivision road usage during construction and development of the Development Area.
- 5.16 Notwithstanding anything hereinbefore contained to the contrary, the Developer covenants and agrees (such covenant being of the essence of this Agreement) that it shall plan and complete the development of the Development Area so as to guarantee and ensure to the County that all Essential Services have been installed and rendered operative as evidenced by the issuance of Construction Completion Certificates for the Essential Services and as-built drawings have been delivered to the County, in any part of the Development Area prior to issuance of building permits or development permits.

The County may, in its sole and absolute discretion, issue development and/or building permits for structures, if there is in the County's view, only a minor deficiency respecting the issuance of a Construction Completion Certificate for all Essential Services; but this shall in no way oblige the County to otherwise issue development or building permits or approve occupancy.

- 5.17 Without limiting the generality of Section 24, the Developer shall at all times ensure that all work conducted within the Development Area is done in accordance with all applicable legislation and regulations, including but not limited to the Occupational Health and Safety Code, Alta Reg 191/2021, as amended from time to time. Without limiting the generality of this section, it is expressly understood that the Developer will ensure there is adequate and sufficient toilet facilities on all work sites within the Development Area, and at minimum shall ensure there is no less than the required number of toilet facilities as specified under Section 357 of the Occupational Health and Safety Code.

## **6. USE OF PUBLIC PROPERTIES IN THE PERFORMANCE OF THE WORK**

- 6.1 The County hereby grants to the Developer the right, permission and power to use, break-up, dig, trench, or excavate in the public streets, roads, lanes, boulevards, parks and similar Public Places under the control of the County, within or adjacent to the Development Area, and otherwise to do such work therein and thereon as may be necessary from time to time to construct, develop, erect, lay, operate, maintain, repair, extend, relay and remove any Improvements forming part of the work of the Developer, as may be necessary for the purpose of this Agreement, PROVIDED:
  - (a) That not less than FOURTEEN (14) days prior to the date that the Developer intends to enter upon any Public Property (except in the case of emergency repair work) the Developer shall provide to the County detailed written proposals, for approval by the County, for the work to be done within any such property, including:

- (i) a specific work schedule and procedures proposed to be followed;
  - (ii) detailed engineering drawings of all connections to existing municipal services;
  - (iii) provisions to be implemented for temporary access and services;
  - (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption;
  - (v) form and schedule of notification and public relation strategy to be utilized.
- (b) No such work shall be commenced prior to the Developer obtaining the written consent of the County to enter upon such Public Properties; and the County shall not unreasonably delay or withhold such written consent;
  - (c) That the work within Public Properties by the Developer and its agents, contractors and subcontractors shall be subject to the inspection rights of the County as set forth in this Agreement and all directions and requirements of the County shall be obeyed;
  - (d) That the Developer shall do as little damage as possible in the performance of such work, and will cause as little obstruction to such Public Properties as possible;
  - (e) That upon completion of such work the Developer shall restore all such Public Properties to a condition and state of repair equivalent to that which prevailed prior to the performance of such work, including, where necessary, the re-planting or replacement of trees and shrubs, and shall maintain such restored portions of such Public Properties, including such replaced or re-planted trees and shrubs, for a period of TWO (2) years thereafter, ordinary wear and tear excepted;
  - (f) That the restoration of Public Properties shall be part of the Municipal Improvements to be constructed and installed by the Developer and the Developer shall be required to obtain Construction Completion Certificates and Final Acceptance Certificates for the restoration work;
  - (g) That the Developer shall indemnify and save harmless the County from and against all losses, costs, claims, suits or demands of any nature (including all legal costs and disbursements on a solicitor and client basis) which may arise by reason of the performance of work by the Developer; and
  - (h) In the event of emergency repair work, the Developer shall notify the County in writing as soon as possible, and in any event within and no later than 24 hours of such work being commenced.

## **7. INSTALLATION OF FRANCHISE UTILITIES**

- 7.1 The Developer shall at its own expense be solely responsible for all costs and expenses relating to the installation, to the County's satisfaction, of Franchise Utilities to the Development Area and within the roadways, utility lots or easement areas adjoining the lots to be created in the Development Area. The Developer shall indemnify and save harmless the County from and against all losses, costs, claims, suits or demands of any nature (including all legal costs for

disbursements on a solicitor and client basis) which may arise by reason of the performance or non-performance of such installation of such services.

- 7.2 The said Franchise Utilities within the Development Area shall be installed within Public Properties, in accordance with the Plans, adjacent to the lots that are intended to be served by such services and shall be installed in a manner and in locations which will permit lot owners within the Development Area to hook up to such services upon paying the normal hook-up fees charged by the Utility Company or franchise holder.
- 7.3 Prior to issuance of Construction Completion Certificates for any Municipal Improvements, the Developer shall provide the County for each of the Franchise Utilities:
- (a) written evidence of the payment in full of the capital charges payable to the owners of the Franchise Utilities in order to obtain their unconditional commitment to construct and install all of the Franchise Utilities;
  - (b) assignment of the agreements with the owners of the Franchise Utilities, providing if the Developer defaults in any of its obligations under this Agreement and the County opts to undertake performance of any of the Developer's obligations the County will have the full benefit of the agreements; and
  - (c) acknowledgement of the assignment from each of the owners of the Franchise Utilities.

## **8. CONTRACTS FOR INSTALLATION OF THE MUNICIPAL IMPROVEMENTS**

- 8.1 Notwithstanding anything contained in this Section, the Developer acknowledges, understands and agrees that the Developer shall be fully responsible to the County for the performance by the Developer of all the Developer's obligations as set forth in this Agreement; AND FURTHER the Developer acknowledges, understands and agrees that the County shall not be obligated in any circumstances whatsoever to commence or prosecute any claim, demand, action or remedy whatsoever against any person with whom the Developer may contract for the performance of the Developer's obligations.
- 8.2 The Developer covenants and agrees that any contract entered into between the Developer and a Third Party in respect to the performance of all or any of the Developer's obligations as set out in this Agreement to construct and maintain the Municipal Improvements, or any of them, shall provide:
- (a) That the Third Party shall indemnify and save harmless the County and the Developer from and with respect to any damages, claims or demands whatsoever (including all legal costs and disbursements on a solicitor and client basis) arising out of the performance of any work undertaken by the Third Party or arising in any way from the negligence of the Third Party's servants, agents or employees;
  - (b) That the Third Party shall provide reasonable proof of financial responsibility;
  - (c) That the Third Party shall comply with the provisions of the *Workers Compensation Act* and the *Occupational Health and Safety Act* for the Province of Alberta;

- (d) That the Third Party will allow the County access to the work for the purpose of inspection;
- (e) That the works to be performed by the Third Party shall not be deemed to be duly and adequately completed under the contract except upon the issuance of a Construction Completion Certificate for the same by the County;
- (f) The Third Party shall coordinate with the County work forces and others to facilitate the installation of utilities and shall protect such utilities from damage;
- (g) That the Third Party will carry adequate public liability insurance of an amount and coverage satisfactory to the County to protect the Third Party and the County from any claims, actions or demands arising from the pursuance or purported pursuance of the work being performed by such Third Party; and
- (h) That, at the option of the County, the Developer will ensure that the Third Party shall carry a Labour and Materials Payment Bond in the amount of Fifty (50%) percent of the contract price.

## **9. COMPLIANCE WITH ALL PLANS AND SPECIFICATIONS**

- 9.1 The Developer shall, at all times during the construction and installation of the Municipal Improvements, comply fully with all terms, conditions, provisions, covenants and details as may be set out in the Plans, as approved by the County, and such terms and conditions as may otherwise be required pursuant to this Agreement or be agreed upon in writing between the County and the Developer.
- 9.2 The provisions of this Agreement shall be additional to and not in substitution for any law, whether Federal, Provincial or Municipal, prescribing requirements relating to construction standards and the granting of permits under the terms of the Land Use Bylaw of the County and the *Safety Codes Act* and Regulations thereunder. Prior to Commencing Construction and installation of the Municipal Improvements, the Developer shall provide proof that all applicable Federal and Provincial approvals have been obtained.

