

DRAFT ONLY.

COUNTY OF VERMILION RIVER

Development Agreement – Single Stage

COUNTY OF VERMILION RIVER

AND

MEMORANDUM OF AGREEMENT made this ____ day of _____, 20__.

County of Vermilion River
a municipal corporation, (hereinafter referred to as "the County")

OF THE FIRST PART

- and -

a body corporate duly authorized to carry on business in the Province of Alberta,
(hereinafter referred to as "the Developer")

OF THE SECOND PART

WHEREAS:

- A. The Developer is, or is entitled to become, the registered owner of part or all of those lands situated in the County as described in Schedule "A" attached to this Agreement.
- B. The Developer proposes to subdivide or develop part or all of the lands (hereinafter referred to as "the Development Area") as shown on the Plan attached as Schedule "B" to this Agreement.
- C. 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 Municipal Improvements.
- D. The County and the Developer have agreed to enter into this Agreement to ensure adequate and timely provision of required services within and adjacent to the Development Area.
- E. Upon satisfactory completion of the construction and installation of the Municipal Improvements, as signified by the issuance of a Construction Completion Certificate, and the Final Acceptance of them by the County, as signified by the issuance of a Final Acceptance Certificate, the Municipal Improvements which are on or under Public Property shall become the property of the County.
- F. 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 of the 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

1.1 "Construction Completion Certificate" shall mean a Certificate issued by the County, as contemplated in Section 10, certifying the completion 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.

1.2 "Commencement of Construction" or "Commence Construction" shall mean the date upon which the Developer commences the actual grading of the Development Area for purposes of servicing 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 "County" shall mean the municipal corporation executing this Agreement as the development or subdivision authority, and the County shall be represented by the County's Chief Administrative Officer or as otherwise designated by the County.

1.4 "Design Standards" shall mean the procedures, standards and specifications which are specified and set forth in the County's engineering design standards which are established and revised from time to time by the County's engineer, or as revised by the County's Council from time to time, 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.

1.5 "Developer's Consultant" shall mean the consulting professionals retained by the Developer and shall include, but not be limited to professional engineers, landscape architects, land use planners, and land surveyors.

1.6 "Development Area" shall mean that portion of the lands legally described in Schedule "A" and which are outlined in heavy black or bold, or otherwise delineated, on the map attached hereto as Schedule "B" to this Agreement.

1.7 "Essential Services" shall mean:

(a) those Municipal Improvements described in Sections (a), (b), (c), (d), (f), (i) and (k) of Schedule "C" of this Agreement; and

(b) natural gas, electrical power and telephone services.

1.8 "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.

1.9 "Guarantee Period" with respect to the Municipal Improvements, subject to Sections 10, 11, 20 and 21 of this Agreement, shall mean: a period of Three (3) years for all Municipal Improvements, including Landscaping;

1.10 "Lands" means those lands legally described in Schedule "A" to this Agreement;

1.11 "Landscaping" includes the modification or enhancement of a site:

(a) by means of the growing or planting of any type of vegetation whatsoever;

(b) by means of the installation, construction or placement of inanimate materials such as brick, stone, concrete, tile and wood (excluding monolithic concrete and asphalt); and

(c) by means of the alteration of any grades or elevations of the surface of the site which is not done solely for purposes of drainage control.

1.12 "Municipal Improvements" shall mean and include, within and without the Development Area, those services and facilities identified in Schedule "C" to this Agreement.

1.13 "Parties" shall mean the County and the Developer, as described above.

1.14 "Plan of Subdivision" or "Plans of Subdivision" shall mean the subdivision or subdivisions which subdivide the Development Area into separate lots for further development.

1.15 "Plans" shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction, location and installation of all Municipal Improvements, 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 the Municipal Improvements, as approved by the County.

1.16 "Prime Rate" shall mean the prime lending rate established from time to time at the nearest Royal Bank of Canada, in relation to the Development Area.

1.17 "Public Property" or "Public Properties" shall include all properties within and adjacent to the Development Area to be owned or administered by the County, including roadways, utility rights-of-way or easements, following the registration of the Plan or Plans of Subdivision for the Development Area.