## **10. ACCEPTANCE OF IMPROVEMENTS - TRANSFER OF IMPROVEMENTS TO THE COUNTY**

### *Construction Completion Certificate*

- 10.1 For purposes of this Section, the County and the Developer agree that no Improvement shall be considered complete unless and until:
  - (a) the Improvement has been fully constructed and installed in accordance with the approved Plans;
  - (b) the Improvement has been constructed and installed in accordance with the Design Standards and accepted engineering and constructed practices;
  - (c) all testing has been completed and the results approved by the County;

- (d) all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the County;
  - (e) all Public Properties which have been disturbed or damaged have been fully restored by the Developer;
  - (f) the Municipal Improvement is suitable for the purpose intended; and
  - (g) the Developer has provided the Municipality with the actual costs and sufficient supporting documentation of all Municipal Improvements located on, in or under Public Properties (including utility rights-of-way and easements) in order that the Municipality is able to meet its accounting and reporting requirements for the acquisition of Tangible Capital Assets. Sufficiency of supporting documentation and costs information shall be determined by the Municipality and its auditors.
- 10.2 When the Developer claims that the Municipal Improvements of the Development Area have been constructed and installed in accordance with the requirements of this Agreement, then the Developer shall give notice in writing of such claimed completion to the County by submitting the Construction Completion Certificate(s) with the Developer's portion completed.
- 10.3 Within SIXTY (60) days of receipt of such claim of completion, the County may undertake an inspection of the Municipal Improvements or may rely on certified as-built drawings of the Municipal Improvements and will notify the Developer in writing of its acceptance (by the issuance of a Construction Completion Certificate) or rejection of the Municipal Improvements so completed.
- 10.4 Notwithstanding the preceding Section, the County may give notice to the Developer of the County's inability to conduct an inspection within the said SIXTY (60) days due to adverse site or weather conditions, and in such an event the time limit for such an inspection shall be extended until SIXTY (60) days following the elimination of such adverse site or weather conditions.
- 10.5 It is understood and agreed between the Developer and the County that the notices required under Sections 10.2, 10.3 and 10.4 shall be given only between the County and the Developer and in no event shall either the County or the Developer give such notices through any contractor or sub-trade which may be engaged by the Developer in the construction of the Improvements.
- 10.6 In the event that any inspection contemplated in Section 10.3 or 10.4 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement, the County may refuse to issue a Construction Completion Certificate for the Municipal Improvement and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request a further inspection and issuance of a Construction Completion Certificate.
- 10.7 It is understood and agreed between the Developer and the County that the County shall be at liberty in its sole discretion to issue a written conditional Construction Completion Certificate for the Municipal Improvements and such Certificate shall be conditional upon the completion of minor deficiencies by the Developer within a time specified by the County; PROVIDED, that

the commencement of the Guarantee Period in relation to any such deficiency, if rectified within THIRTY (30) days, shall be back-dated to the date of the said conditional Construction Completion Certificate; AND PROVIDED FURTHER, that the Guarantee Period in relation to any such deficiency, if not rectified within the said THIRTY (30) days, shall not commence until such time as such deficiency has been rectified by the Developer and received acceptance of the County in accordance with this Agreement

- 10.8 In addition to the default provisions provided by this Agreement, in the event that the Developer fails to apply for Construction Completion Certificates and provide the necessary as-built drawings and other related documents within the timeframes provided for under this Agreement, the County may, at its sole discretion, undertake its own inspection of the Municipal Improvements, at the Developer's sole cost and expense, and issue any necessary Construction Completion Certificates or notices regarding deficiencies as if the Developer itself had applied for Construction Completion Certificates in accordance with Section 10.2.

*Final Acceptance Certificate*

- 10.9 Not more than NINETY (90) days nor less than SIXTY (60) days prior to the expiration of any Guarantee Period for the Municipal Improvements or any portion the Developer shall give notice to the County of expiration of the Guarantee Period for the Municipal Improvements and the Developer shall request a Final Acceptance Certificate in respect to the Municipal Improvements.
- 10.10 Within SIXTY (60) days of the receipt by the County of a request for a Final Acceptance Certificate, the County shall undertake an inspection of the Municipal Improvements and the County shall within the said SIXTY (60) days advise the Developer in writing of any deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements; PROVIDED, that the provisions of Section 10.4 shall also apply to any request for the issuance of a Final Acceptance Certificate.
- 10.11 In the event that any inspection contemplated in Section 10.10 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement the County may refuse to issue the Final Acceptance Certificate of the Municipal Improvements and require the Developer to repair or replace the whole or any portion of any such Municipal Improvements; PROVIDED, that upon completion of the repairs or replacement required to correct any such deficiencies, the Developer may request that a further inspection and issuance of a Final Acceptance Certificate.
- 10.12 In the event that any inspection contemplated in Section 10.10 reveals that there are no deficiencies in relation to the Municipal Improvements, the County shall issue in writing its Final Acceptance Certificate for the Municipal Improvements.
- 10.13 It is understood between the County and the Developer that the County shall be at liberty to issue a conditional Final Acceptance Certificate for the Municipal Improvements and such acceptance shall be conditional upon the completion of minor deficiencies by the Developer within THIRTY (30) days.
- 10.14 Upon the issuance of a Construction Completion Certificate by the County for the Municipal Improvements, the Developer hereby acknowledges that all right, title and interest in the Municipal Improvements (excluding facilities owned by private utility companies) located on or

under Public Properties (including utility rights-of-way and easement areas) vests in the County without any cost or expense to the County therefore, and the Municipal Improvements shall become the property of the County.

10.15 Notwithstanding anything contained in this Agreement to the contrary, the Developer acknowledges and agrees that the Guarantee Period for the Municipal Improvements shall not expire before the issuance of a Final Acceptance Certificate for the Municipal Improvements by the County to the Developer; PROVIDED, that in the event that either party refers to arbitration the Developer's right to the issuance of a Final Acceptance Certificate for the Municipal Improvement, the arbitrator shall, in accordance with the terms of this Agreement, determine the date upon which any such Final Acceptance Certificate is to be effective.

10.16 Following the issuance of a Construction Completion Certificate for the Municipal Improvements, the County agrees that it shall assume the normal operation and maintenance (excluding repairs or matters arising from inadequate or deficient design or construction) of the Municipal Improvements excluding landscaping, fencing and facilities owned by private utility companies. The Developer agrees to be responsible for the maintenance and repair of all Landscaping until the issuance of the Final Acceptance Certificate for Landscaping.

10.17 The County and the Developer agree, notwithstanding the issuance of a Final Acceptance Certificate for the Municipal Improvements, that the developer shall be responsible, for a period of FIVE (5) years following the issuance of a Final Acceptance Certificate for the Municipal Improvements, to repair or replace any of the Municipal Improvements where there were any hidden or latent defects (which were reasonably not detected by inspections or tests actually undertaken) in any of the Municipal Improvements which are causally connected to the performance or non-performance of the obligations under this Agreement and were not discovered prior to the issuance of the Final Acceptance Certificate. In the event of a dispute regarding this provision, and in addition to Section 21 on Arbitration, the Parties may mutually agree to resolve any dispute under this provision by means of mutually hiring an independent engineering firm to determine causation of hidden or latent defects in any Municipal Improvements installed and constructed pursuant to this Agreement.

10.18 It is understood and agreed that the County may in its discretion issue up to NINE (9) separate Construction Completion Certificates for the Municipal Improvements, namely:

- (a) the underground Municipal Improvements referred to in Sections (a), (b), (c), (f) and (m) of Schedule "C" of this Agreement;
- (b) the surface Municipal Improvements referred to in Sections (d, except the top lift of asphalt), (e), (g), (j), (k), of Schedule "C" of this Agreement;
- (c) the separate sidewalk Municipal Improvements referred to in Section (h), (i), (n) and (r) of Schedule "C" of this Agreement;
- (d) the Landscaping referred to in Sections (h), (k) and (p) of Schedule "C" of this Agreement;
- (e) the Landscaping for boulevards on separate sidewalks, referred to in Section (i) of Schedule "C" of this Agreement;



- (f) the Landscaping of open space site amenities and playgrounds (including equipment), referred to in Section (l) of Schedule "C" of this Agreement;
- (g) the Common Fencing on private lands referred to in Section (q) of Schedule "C" of this Agreement; and
- (h) the Common Fencing on Public Property referred to in Section (q) of Schedule "C" of this Agreement.
- (i) The Second Lift of roadway asphalt referred to in Sections (d) and (j) of Schedule "C"

Likewise, the County may in its discretion issue up to NINE (9) Final Acceptance Certificates for those portions of the Municipal Improvements referred to above. Notwithstanding, the County will not issue a Final Acceptance Certificate for Common Fencing on private lands, referred to in subsection (g) above, and for Franchise Utilities, referred to in subsection (a) above.

10.19 It is understood by the Developer and agreed that the County shall at its sole discretion issue a Construction Completion Certificate and a Final Acceptance Certificate for the First Lift of roadway asphalt in the Development Area. Further, it is understood by the Developer and agreed that the County shall issue at its sole discretion a Construction Completion Certificate for the Second Lift of roadway asphalt, followed by a TWO (2) year Guarantee Period, after which the County at its sole discretion will issue a Final Acceptance Certificate. The Developer shall provide a separate construction cost estimate, based on tendered costs, for the Second Lift of roadway asphalt, within which a TWENTY (20%) percent cost escalation shall be accounted for. The Developer shall deposit with the County, Security for the Second Lift of Roadway asphalt in accordance with Section 22 of this Agreement.

## **11. MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER**

- 11.1 The Guarantee Period in respect to any of the Municipal Improvements shall commence with the County's written Construction Completion Certificate for any such Municipal Improvements in good condition and repair (ordinary wear and tear excepted), and the Developer shall, subject to Section 10.17, repair or replace the whole or any portion thereof during such Guarantee Period where such repair or replacement is required, as determined by the County, as a result of any cause other than the neglect by the County, its servants, agents or contractors in the use and operation thereof.
- 11.2 The Developer acknowledges and agrees that prior to the issuance of a Final Acceptance Certificate for any Landscaping, or portion thereof, the County shall be entitled to require the Developer to replace any trees, shrubs or grass which may have died or failed to achieve proper growth, as determined by the County in its sole discretion; AND FURTHER, the County shall be entitled to require the replacement or repair of any other Landscaping such as berming, noise attenuation, rip-rap, screen fencing, or fencing which is not in accordance with the Plans as a result of any cause other than neglect by the County, its servants, agents or contractors in the use and operation thereof.
- 11.3 The Developer covenants that it shall fully comply with the Design Standards and accepted engineering and construction practices, in undertaking and completing the repair or

replacement of any of the Municipal Improvements pursuant to the requirements of this Section.

- 11.4 The Developer agrees that in the event of any emergency arising during the Guarantee Period, the County being the sole judge of what constitutes an emergency, then the County shall have the right in its discretion to undertake any repair or remedial work to the Municipal Improvements deemed necessary or appropriate by the County and all costs and expenses incurred by the County in that regard shall be paid by the Developer to the County upon demand.
- 11.5 The County and the Developer agree that during the Guarantee Period, the County shall perform the normal maintenance requirements of the County for all Municipal Improvements, with the exception of Landscaping. With respect to the sanitary sewers, the Developer shall pay the County's costs and expenses for final cleaning and removal of debris prior to issuance of the Final Acceptance Certificate.
- 11.6 Without limiting any of the foregoing, maintenance for which the Developer shall be responsible shall include, without restriction, failure of or damage to the underground Municipal Improvements resulting from defective materials or improper installation or workmanship, settlement of ditches, storm water management facilities, grading, gravelling, repairs or replacement of road and lane surfaces, sidewalks, curbs, and gutters, catch basins and leads, road surfaces constructed by the Developer or its contractor, adjustment and repairs to water mains, main valves, water hydrants, hydrant valves, service lines and valves and valve operating mechanisms; repairs, replacements and adjustments to sewer mains, sewer services, manholes, manhole frames and covers, but shall not include ordinary wear and tear. The Developer covenants that during the Guarantee Period that the Developer shall be responsible, at the Developer's own cost and expense, for adjusting and maintaining all hydrants, valve boxes (for both hydrants and mains) manholes and catch basins and appurtenances thereto and any crack filling of roadways until the County has issued the Final Acceptance Certificate for all aspects of roadway improvements.
- 11.7 The Developer covenants and agrees that in the event that the County is of the opinion that any repair or replacement required during the Guarantee Period is of a major nature, the County shall be entitled, in its discretion, to require a further full Guarantee Period for the particular Municipal Improvement, or portion thereof, and such further Guarantee Period shall commence upon the County issuing a Construction Completion Certificate for the repair or replacement work.

## **12. UTILITY EASEMENTS AND OTHER INSTRUMENTS**

- 12.1 The Plans, as approved by the County, shall designate, public utility lots, easements road allowances, or rights-of-way of widths adequate to the needs of the County and utility companies, for the construction and installation of Municipal Improvements and Franchise Utilities to and through the Development Area, and for storm drainage systems, and shall be of a width and in such locations as required by the County.
- 12.2 The public utility lots, easements, road allowances and utility rights-of-way shall be granted and registered to the County (without further compensation payable to the Developer, except

as stated in this Agreement) upon the submission for registration of a Plan of Subdivision or in accordance with Section 12.8 for the Development Area.

- 12.3 Where subdivision is contemplated as part of the development of the Development Area, the Developer shall within ONE (1) month of registration of the Plan of Subdivision, and prior to the sale of any lots within the Development Area, provide to the County proof of the registration of all easements and utility rights-of-way required by the County.
- 12.4 The Developer agrees that the easements, road allowances, utility rights-of-way shall be in a form acceptable to the County and shall be a first charge (excepting other easements and utility rights-of-way) and that the Developer shall obtain and register postponements of all liens, charges and encumbrances in favour of the easements.
- 12.5 Such road easements, road allowances or utility rights-of-way shall provide that the County shall have the right either:
- (a) to assign all or any parts of the rights thereby granted to owners of the Franchise Utilities; or
  - (b) to grant permits or licenses to install, repair and replace gas, power, telephone, cable and communication lines, and all Municipal Improvements, including drainage systems.
- 12.6 All Public Utility lots shall have a 1.5 metre registered easement on adjacent properties for maintenance purposes. Further, the Developer shall construct 1.8 metre pathways in all Public Utility lots, Municipal Reserves or Storm Water Management Facilities where pedestrian/maintenance vehicle access is required to ponds, parks/playgrounds or other walkways (and where not prohibited pursuant to the requirements of any pipeline right of way or the Alberta Utilities Commission).
- 12.7 The Developer covenants that it shall register or cause to be registered against the title to any or all lots in the Development Area or other lands controlled by the Developer, in a form acceptable to the County, restrictive covenants and other instruments which are required by any subdivision approval for the Development Area or otherwise required under the terms of this Agreement.
- 12.8 The Developer hereby grants, conveys, transfers and sets over to and unto the County, its servants, agents, contractors, successors, assigns and licensees:
- (a) the right, license, liberty, privilege and easement across, over, under, on and through and within the Lands, described within Schedule "A" of this Agreement, in accordance with the alignments in the approved Plans (if any), for the purposes of laying down, installing, constructing, operating, inspecting, maintaining, repairing, replacing, altering, removing and reconstructing from time to time sanitary sewer, storm sewer, drainage, water, gas, electrical, telephone, telecommunications, and cable television lines, services or distribution systems, and temporary roadways, together with any and all appurtenances incidental or necessary in relation to the above, together with the right of ingress and egress over the Lands with vehicles, supplies and equipment for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the rights and privileges granted within this Agreement; and

- (b) the dedication of all roads shown within the subdivision approval for the Lands, as amended by this Agreement or the Plans subsequently approved by the County, which dedications may be registered at any time by the County by road plan in accordance with Section 16.1 of the *Municipal Government Act*.

The grant of the right of way provided above is and shall be for as long as is necessary for the County and is intended to be a covenant that runs with the Lands, until such time as the Plan of Subdivision and/or any applicable and required public utility lots, easements, road allowances and utility rights-of-way have been registered with Land Titles, and shall survive termination of this Agreement.

### **13. MUNICIPAL SERVICES**

- 13.1 As lots are developed in parts of the Development Area, the County will provide thereto, as required, subject to the terms of this Agreement, all municipal services which are normally supplied to all other similar parts of the County and to the same standards and costs, subject to such limitations that may be imposed by reason of the progress of the Developer's work, the availability of such services, the number of lots requiring services, and the configuration of the lots requiring services.
- 13.2 Notwithstanding the preceding Section, the County shall not provide any services related to the maintenance or snow ploughing of any private roads or driveways constructed on the lots.
- 13.3 Prior to the issuance of the Final Acceptance Certificate for all surface Municipal Improvements in the Development Area, the Developer shall at all times after any premises are occupied and used within the Development Area, provide and ensure continuous access to such occupied premises from both the front street and, where applicable, the rear lane, for police, fire and other emergency services.
- 13.4 The Developer, prior to issuance of the appropriate Construction Completion Certificate, covenants and agrees to be responsible for and pay all tolls, rates and fees applicable to street lighting or decorative lighting within the Development Area and to be responsible for and to pay for all street cleaning, snow removal and street sweeping within the Development Area upon the following terms and conditions:
  - (a) the Developer shall within THIRTY (30) days of being invoiced by the County, pay to the County any costs incurred by the County for outside forces in connection with street lighting or decorative lighting, street cleaning, snow removal or street sweeping; and
  - (b) where Municipal work forces and equipment are used to provide any such services, the costs to be charged back to the Developer shall be calculated at the existing hourly rates for equipment and labour and the cost of employee benefits then utilized by the County plus an additional FIFTEEN (15%) per cent of all such costs to cover the administrative costs incurred by the County.
- 13.5 The Developer acknowledges and agrees that if any portion of the Development Area is subdivided by way of condominium plan rather than Conventional Subdivision Plan, the County is not obligated to provide its regular services within that portion of the Development Area. Without limiting the generality of the foregoing, the County will not be obligated to provide services (including provision of public utilities, garbage removal or maintenance or

internal access roads) to any portion of lands that is within the boundaries of the Condominium plan. With that said, while not obligated the County has the full authority to enter into a separate agreement for the provision of the services for the area of the condominium plan, and the entering of such an agreement is solely in the discretion of the County.