2. PLAN OF SUBDIVISION

2.1 The County agrees that, subject to the other requirements of this Agreement, the Developer may proceed with the development of the Development Area prior to registering a Plan of Subdivision for the Development Area.

2.2 Except where a Plan of Subdivision is not contemplated as part of the development of the Development Area:

(a) if the Developer has not obtained subdivision approval for the Development Area by the time of the execution of this Agreement, the Developer shall at its sole cost and expense cause a Plan of Subdivision for the Development Area to be prepared and approved by all necessary approving authorities and in accordance with the law in that respect, and provided that it is a strict requirement of this Agreement, that any Plan of Subdivision must first have received approval in writing of the County;

(b) the Developer covenants and agrees that it shall register in the Land Titles Office for the North Alberta Land Registration District a Plan of Subdivision for the Development Area within Twelve (12) months of the date of this Agreement or in the case of an extension granted by the County's Council pursuant to Section 657(2) of the *Municipal Government Act* prior to the expiration of that extension (unless otherwise agreed to in writing);

(c) if the Developer does not register a Plan of Subdivision within the time prescribed in Section (b), the County shall be entitled to terminate this Agreement;

(d) the termination of this Agreement in whole or in part as provided in Section (c) shall be effective upon the County serving written notice of termination on the Developer;

(e) if the Developer does not register a Plan of Subdivision within the time prescribed in Section (b), Developer shall not register any Plan of Subdivision for any portion of the Development Area or commence or complete the obligations under this Agreement until a further written agreement is entered into between the Developer and the County; and

(f) if 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.

2.3 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).

2.4 No Plan of Subdivision shall either be endorsed by the County or permitted to be registered, nor shall the Developer commence any work within or adjacent to the Development Area, unless and until the County in its discretion has:

(a) rezoned the Development Area to a district that the County deems appropriate;

(b) 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;

(c) passed any new statutory plans or amendments to any existing statutory plans that the County deems appropriate;

(d) has received all necessary approvals from all other orders of government respecting the proposed subdivision or development, the Municipal Improvements, or the Plans;

(e) approved of all Plans respecting the construction and installation of all Municipal Improvements;

(f) received confirmation of, or otherwise confirmed, the satisfaction of all conditions contained within the applicable subdivision approval or development permit;

(g) 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

2.5 In the event that a 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 said Plan of Subdivision, and further, the Developer, in all events, shall have obtained the cancellation of the registration of the said Plan of Subdivision within Three (3) months of the County providing written notice to the Developer as herein provided.

2.6 The Developer covenants and agrees that in the event that a Plan of Subdivision for the Development Area is not registered within the time limits prescribed herein, or in the event that a Plan of Subdivision for the Development Area is cancelled as contemplated in this Section, or in the event that the Developer does not commence the development of the Development Area within the time limits prescribed herein, 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.

2.7 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 said Plan of Subdivision in accordance with the preceding Section of this Agreement.

2.8 The power of attorney conferred upon the County by the Developer in Section 2.7 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.

2.9 The County in its discretion may extend the time limits specified in Section 2.8, 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 2.7 and 2.8 of this Agreement.

2.10 The Developer shall ensure that the public is informed of all land use classifications, bus zones, community mail boxes, truck routes, overhead power feeder mains, sewage treatment plants, arterial roads, the location of school sites and when specified by the school board the school building sites, reserve parcels, dry ponds and other amenities within the subdivision of the Development Area; and the said information shall be shown in all brochures, billboards and other advertising where maps are used in connection with the promotion and sale of lots in the Development Area. The Developer shall erect the Land Use Classification sign, as approved by the County, in the Development Area showing the above-mentioned amenities prior to the issuance of any development permits for any lots in the Development Area. In the event that the Developer proposes to erect the Land Use Classification sign on publicly owned lands, the Developer shall submit to the County a plan showing the size and location of the said sign for the County's approval. The Developer shall maintain the said sign until the issuance of Final Acceptance Certificates for all Municipal Improvements in the Development Area, following which the Developer shall remove the said sign.

3. PLANS

3.1 Prior to commencing construction and installation of the Municipal Improvements within or adjacent to the Development Area, the Developer shall submit Plans to the County for approval. The Plans shall give all necessary details of the Municipal Improvements to be constructed by the Developer, including any necessary specifications to be attached thereto.

3.2 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.