#### **14. FENCING**

- 14.1 The Developer shall, at its own expense, as part of the development of the Development Area, construct fences, including wildlife fencing, of the type hereinafter referred to where required by the County, including public utility lots and walkways. The Plans shall include a description of the location of fences, and the design and construction.
- 14.2 All fences to be constructed by the Developer pursuant to the requirements hereof shall be of uniform design and the design and construction thereof shall be subject to the approval of the County in its sole and absolute discretion.
- 14.3 Any Common Fencing as contemplated herein which is wholly located upon Public Properties and does not abut upon other properties, shall be maintained by the Developer during the Guarantee Period as provided in this Agreement.
- 14.4 Any Common Fencing which is intended to separate Public Properties from other abutting lands shall be constructed not less than FIFTEEN (15) centimetres within the boundary of such other lands and shall not be constructed on the boundary line between the Public Properties and the other lands.
- 14.5 Any Common Fencing that is not wholly located upon Public Properties shall be maintained by the Developer until the expiration of the Guarantee Period for such Common Fencing and thereafter shall be maintained by the owners of the properties upon which the Common Fencing is located, and further, in order to ensure the maintenance obligations of such owners, the Developer shall, prior to selling or transferring any such properties, register against such properties a restrictive covenant, in a form acceptable to the County, which shall impose such maintenance obligations upon the future owners of such properties.
- 14.6 The Developer covenants that in addition to the requirements of any permanent fencing within the Development Area, that the Developer shall prior to the issuance of a Construction Completion Certificate for the above ground Municipal Improvements, at the Developer's own cost and expense, construct and maintain temporary fencing of a type and to a standard acceptable to the County around all municipal and environmental reserve parcels within the Development Area.

#### **15. MAINTENANCE OF BOULEVARDS AND OTHER PUBLIC AREAS**

- 15.1 The Developer shall be responsible, at the Developer's sole expense, except where limited within this Agreement, to maintain the Developer's lands and all Public Properties within the Development Area in such condition as may be reasonably required by the County, by mowing grass thereon, and eliminating weeds, refuse, litter and undesirable vegetation.
- 15.2 Where the Developer has sold a lot (and transferred possession) within the Development Area, the Developer's obligations under Section 15.1, in respect only to such lot, shall cease.

15.3 The Developer covenants and agrees that it shall, at the Developer's own cost and expense, be responsible for the cleanup and removal of all Construction Debris, foreign material and dirt from all Public Properties, including roadways, within and adjacent to the Development Area, subject to the following conditions:

- (a) prior to Commencement of Construction of the Municipal Improvements, the Developer shall provide a Construction Debris management plan for the Development Area to the County for approval, and the Developer shall be responsible for adhering to and for ensuring that all builders within the Development Area adhere to the approved Construction Debris management plan;
- (b) it shall be the responsibility of the Developer to monitor the condition of Public Properties and take immediate action as necessary to comply with the provisions of this Section;
- (c) in the event that the County considers that any cleanup or removal of construction debris, foreign material or dirt is required, the Developer shall, within FORTY-EIGHT (48) hours of receiving notice from the County, take all necessary action as determined by the County, failing which, the County may take action and charge back all costs and expenses to the Developer.
- (d) The Developer's obligations under this Section shall cease and terminate in respect to the Development Area upon the latter of issuance of FACs for all Improvements or completion of housing construction on seventy five (75%) of the private lots within the Development Area.

15.4 The County shall assume the normal maintenance of all other Public Properties which have been seeded to grass, such as parks, buffer strips, and the like, after satisfactory germination and establishment of grass sown by the Developer on such Public Properties, and after the latter of either the expiration of the Guarantee Period or upon issuance of the Final Acceptance Certificate.

## **16. OVERSIZING AND SHARING OF SERVICING COSTS**

16.1 The Developer recognizes and agrees that the Development within the Development Area will benefit from the oversizing or construction of Municipal Improvements that have been or will be constructed by parties other than the Developer in areas adjacent to the Development Area and other benefiting areas, and therefore, the Developer agrees that it shall bear and pay its proportionate share of such other Municipal Improvements as determined in the discretion of the County. Accordingly, the Developer covenants and agrees to pay to the County such shared costs for oversizing or completed Municipal Improvements upon execution of this Agreement and as provided within Schedule "E".

16.2 In the event that the Developer's proportionate share of existing or currently contemplated oversizing is not determined as of the date of this Agreement, the method of calculating the Developer's proportionate share of such Municipal Improvements constructed by other parties shall be determined solely by the County in accordance with good engineering and construction practices, the provisions of any relevant bylaws of the County and in accordance with any agreements which the County has entered into, or may enter into, with contractors, other

developers or other persons in respect to the construction of such Municipal Improvements. In such case, the Developer covenants and agrees to pay to the County such shared costs for oversizing or completed Municipal Improvements in accordance with the Schedule "D" and Schedule "E" of this Agreement.

- 16.3 Nothing in this Agreement shall preclude the County from levying in a lawful manner any special frontage assessment or uniform unit rate assessment or special local benefit assessment for the construction, expansion or extension of Municipal Improvements, other than such Municipal Improvements or portions of such Municipal Improvements, which are covered by the provisions of this Agreement.
- 16.4 The Developer, in constructing the Municipal Improvements as contemplated herein, shall bear the costs of oversizing and extending Municipal Improvements designed and installed to accommodate future developments on land adjacent to the Development Area and other benefiting areas, and shall design, construct and install the Municipal Improvements so that such future developments can utilize or benefit from such oversizing or extensions. The County's requirements for oversizing shall be evidenced within the Design Standards or otherwise required to be shown within the Developer's Plans at the time of the County's review and approval.
- 16.5 The costs of the oversizing or extensions contemplated in Section 16.4 shall be shared costs and the County and the Developer acknowledge that the Developer shall be entitled to recover such shared costs in accordance with this Agreement.
- 16.6 The County shall not be responsible for payment of any portion of the shared costs, except as may be specifically provided elsewhere in this Agreement, or except in respect to lands owned or acquired by the County, but the County shall use reasonable efforts to give such assistance to the Developer as it can legally give in the recovery of shared costs by making it a term of any Development Agreement between the County and owners of any future benefiting developments that such owners pay their proportionate share of such shared costs to the Developer and by requiring payment of the same by such owners as a condition of the use of the Improvements or as a condition of the approval of any development applications.
- 16.7 The Developer shall, so soon as reasonably possible, provide the County with the details of the costs of oversizing or extension of the Municipal Improvements that accommodate future development on land adjacent to the Development Area and in other benefiting areas for approval by the County, and upon the County approving the said details, the same shall govern for the purpose of determining the amount of shared costs to be paid by such benefiting owners pursuant to Section 16.6.
- 16.8 The County agrees that in the event any land adjacent to the Development Area, and other benefiting areas which may benefit from the Municipal Improvements oversized or extended by the Developer, is intended to be developed and the County is advised of any such development, the County will endeavour to notify the Developer in writing of the intended development. The Developer agrees that upon notice of such intended development being sent by the County, the Developer shall notify the County in writing of any claims it has in writing under this Agreement for recovery of shared costs with detailed calculations setting out the amount claimed by the Developer. Until such notice has been delivered by the Developer to the County, the County shall not be required to request from the owners of adjacent lands the payment to the Developer of the shared costs attributable to the lands intended to be

developed. Upon receipt of any such notice from the Developer to the County, the County will take the steps contemplated by this Agreement to facilitate the recovery by the Developer of the applicable shared costs.

- 16.9 The County agrees that in calculating any shared costs payable to the Developer, the County shall include interest, calculated from the date of Construction Completion Certificate of all of the Municipal Improvements, compounded annually, at the Prime Rate plus TWO (2%) per cent; PROVIDED, that interest shall cease to accrue FIVE (5) years from the date of the issuance of Construction Completion Certificates for all of the Municipal Improvements.
- 16.10 For purposes of calculating interest payable under Section 16.9, the Prime Rate established on the first business day of a particular month shall be utilized and shall be deemed to be the Prime Rate for that entire month.
- 16.11 Notwithstanding anything to the contrary within this Agreement, the Developer shall only be entitled to recover any payment of shared costs within ten (10) years from the date of this Agreement and the Developer shall make no demands against the County or any other developer for payment thereafter. In addition and in that regard, the Developer and the County acknowledge and agree that there exists the potential for significant passage of time between the development of the Development Area and the development of other properties, as well as the corresponding potential for change in development and servicing needs in the near and long term (including, without restriction, alternative servicing based upon proper planning and servicing principles resulting in some oversized Municipal Improvements becoming obsolete or requiring replacement or renewal prior to payment of all potential proportionate shares by other developers). For these and other reasons (including, without restriction, the simple lack of further and other development in general), there shall always exist the potential for adjacent or other lands never becoming benefited by some or all oversized Municipal Improvements. Consequently, and notwithstanding the foregoing and anything to the contrary contained within this Agreement, the County cannot and will not guarantee eventual recovery of proportionate shares of oversizing costs.

## **17. LEVIES AND FEES**

- 17.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water and arterial roadway that will be utilized to provide municipal services to the Development Area, and accordingly, the Developer covenants and agrees to pay to the County off-site levies upon execution of this Agreement and as provided within Schedule "E".
- 17.2 The Developer covenants and agrees that the off-site levies currently established by the County and payable by the Developer to the County are the amounts specified in Schedule "E" of this Agreement. Unless otherwise required by the applicable bylaw, or otherwise already apportioned and applied within Schedule "E" to the lands contained within the Development Area, the County shall distribute any off-site levies specified in Schedule "E" which are shown or levied on the basis of gross hectares in the manner the County considers equitable amongst the parcels within the Development Area (excluding any lands to be owned by the County) so that a specified amount shall be attributed to each parcel within the Development Area.
- 17.3 The Developer acknowledges that the County will incur costs and expenses in the checking of the Plans for the Municipal Improvements, as well as costs and expenses for the testing and



inspection of the Municipal Improvements, which costs and expenses are properly part of the costs of constructing and installing the Municipal Improvements and shall properly be borne by the Developer. The County and the Developer agree that unless otherwise required by a Section of this Agreement, any applicable fees bylaw, or any other bylaw of general application, or unless otherwise stipulated within Schedule "E", upon the execution of this Agreement the Developer shall pay to the County approval and inspection fees as per the fees established from time to time by the County. Such fees may be applied on a flat rate basis or for each hectare within the gross area of the Development Area, or applied on the rate and/or basis required by any applicable fee bylaw or other applicable bylaw of general application, as set forth in Schedule "E", and failing those as may be established from time to time by the County.

17.4 The Developer acknowledges that the amount of the approval and inspection fees payable, whether specified in Schedule "E", are subject to adjustment by the County, and the Developer and the County further covenant and agree that the following provisions shall apply:

- (a) that in the event that at the time of the payment of the approval and inspection fees for the Development Area the County has not as yet established the approval and inspection fees for the applicable calendar year, the Developer shall pay to the County an amount equal to the approval and inspection fees calculated on the basis of then current rate as required within this Agreement;
- (b) within Thirty (30) days of the new approval and inspection fees being established by the County for the applicable calendar year, the amount of the payment shall be adjusted upwards or downwards and the difference shall be paid by the Developer to the County, or paid by the County to the Developer, as the case may be; and
- (c) that the amount of the approval and inspection fees shall only be adjusted so that the new approval and inspection fees are of general application within the County.

## **18. INTEREST ON MONIES OWED TO THE COUNTY**

18.1 Except as otherwise specifically provided in this Agreement, all sums or monies owed by the Developer to the County shall bear interest calculated semi-annually and calculated from the date upon which such sum or monies are due and payable and such interest shall be calculated at a rate per annum equal to the Prime Rate plus TWO (2%) per cent and such interest rate shall be adjusted from time to time in accordance with any change to the Prime Rate.

18.2 In the event that the County, pursuant to this Agreement, is holding any monies, for the purposes of security, belonging to the Developer, the County shall invest such monies and upon the County returning such monies, the Developer shall only be entitled to the principal amount provided (less any amounts lawfully owing from the Developer to the County), with any accumulated interest being the sole property of the County.

18.3 For purposes of calculating interest under Sections 18.1 the Prime Rate established on the first business day of a particular month shall be utilized and shall be deemed to be the Prime Rate for that entire month.

## **19. AMOUNTS PAYABLE UNDER THIS AGREEMENT**

- 19.1 The Developer acknowledges and agrees that the County and the Developer are properly and legally entitled to make provision in this Agreement, for the purposes specified herein, for the payment by the Developer to the County of the various sums prescribed in this Agreement, AND FURTHER:
- (a) the Developer acknowledges and agrees that the Agreement by the Developer to pay the said sums is an inducement offered by the Developer to the County to enter into this Agreement;
  - (b) the Developer acknowledges that the County has agreed to enter into this Agreement on the representation and agreement by the Developer to pay to the County the sums specified in this Agreement;
  - (c) the Developer agrees that the County is fully entitled in law to recover from the Developer the sums specified in this Agreement;
  - (d) the Developer hereby waives for itself and its successors and assigns any and all rights, defenses, actions, causes of action, claims, demands, suits and proceedings of any nature or kind whatsoever, which the Developer has, or hereafter may have, against the County in respect to the Developer's refusal to pay the sums specified in this Agreement; and
  - (e) the Developer for itself and its successors and assigns hereby releases and forever discharges the County from all actions, claims, demands, suits and proceedings of any nature or kind whatsoever which the Developer has, or may hereinafter have, if any, against the County in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the County pursuant to this Agreement.
- 19.2 The County and the Developer agree that any amounts of money presently or hereafter owing by the Developer to the County pursuant to the provisions of this Agreement, whether by way of a liquidated or unliquidated claim, and howsoever arising, shall be a charge and encumbrance against the lands described in Schedule "A" of this Agreement, the Developer does hereby mortgage, charge and encumber the said lands as security for the payment or performance of the Developer's obligations within this Agreement, and further, that the County shall be entitled to recover any such monies owing, together with all costs on a solicitor and client basis, by enforcing the charge and encumbrance against the lands described in Schedule "A" of this Agreement.
- 19.3 The Developer acknowledges and agrees that the County may offset any remaining portion of any funds paid by the Developer to the County under this Agreement to satisfy any other outstanding payments due and owing to the County.
- 19.4 Should the Developer become defunct, dissolved, or otherwise ceases to exist, any monies paid or security provided to the County under this Agreement vest in the County and become the County's sole property as if it always had been the County's property. Furthermore, the Developer hereby agrees now that any monies paid or securities provided pursuant to this Agreement in the event the Developer becomes defunct, dissolved, or otherwise ceases to exist, then any other party the Developer may have a relationship or agreement with shall

not be entitled to any portion of, or at all, the monies or securities the Developer paid or provided to the County under this Agreement.

## **20. DEFAULT BY THE DEVELOPER**

- 20.1 In the event that the County claims that the Developer is in default in the observance and performance of any of the terms, covenants or conditions of this Agreement, the County may give the Developer THIRTY (30) days' notice in writing of such claimed default and requiring the Developer to rectify same within the said period of THIRTY (30) days.
- 20.2 If the Developer denies that it is in default as claimed in such notice, the Developer shall within TEN (10) days of receipt of such notice request a reference to arbitration pursuant to the provisions of Section 21 hereof. If arbitration is mutually consented to and occurs, and the Arbitrator confirms the claimed default, the Developer shall, notwithstanding the provisions of Section 20.1, have a period of THIRTY (30) days from the receipt of the arbitration ruling within which to rectify such default.
- 20.3 The Developer agrees that in the event that the County has given the Developer written notice of default and the Developer does not, within TEN (10) days of receipt of the written notice, dispute that it is in default, then the Developer shall conclusively be deemed to have acknowledged the default.
- 20.4 In the event that the Developer has failed to rectify such default within the period of THIRTY (30) days from the receipt of the notice of default provided by the County pursuant to Section 20.1 and no arbitration been requested by the Developer, or from confirmation of the default by the Arbitrator pursuant to Section 20.2, the County may, but shall not be obligated to, undertake any work it considers necessary in order to remedy such default and any costs or liability incurred by the County in respect thereof shall be at the Developer's sole cost and expense. The Developer shall pay such costs to the County within Thirty (30) days of receiving demand for payment from the County.
- 20.5 Notwithstanding anything to the contrary herein, in the event that the County, in its discretion, considers it necessary to undertake any immediate work in connection with the construction, installation or repair of the Municipal Improvements, including in a situation which the County considers to be an emergency, the County shall immediately notify the Developer of such situation and shall be entitled to then cause such work to be done and invoice the Developer for said work; PROVIDED, that upon completion of said work, the County shall give notice in writing to the Developer of the County's claims that such repair work was made necessary by reason of a default on the part of the Developer in the observance or performance of the terms, covenants and conditions of this Agreement, and if the Developer denies the claimed default, it shall within TEN (10) days request a reference to arbitration pursuant to the provisions of Section 21 hereof.
- 20.6 The Developer agrees that the County shall, for purposes of undertaking any work under this Section, have free and uninterrupted access to all portions of the Development Area and any other areas under the control of the Developer and that the County shall not be hindered nor restricted in any manner whatsoever in obtaining or exercising such right of access.
- 20.7 The decision of the Arbitrator in any reference respecting a claimed default on the part of the Developer shall be final and binding upon the County and the Developer.

20.8 The County and the Developer agree that any rights and remedies available to the County whether specified in this Agreement or otherwise available at law, are cumulative and not alternative and the County shall be entitled to enforce any right or remedy in any manner the County deems appropriate in its discretion without prejudicing or waiving any other right or remedy otherwise available to the County.

20.9 In the event that, and without restricting the provisions of the foregoing:

- (a) a default by the Developer has not been rectified by the Developer in accordance with the foregoing provisions; or
- (b) a default by the Developer has been rectified by the County in accordance with the foregoing provisions and the Developer fails to pay the cost and expense of this rectification within FIVE (5) DAYS after receipt from the County of an account therefore; or
- (c) emergency repair work has been done by the County, and the Developer fails to pay the cost and expense of the repair work within FIVE (5) DAYS of the demand for payment; or
- (d) the subdivision approval for the Development Area has been suspended, cancelled or lapsed; or
- (e) the Plan of Subdivision contemplated by the subdivision approval is not registered with Land Titles in the time period provided by Section 2.1 of this Agreement; or
- (f) the Developer has become insolvent, there is a filing or presenting of a petition in bankruptcy against the Developer, there is an appointment of a receiver or a receiver-manager of the Developer or any of its assets either privately or by court appointment, or there are any proceedings or proposal with respect to the Developer commenced under either the *Companies Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* or any successor legislation;

then the County, in its sole discretion may:

- (i) demand as Payee under any security provided by the Developer pursuant to Section 22.11 of the Agreement in such amounts as the County deems appropriate in its sole discretion; or
- (ii) terminate this Agreement, which termination shall be effective the date notice is given to the Developer, provided that termination shall not release the Developer from any financial obligations under this Agreement, any liability arising out of or in connection with this Agreement, of its obligations to indemnify the County, or from any damage claim available to the County for breach of this Agreement; or
- (iii) revoke its endorsement of the Plan of Subdivision if the such Plan of Subdivision has been submitted for registered with Land Titles; or
- (iv) invoke any two or more of the above remedies, which shall be cumulative remedies and not exclusive.