3.3 The Plans for the construction and installation of the Municipal Improvements for the Development Area shall conform strictly to the Design Standards.

3.4 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 any such dispute or difference shall not be subject to arbitration.

3.5 The Developer covenants and agrees that the Plans shall include a construction timetable for the construction and installation of all of the Municipal Improvements within and adjacent to the Development Area and the Developer shall, upon approval of the Plans by the County, comply with all time limits and complete all of the Developer's work within the dates specified in the construction timetable.

3.6 The Developer covenants and agrees that the Plans for Landscaping for Public Properties shall comply with the Design Standards and shall include all Landscaping required by the County including, but not so as to limit the generality of the foregoing, Landscaping of all roadways, utility rights-of-ways and public walkways, construction of berms, construction of uniform fencing, installation of recreational equipment and facilities and the Landscaping of other Public Properties.

3.7 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 once such Plans have been approved by the County.

3.8 It is understood and agreed that the County's approval of the Plans for the Municipal Improvements shall be in principle only and, in the case of unforeseen conditions which may adversely affect development, or in the case where a Municipal Improvement to be built in accordance with the Plans would not be suitable for the purposes intended, the detailed design specifications for any of the Municipal Improvements shall be subject to review and revision, from time to time, by the County in accordance with the Design Standards and in accordance with accepted engineering and construction practices.

3.9 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.

3.10 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 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. DRAINAGE STANDARDS

4.1 The Developer covenants that the preparation of the drainage Plans, the construction and installation of all storm water management systems both within private lands and public property within the Development Area, all testing associated with storm water management systems (including testing for the height of water tables, soil alkalinity and soil compaction), all necessary approvals from Alberta Environment and other affected approving authorities, 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 Design Standards.

4.2 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, as outlined below.

4.3 It is agreed between the County and the Developer that all of the storm water management standards and requirements of the County pursuant to this Agreement shall be and hereby constitute covenants running with the lands and are binding upon the Developer and any subsequent owners of any lots within the Development Area.

4.4 The Developer further covenants and agrees to ensure that any portion of the Development Area that has fill areas in excess of One (1) meter shall be compacted, and the Developer shall ensure that the County shall be provided with certified test results to ensure compliance with this Section and further, will provide to the County a plan of the Development Area that has fill areas in excess of the said One (1) meter.

4.5 The Developer covenants and agrees that prior to the Construction Completion Certificate for any of the 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 as may be necessary to ensure that all lots within the Development Area have positive drainage and that there will be no unacceptable pooling of water within any of the lots within the Area.

4.6 It is further agreed and hereby declared by the Parties that all herein specified standards, requirements and any unfulfilled obligations due and owing to the County by the Developer constitute covenants running with the land and binding upon any subsequent owners or leaseholders of all or any portion of the Development Area.

4.7 The following standards shall apply with respect to grading within the Development Area:

- (a) The finished elevations at all corners of the lot and the ground next to the building shall conform to an approved surface drainage plan. Any changes must be approved, in writing, by the County.
- (b) Home builders will be required to supply a grading compliance certificate prepared by an Alberta Land Surveyor, showing compliance with finished grade requirements, prior to occupancy.
- (c) Positive drainage must be established away from the building to the gutter or drainage channels as designed.
- (d) Weeping tiles and other foundation drains shall meet Alberta Building Code requirements. Disposal of weeping tile and other foundation drainage shall be subject to County approval. Disposal into the sanitary sewerage system is prohibited. In all cases, this will require the provision of a sump pump discharging 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) Native material may be used for backfill of trench and building excavations respecting the Municipal Improvements. In accordance with good construction practice, all trench and foundation backfill must be adequately consolidated at the time of construction by moisture conditionings and/or mechanical compaction to ensure that when subsequent natural settlement is complete, that final grades will be acceptable with no adverse impact to adjacent structures. The County will inspect backfill prior to issuance of an Completion Construction Certificate or the Certificate may be issued after provision of appropriate security if weather conditions preclude adequate consolidation and inspection prior to occupancy.
- (f) Site improvements shall not alter or disrupt the drainage pattern as established in the surface drainage plan.
- (g) Landscaping and structures such as solid fences, retaining walls and permanent or temporary buildings which may disrupt surface drainage shall not be permitted (unless otherwise permitted at the County's sole discretion and approval)

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 applicable policies.

5. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

5.1 Except as otherwise specified in the construction timetable approved under Section 3.5, the Developer shall Commence Construction and commence installation of the Municipal Improvements within Twelve (12) months of endorsement of this Development Agreement and shall complete the construction and installation of the Municipal Improvements, at the Developer's own cost and expense, within Twenty Four (24) months of endorsement of this Development Agreement.

5.2 The Developer warrants to the County that all of the Municipal Improvements shall, at the Developer's sole cost and expense, be constructed and installed 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.

5.3 If there has been no Commencement of Construction of the Municipal Improvements by the Developer within the time limits specified in Section 5.1 then the County shall be entitled at its sole option to terminate this Agreement, and further, the Developer agrees:

- (a) that the termination of this Agreement in whole or in part 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, 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
- (c) 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, the security provisions contained within this Agreement), which shall remain in full force and effect until satisfied in full.

5.4 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. Any such access shall be constructed to an all weather standard.

5.5 The Developer covenants and agrees that it shall, prior to the public having access within the Development Area, complete the installation of all traffic control signs, street identification signs, development identification signs and any temporary signage required by the County.

5.6 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 approved Plans, applicable 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; and
- (vii) order the testing of any materials to be incorporated in the work and the testing of any Municipal 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 Sections (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.

5.7 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 Municipal 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.

5.8 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 such contractors or other parties shall constitute a breach of this Agreement by the Developer unless there is a bona fide dispute between the Developer and the contractor or other party.

5.9 The Developer shall take effective measures to reasonably control dust and dirt in and around the Development Area, including, and without limiting the generality of the foregoing, on any loam stockpile site so that dust and dirt originating therein shall not be conveyed therefrom by any means whatsoever or cause annoyance or become a nuisance to property owners and others within or adjacent to the Development Area. The Developer is solely responsible for ensuring dust and dirt control within the Development Area; the Developer is also responsible for ensuring that work done by the Developer or its contractors in and around the Development Area does not result in dust or dirt becoming an annoyance or nuisance.

In the event, however, that the County deems that there are dust or dirt problems the County shall attempt to notify the Developer or the Developer's Consultant of the problem in writing and by telephone. The Developer shall rectify the problem within Seventy-two (72) hours of the notice by taking effective measures to control the dust or dirt problem. The Seventy-two (72) hours notice may be waived or shortened by the County:

- (a) in an emergency (as deemed by the County);
- (b) if the County is not able to contact the Developer or its Consultant; or
- (c) if the Developer by its conduct or statements leaves the County with the impression that it will not perform the necessary work within the required time frames.

The County may take effective measures to control the dust and dirt problem 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 Seventy-two (72) hours notify the Developer of the action taken by the County.

5.10 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 his professional seal certifying that the Developer's Consultant has provided adequate periodic inspection services during the course of the work and that the Developer's Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans; in accordance with accepted engineering and construction practices; and in accordance with the Design Standards.

5.11 In addition to whatever other testing requirements may be imposed upon the Developer by the County, the Developer shall undertake t.v. camera video inspection of all storm and sanitary sewer lines and shall provide the video and corresponding report prior to the issuance of the Construction Completion Certificate of such lines by the County. Prior to the issuance of the Final Acceptance Certificate for all storm and sanitary sewer lines, the Developer shall undertake t.v. camera video inspection of ten percent (10%) of such lines; if any deficiencies are discovered, the Developer shall be required to undertake such an inspection of any further portion or all of the said lines, to be determined by the sole discretion of the County.

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 in its 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.

5.13 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:

- (a) water service is operational (for fire protection) prior to issuance of building permits or development permits for buildings on the Lands; and
- (b) all Essential Services shall have been installed and rendered operative in any part of the Development Area before any buildings or facilities are occupied in any such part of the Development Area, except as otherwise permitted in writing by the County.

Notwithstanding the foregoing the County may, in its sole and absolute discretion, permit the issuance of development and/or building permits, or building occupancy, in respect to the development upon lots or parcels contained in the Development Area prior to completion of the underground water and sewer improvements in any part of the Development Area (subject always to emergency vehicle access and other interim safety concerns), but this shall in no way oblige the County to issue permits or approve occupancy earlier than provided in the regulations and bylaws of the County.