## **21. ARBITRATION**

- 21.1 Subject to any other provisions of this Agreement to the contrary, if any dispute or difference between the Parties shall arise under this Agreement, either party may give to the other notice of such dispute or difference and refer such dispute or difference to arbitration in accordance with the provisions of this Agreement.
- 21.2 Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the County and the Developer, and his decision shall be final and binding. In the event that the County and the Developer shall fail to agree on an arbitrator within FORTY-EIGHT (48) hours of either party giving notice to the other party notice of a dispute or difference pursuant to Section 21.1 hereof, then an application shall be made to a Justice of the Court of King's Bench of Alberta to select the arbitrator.
- 21.3 All charges, fees and expenses of the arbitrator shall be borne and paid by the County or the Developer, or proportionately by both the County and the Developer, depending upon their respective fault as found by the arbitrator.
- 21.4 Nothing in this Agreement shall authorize any reference to arbitration as to any matter or question which under this Agreement is expressly or by implication required or permitted to be decided by the County, the Committee of the Whole or the Council of the County or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by the County, the Committee of the Whole or the Council of the County. In any such instance the discretion, decision, opinion or determination of the County, the Committee of the Whole or the Council of the County, as the case may be, shall be final and binding upon the Developer.

## **22. INDEMNITY AND SECURITY**

- 22.1 The Developer shall indemnify, defend and hold harmless the County, and all of its respective officials, officers, employees and authorized representatives from and against any and all suits, actions, payments, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, legal fees, costs and expenses sustained by the County of every nature and description, whether arising before or after the completion of any activity, work, maintenance or construction as contemplated in this Agreement and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, error, omission or fault whether active or passive of the Developer, its employees, contractors, sub-contractors, engineers, agents or anyone acting under the Developer's direction or control or on its behalf in connection with or incidental to any activity, work, maintenance or construction contemplated herein.
- 22.2 The Developer covenants and agrees that it shall carry comprehensive liability insurance and that the following provisions shall apply to such insurance:
- (a) the County shall be an additional named insured in all public liability policies;
  - (b) all policies shall provide that an event of default on the part of the Developer, its servants or agents, shall not be an event of default on the part of the County;

- (c) none of the policies shall be cancelled unless THIRTY (30) days prior written notice of cancellation is first given to the County;
- (d) copies of all policies of insurance shall immediately be provided to the County upon written request by the County;
- (e) the insurance policies shall have the minimum limits of coverage of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence for such period as the Developer has any rights or obligations hereunder with respect to the Development Area, and a comprehensive liability policy, including extended coverage and malicious damage endorsement, as per industry standard, insuring the full value of the work undertaken by the Developer pursuant to this Agreement.

22.3 In order to ensure to the County full compliance by the Developer with the terms, covenants and conditions of this Agreement, the Developer hereby covenants and agrees that it shall deliver and deposit with the County security in the form hereinafter prescribed and that the following provisions shall apply to determining the amount of the security and the time or times at which the security shall be deposited with the County:

- (a) the security shall be deposited by the Developer with the County prior to the commencement of construction;
- (b) the security shall be an amount equal to the sum of the following amounts:
  - (i) 100% of the estimated cost for constructing and installing all Municipal Improvements, including Landscaping (but excluding Franchise Utilities) where the Construction Completion Certificate has not been issued;
  - (ii) 100% of the estimated cost for constructing and installing each and every Franchise Utility (unless the County has been advised by the respective franchise owner in writing that the Franchise Utility complies with the Plans, is operable and the Developer has completed all of its obligations in relation to the Franchise Utility);
  - (iii) 100% of the estimated cost for constructing and installing the second lift of asphalt as calculated pursuant to Section 10.19;
  - (iv) 100% of the Common Fencing on private lands;
  - (v) 15% of the estimated costs for constructing and installing all Municipal Improvements including Landscaping (but excluding Franchise Utilities and Common Fencing on Private Lands) for which a Construction Completion Certificate has been issued. However if a Construction Completion Certificate has been issued with deficiencies noted, 125% of the estimated cost for completing such deficiencies shall be required;
  - (vi) 100% of the cost any other incomplete obligation or default of the Developer under the Development Agreement, whether or not a Notice of Default has been issued; and

- (vii) such other amounts as are required elsewhere under the provisions of this Agreement.
  - (c) for purposes of this paragraph, the estimated cost for the Municipal Improvements shall be determined as follows:
    - (i) where actual tendered costs are available, the tendered costs shall be used;
    - (ii) where actual tendered costs are not available, the Developer's Consultant shall prepare cost estimates which shall be submitted to the County for approval, and if approved by the County, such cost estimates shall be used.
- 22.4 It is understood and agreed by the Developer that the Developer shall, during the currency of this Agreement (including the Guarantee Period maintain in full force and effect all security and liability insurance prescribed herein.
- 22.5 The said security as above referred to shall consist of an Irrevocable Letter of Credit issued by a Chartered Bank in Canada or ATB Financial; PROVIDED, that all security shall be in terms and form to be approved by the County's solicitors.
- 22.6 Any Irrevocable Letter of Credit provided as security by the Developer shall contain a covenant by the issuer that if the issuer has not received a release from the County SIXTY (60) days prior to the expiry date of the security, then the security shall automatically be renewed, upon the same terms and conditions, for a further period of ONE (1) year.
- 22.7 In regards to security provided under this Agreement, the following terms and conditions shall apply:
- (a) any cash security deposit, Irrevocable Letter of Credit or other security required or otherwise provided by the Developer to the County pursuant to this Agreement is hereby assigned and pledged to the County as security for the performance of the Developer's obligations as contemplated herein (such assignment and pledge to be perfected by possession and/or registration);
  - (b) the Developer acknowledges having received a copy of this Agreement, and the security terms contemplated herein, and waives any right it may have to receive a copy of any Financing Statement or Financing Charge Statement in relation hereto; and
  - (c) notwithstanding any other provision of this Agreement and further, without prejudice to any other right or remedy of the County, the obligation of the County or its solicitor to release any security deposit funds held by it under or in connection with this Agreement (including, without restriction, any cash security) is subject to the County's right to deduct or set off any amount which may be due by the Developer to the County or the amount of any claim by the County against the Developer under this Agreement (including, without limitation, the amount of any liquidated damages). Without limitation, if the Developer is in breach or default of any provision of this Agreement and, after receiving notice thereof, the Developer does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the County may (but shall not be obligated to) take any measures it considers necessary to remedy such default or breach and any costs or liabilities incurred by the County in respect

thereof may be deducted from or set off against any amount(s) to be paid or released to the Developer under this Agreement. This provision shall survive the termination of this Agreement for any reason whatsoever.

- 22.8 Any security or insurance herein required to be deposited by the Developer may be required to be increased or decreased by the County upon written notice to the Developer at any time during the currency of this Agreement if it shall appear to the County in its discretion that the security or insurance deposited is excessive or insufficient in relation to the costs or protection to the County, for which security or insurance has been provided.
- 22.9 The amount of insurance to be provided by the Developer to the County may, in the sole and absolute discretion of the County, be reduced on application by the Developer upon the Developer having received a Construction Completion Certificate or Final Acceptance Certificate for the Municipal Improvements or any of them, so completed.
- 22.10 The amount of security to be provided by the Developer to the County may, in the sole and absolute discretion of the County, be reduced on application by the Developer upon the Developer having received a Construction Completion Certificate or Final Acceptance Certificate for the Municipal Improvements, or any of them, so completed; PROVIDED THAT, the security maintained by the County shall not be less than the percentages prescribed in Section 22.3 above. Upon the issuance of all Final Acceptance Certificates for the Improvements, the County shall return to the Developer all remaining security held by the County pursuant to this Agreement.
- 22.11 In the event that the County is of the opinion that:
- (a) a default by the Developer has not been rectified by the Developer in accordance with the provisions of this Agreement.
  - (b) a default by the Developer has been rectified by the County in accordance with the provisions of this Agreement and the Developer has failed to pay the costs and expenses of such rectification within THIRTY (30) days after receipt from the County of an account therefore;
  - (c) emergency repair work has been done to Improvements by the County in accordance with the provisions of this Agreement and the Developer fails to pay the costs and expenses of such repair work within THIRTY (30) days after receipt from the County of an account therefore;
  - (d) the Developer by any act or omission is in default of any term, condition or covenant of this Agreement;
  - (e) the security to be provided by the Developer to the County pursuant to this Agreement is due to expire within a period of SIXTY (60) days and the Developer has not deposited with the County a renewal or replacement of such security in terms and form acceptable to the County's solicitors;

the County may invoke the provisions of this Section, and make demands as payee and beneficiary under the Irrevocable Letter of Credit provided by the Developer to the County pursuant to the requirements of this Agreement.



- 22.12 In the event that the County has negotiated or called upon the security to be deposited by the Developer with the County in circumstances where the said security was due to expire within the said SIXTY (60) day period, then the County shall be entitled to hold any funds thereby obtained in lieu of the security which has been negotiated or called upon.
- 22.13 In the event that the County has negotiated or called upon the security to be deposited by the Developer with the County, the County may, at its option and discretion, use any funds thereby obtained in any manner the County deems fit to discharge the obligations of the Developer pursuant to this Agreement.
- 22.14 The security requirement contained within and provided by the Developer is without prejudice to the Developer's responsibility under this Agreement. Nothing shall prevent the County from demanding payment or performance by the Developer in excess of the required security, and without having to call upon or otherwise exhaust its remedies in respect of the required security prior to making such demand.
- 22.15 The Developer shall forfeit all remaining security provided to the County under this Agreement after four (4) year from the date of the Agreement, if in the sole opinion of the County, the Developer has not acted in a reasonable manner to complete the obligations of this Agreement, including without restriction any outstanding Municipal Improvements and/or deficiencies or the Developer has become defunct, dissolved, or otherwise ceases to exist.

### **23. DELIVERY OF DOCUMENTS TO THE COUNTY**

- 23.1 Prior to the issuance of a Construction Completion Certificate for the above ground Improvements, the Developer shall, in addition to the requirements specified elsewhere in this Section, deliver to the County all other documentation and information relating to the development of the Development Area which the County considers, in its discretion, necessary or desirable for the delivery of County services to the Development Area and the Developer agrees that not less than thirty (30) days prior to its application for a Construction Completion Certificate for the above ground Improvements that the Developer shall request from the County a list of all documents and information required by the County.
- 23.2 Forthwith upon the completion of the construction and installation of the Improvements and the issuance of a Construction Completion Certificate for the same by the County, the Developer shall deliver immediately to the County all inspection and testing records and As-Built Drawings and records, as herein required, in a form and to standards specified by the County which may include paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the County. Such As-Built Drawings shall include detailed information on the underground and surface Improvements constructed for the Development Area, including, but not limited to, such information such as grading elevations, length of asphalt, length of pipes, fire hydrants, length of sidewalks and multi-way trails, etc.
- 23.3 Notwithstanding any other provision of this Agreement, the Final Acceptance Certificate shall not be issued until SIX (6) months have elapsed subsequent to the date of receipt of the records AND PROVIDED, that the Final Acceptance Certificate shall not be issued prior to the expiration of the Guarantee Period.

- 23.4 Any and all documents provided by the Developer to the County, including the Plans and as-built drawings, pursuant to this Agreement shall become and are the property of the County, including any proprietary, copyright or moral rights to the same, and the County shall be entitled to utilize such documents in any manner that it sees fit.

## **24. COMPLIANCE WITH LAW**

- 24.1 The Developer shall at all times comply with all legislation (including any applicable Provincial or Federal legislation), regulations and County bylaws and resolutions relating to the development of the Development Area by the Developer.
- 24.2 This Agreement does not constitute approval of any subdivision and is not a development permit, building permit or other permit granted by the County, and it is understood and agreed that the Developer shall obtain all approvals and permits which may be required by the County or any governmental authority.
- 24.3 Where anything provided for herein cannot lawfully be done without the approval or permission of any authority, person or board, the rights or obligations to do it do not come into force until such approval or permission is obtained; PROVIDED, that the parties will do all things necessary by way of application or otherwise in an effort to obtain such approval or permission.
- 24.4 If any provision hereof is contrary to law, the same shall be severed and the remainder of this Agreement shall be of full force and effect.

## **25. GENERAL**

- 25.1 The validity and interpretation of this Agreement and of each clause and part hereof shall be governed by the laws of the Province of Alberta.
- 25.2 The headings in this Agreement are for convenience only and not intended to affect interpretation of this Agreement.
- 25.3 Words impacting the singular number only shall include the plural and vice versa. A reference to any gender includes reference to the other genders. Words impacting persons shall include corporations.
- 25.4 The parties to this Agreement shall execute and deliver all further documents and assurances necessary to give effect to this Agreement and to discharge the respective obligations of the parties.
- 25.5 A waiver by either party hereto of the strict performance by the other of any covenant or provision of this Agreement shall not, of itself, constitute a waiver of any subsequent breach of such covenant or provision or any other covenant or provision of this Agreement.
- 25.6 Whenever under the provisions of this Agreement any notice, demand or request is required to be given by either party to the other, such notice, demand or request may be given by delivery by hand to, by courier, by email, or by registered mail sent to, the respective addresses of the parties being:

LEDUC COUNTY  
#101, 1101 - 5 Street  
Nisku, AB T9E 2X3  
EMAIL

AND  
NAME OF DEVELOPER  
ADDRESS  
EMAIL

provided, however, that such addresses may be changed upon Ten (10) days' notice; and provided, further, that if in the event that notice is to be served at a time when there is an actual or anticipated interruption of mail service affecting the delivery of such mail, the notice shall not be mailed but shall be delivered by courier, by hand, or by email. If sent by email, the notice shall be deemed to have been received on the first business day following the day it was dispatched.

- 25.7 The Developer covenants and agrees that in addition to the provisions contained in the text of this Agreement, the Developer shall be bound by the additional provisions found in the Schedules of this Agreement as if the provisions of the Schedules were contained in the text of this Agreement. This Agreement is intended to have EIGHT (8) Schedules, titled: Schedule "A", "B", "C", "D", "E", "F", "G", and "H".
- 25.8 The Developer acknowledges and agrees that the County shall be at liberty, pursuant to the *Municipal Government Act*, upon the execution of this Agreement, to file at the Land Titles Office for the North Alberta Land Registration District a caveat against the Development Area and against the undeveloped portion of the lands described in Schedule "A" for purposes of protecting the County's interests and rights pursuant to this Agreement.
- 25.9 This Agreement shall enure to the benefit of, and shall remain binding upon (jointly and severally, where multiple parties comprising the Developer), the heirs, executors, administrators, attorney under a power of attorney, and other personal representatives of all individual parties and their representative estates, and shall enure to the benefit of and shall remain binding upon, all successors and assigns (if and when assignment permitted herein) of all corporate parties.
- 25.10 This Agreement shall not be assignable by the Developer without the express written approval of the County. Such approval shall be subject to Section 25.11 and may be withheld by the County in its discretion.
- 25.11 It is understood between the County and the Developer that no assignment of this Agreement by the Developer shall be permitted by the County unless and until:
- (a) The proposed assignee enters into a further agreement with the County whereby such assignee undertakes to assume and perform all of the obligations and responsibilities of the Developer as set forth in this Agreement;
  - (b) The proposed assignee has deposited with the County all insurance and security as required by the terms of this Agreement.
- 25.12 Time shall in all respects be of the essence in this Agreement.
- 25.13 The Developer shall be responsible for, and within THIRTY (30) days of the presentation of an account or invoice, paying the County all legal and engineering costs, fees, expenses and

disbursements, incurred by the County through its solicitors and engineers for all services rendered in connection with the preparation, fulfillment, execution and enforcement of this agreement in full.

25.14 The Parties agree that in the event of one or more of the provisions of this Agreement being subsequently declared invalid, unenforceable, or contrary to law by a court or other binding authority then the same shall be severed and the remainder of this Agreement shall be full force and effect.

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

25.16 In the event that either party is rendered unable wholly, or in part, by force majeure to carry out its obligations under this Agreement, other than its obligations to make payments of money due hereunder, such party shall give written notice to the other party stating full particulars of such force majeure. The obligation of the party giving such notice shall be suspended during the duration of the delay resulting from such force majeure, to a maximum of ONE HUNDRED AND EIGHTY (180) days. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances of a general nature affecting an industry critical to the performance of the Work, acts of the King's enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, inability with reasonable diligence to obtain materials and any other cause not within the control of the party claiming a suspension, which, by the exercise of due diligence, such party shall not have been able to avoid or overcome; provided however, the term "force majeure" does not include a lack of financial resources or available funds or similar financial predicament or economic circumstances or any other event, the occurrence or existence of which is due to the financial inability of a party to pay any amount that a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid or discontinue such event.

## **26. EXECUTION OF AGREEMENT**

26.1 The Developer hereby acknowledges that it is hereby executing this Agreement having been given the full opportunity to review the same and seek proper and independent legal advice and that the Developer is executing this Agreement freely and voluntarily and of its own accord without any duress or coercion whatsoever and that the Developer is fully aware of the terms, conditions and covenants contained herein and the legal effects thereof.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals, duly attested by the hands of their respective proper officers in that behalf, as of the day and year first above written.

**LEDUC COUNTY**

Per: \_\_\_\_\_

c/s

Per: \_\_\_\_\_

Per: \_\_\_\_\_

c/s

Per: \_\_\_\_\_

**SCHEDULE "A"**  
**LEGAL DESCRIPTION OF THE LANDS**

The subject Lands have the legal description of:

**NTD: LEGAL ADDRESS**

**SCHEDULE "B"**  
**THE DEVELOPMENT AREA**

**SCHEDULE "C"**  
**MUNICIPAL IMPROVEMENTS**

Subject to confirmation from the County with respect to either the current existence of any of the following satisfactory to the County, or confirmation that the County has assumed responsibility to initially construct and install them, Municipal Improvements shall mean and include the following to be constructed in and adjacent to the Development Area.

- (a) all sanitary sewer systems including holding tanks, service lines, man holes, mains, lift stations and appurtenances;
- (b) all drainage systems, including storm sewers, storm sewer connections, pumping stations, provisions for weeping tile flow where a high water table or other subsurface conditions cause continuous flow in the weeping tile, storm retention ponds/ storm water management facilities, catch basins, catch basin leads, man holes and associated works, all as and where required by the County;
- (c) all water wells, pumps and lines, including all fittings, valves, and hydrants and looping as required by the County, in order to safeguard and ensure the continuous and safe supply of water in the Development Area;
- (d) all concrete curbs and gutters, sidewalks and sub-grade, base gravel and base asphalt and all surface asphalt;
- (e) all lighting systems for streets, walkways, parking areas and Public Properties as and where required by the County;
- (f) such electrical conduit as may be required by the County for the installation of traffic control signals and traffic control devices;
- (g) all traffic signs, street signs, development identification signs, zoning signs, and directional signs, berming and noise attenuation devices all as and where required by the County;
- (h) subject to subsection (i) below, all walkway systems and Landscaping on both private property and public property which are to be constructed and installed to the satisfaction of the County, and in accordance with the approved landscaping plans;
- (i) all walkway systems and Landscaping on boulevards adjacent to separate sidewalks which are to be constructed and installed to the satisfaction of the County, and in accordance with the approved landscaping plans;
- (j) such construction or development of roads, including lanes, as may be required by the County; and shall include, but in no manner be limited to, a second or temporary access for construction, emergency and vehicular traffic from the Development Area;
- (k) the restoration of all Public Properties to the County's satisfaction which are disturbed or damaged in the course of the Developer's work;



- (l) all open space site amenities and playgrounds, including landscaping and playground equipment, on public lands which are to be constructed and installed to the satisfaction of the County, and in accordance with the approved landscaping plans;
- (m) the relocation, to the County's satisfaction, of all existing utilities and Improvements as required by the County as a result of the installation and construction of the Improvements pursuant to this Agreement;
- (n) the establishment, or re-establishment, of any survey monuments or iron posts (including pins on individual lots) as and where and when required by the County throughout and adjacent to the Development Area;
- (o) public information signs, of a size and location to be approved by the County, and to contain such public information regarding the completion of services and the completion of construction of other facilities as may be required by the County in order to provide proper and complete up to the date information to proposed purchasers and residents within the Development Area;
- (p) major entrance features shall be located either on an added dedication to the required road right-of-way or on private property. The required dedication of road right-of-way shall be defined at the time the Plan of Subdivision for the development is submitted for approval. Any major entrance feature located on private property shall require the registration of an easement to provide for maintenance access to the feature and shall be approved by the County. The easement shall be to the satisfaction of the County;
- (q) such uniform fencing, such as noise attenuation or screening, of either permanent or temporary, and of a standard and design satisfactory to the County, all of which is to be constructed and located to the satisfaction of the County; and
- (r) all utilities including electricity, natural gas, cable television, telephone and internet. Such utilities to be provided in a location and a standard to be approved by the appropriate utility company and the County.

**SCHEDULE "D"**  
**ADDITIONAL PROVISIONS**

In addition to the terms, covenants and conditions contained within this Agreement, the Developer shall be responsible, at its sole cost, for the satisfaction of the following additional conditions:

(i) Landscaping of Public Lands

Further to the Municipal Improvements in Schedule "C" of this Agreement, the Developer shall, at the Developer's sole cost and expense:

- (a) Use a seed mix that consists of 40% Kentucky Bluegrass, 40% Creeping Red Fescue, and 20% Perennial Ryegrass for Landscaping Public Lands;
- (b) Include in the Landscaping Plans, to be approved by the County, and construct and install: Park Amenities; trail types, trail road crossings and connections signage; location of fencing on private lands that abuts public lands; tree planting/other vegetation and configuration of planting beds; riparian plantings for the storm water management facility; and any other requirements of the Leduc County Parks and Recreation Department deems necessary to approve the plans; and
- (c) Surface all trails in asphalt, in accordance with Design Standards.

(ii) Building and Development Permits

The timing of issuance of building and development permits shall be in accordance with Section 5.16. No Development or Building Permits shall be issued until Construction Completion Certificates have been issued and as built drawings have been provided to the County.

(iii) Lot Plans

The Developer shall provide to the County individual lot plans illustrating grades, building pockets, as built, underground service locations and elevations along with street furniture.

(iv) Cost Contribution for Oversized Costs

The Developer recognizes and agrees that the Development within the Development Area will benefit from the Oversizing or construction of Municipal Improvements which have been or will be constructed by parties other than the Developer in areas adjacent to the Development Area and other benefiting areas, and therefore, the Developer agrees that it shall bear and pay its proportionate share of such other Municipal Improvements as determined in the discretion of the County. The Developer's proportionate share of existing or currently contemplated oversizing be calculated and paid upon execution of this Agreement and in any event prior to Commencement of Construction.

The Developer agrees as a benefiting developer, to contribute and pay to the County in the amount of \$\_\_\_\_\_ for the oversizing of the storm water management facilities which accommodate future development on other lands as per below. The cost of the oversized storm water management pond is apportioned on an area basis over the benefiting lands, including the Development Area, as provided in the table below;

<u>Benefiting Lands</u>	<u>Area (ha)</u>	<u>Cost Share/Recoveries</u>
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**SCHEDULE "E"**  
**OVERSIZING, LEVIES AND FEES**

**(a) Offsite Levies**

Levy and Calculation – the Developer shall pay the following servicing contribution and/or Off-Site Levies, pursuant to the County's Off-Site Levy Bylaw No. 09-25, as amended, Section 16 and 17 of this Agreement and Sections 650 or 655 of the MGA. Levies in the amount of \$\_\_\_\_\_ are due and payable to the County:

Water Off-Site Levy	\$20,600/hectare x _____ hectares = \$
Arterial Road Off-Site Levy	\$88,367/hectare x _____ hectares = \$
Sanitary Sewer	\$9,676/hectare x _____ hectares = \$
<hr/>	
Total Off-site Levies	
\$	

**(b) Development Agreement Preparation Fees**

Fees and Calculation – the Developer shall pay the following approval and inspection fees currently due and payable by the Developer pursuant to Section 17 of this Agreement:

- (i) Administrative Development Agreement Preparation Fee - \$\_\_\_\_\_, paid in full upon execution of this Agreement;
  
- (iii) Subdivision Requiring New Watermain - \$\_\_\_\_\_ per lot, paid in full at the time of registration of the plan of subdivision, which comes first.

**SCHEDULE "F"**  
**SECURITY**

1. For purposes of calculating the security required to be deposited by the Developer pursuant to Section 22, and subject to the provisions below, the cost estimates for the construction and installation of the Municipal Improvements \_\_\_\_\_ for the following Municipal Improvements only.

Stripping and Grading ( <b>YEAR</b> ) 15%	\$
Underground Utilities - water, sanitary, storm	\$
Surface Works - roads, lanes, and concrete	\$
Power & Communications	\$
Landscaping and Fencing	_____ \$
Subdivision Signage	\$
Legal Survey (\$____/lot)	\$
Construction Engineering	\$no
Construction Testing (1.5% items 1, 2, & 3)	\$
 Total	 \$

2. Upon execution of this Agreement, the Developer agrees to provide additional security for the remaining Municipal Improvements based on the actual costs at the time that the work is to be undertaken for the construction and installation of the Municipal Improvements.
3. The Parties hereby represent, warrant, covenant and agree that all of the costs for the construction and installation of the Municipal Improvements for the Development Area, as set out above, are estimates, and as such shall in no way limit or restrict the Developer's responsibility under this Agreement, nor in any way whatsoever establish or otherwise suggest a maximum amount of the Developer's obligations under this Agreement.
4. Where estimates are not available as at the date of this Agreement, the Developer shall provide such estimates as contemplated within Section 22, and the amount of the security shall be established by the County at that time.
5. In the event that any of the actual or tendered costs for the construction and installation of the Municipal Improvements for the Development Area are higher or lower than as estimated above, the security to be provided by the Developer shall be adjusted in accordance with Section 22 so as to be based upon those actual or tendered costs.

**SCHEDULE "G"**  
**SCHEDULE OF PLANS**

\_\_\_\_\_.

Sheet No.      Title of Drawing

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**SCHEDULE "H"**  
**INAPPLICABLE PROVISIONS**

*(NTD: Specify any provisions which shall not have effect under this Development Agreement)*