5.14 The Developer shall take effective measures to reasonably control garbage in and around the Development Area, including, and without limiting the generality of the foregoing, any building and Landscaping so that 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 shall at its own expense provide dumpsters or such other containers suitable for the collection and containment of garbage within the Development Area.

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 highways, streets, roads, lanes, boulevards, parks and similar Public Properties 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 Municipal 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; and
 - (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; and
- (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.

6.2 The Developer shall provide to the County for approval as part of the Plan, four (4) sets of plans indicating the drainage and contouring, and the proposed grades of the boulevards and other Public Properties that will be graded during construction. The Developer shall at its sole expense grade and loam to a depth of one hundred (100) millimetres (in conformity with the Design Standards for those areas of the boulevards and other Public Properties which are not left in their natural state, and thereafter shall seed to grass boulevards and Public Properties to the satisfaction of the County's engineer. The Construction Completion Certificate for Landscaping shall not be issued by the County until such time as such work is completed to the satisfaction of the County's engineer.

7. INSTALLATION OF OTHER UTILITIES

7.1 The Developer shall, at no cost to the County whatsoever, arrange for and ensure the installation, to the County's satisfaction, of electric power and natural gas to the Development Area and within the streets 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 and 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 electric power and natural gas within the Development Area shall be installed within the roadways, utility lots or easement areas, in accordance with the Plans, adjacent to the lots that are intended to be served by such services and shall be installed in a manner and in locations which will permit lot owners within the Development Area to hook up to such services upon paying the normal hook-up fees charged by the Utility Company or franchise holder.

7.3 The Developer shall be responsible for making arrangements for the provision of telephone services to lots within the Development Area upon any such lot being occupied and the Developer shall be solely responsible for all costs and expenses relating to the installation of such telephone services excepting the normal hook-up costs charged to the customer.

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 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 percent (50%) 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 development, building and occupancy permits.

10. ACCEPTANCE OF MUNICIPAL IMPROVEMENTS

10.1 For purposes of this Section, the County and the Developer agree that no Municipal Improvement shall be considered complete unless and until:

- (a) the Municipal Improvement has been fully constructed and installed in accordance with the approved Plans;

- (b) the Municipal 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 within a reasonable time of receipt;
- (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 or repaired, as reasonable in the circumstances, by the Developer;
- (f) the Municipal Improvement is suitable for the purpose intended in accordance with the approved Plans; and
- (g) the Developer has provided the County with any applicable operation plans, operation manuals or maintenance manuals, for the Municipal Improvements having special operation or maintenance requirements.

10.2 When the Developer claims that each of the Municipal Improvements for the Development Area as identified in Schedule "C" 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.

10.3 Within Sixty (60) days of the receipt by the County of a request for a Completion Construction 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 its acceptance (by issuance of a Construction Completion Certificate) or rejection of the Municipal Improvements so completed, together with a list of any deficiencies (ordinary wear and tear excepted) in relation to the Municipal Improvements (i.e. any deficiencies referred to by the Developer and any additional deficiencies).

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 no later than Sixty (60) days following the elimination of such adverse site or weather conditions.

10.5 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.

10.6 In the event that any inspection contemplated in Sections 10.3, 10.4 or 10.5 reveals that there are no deficiencies in relation to the Municipal Improvements, the County shall issue in writing its Completion Construction Certificate for the Municipal Improvements.

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 (or such other time frame stipulated on the Construction Completion Certificate), 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 (or such other time frame stipulated on the Construction Completion Certificate), 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 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. The Developer's notice shall be accompanied by a list of any deficiencies.

10.9 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 (i.e. any deficiencies referred to by the Developer and any additional deficiencies); PROVIDED, that the provisions of Section 10.4 shall also apply to any request for the issuance of a Final Acceptance Certificate.

10.10 In the event that there are 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.

10.11 In the event that any inspection contemplated in Sections 10.9 or 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.

10.12 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.

10.13 It is understood and agreed between the Developer and the County that the notices required under this Sections 9 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 Municipal Improvements.

10.14 Upon the issuance of a Final Acceptance 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 Final Acceptance 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.

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 capable of being 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 of the Developer 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 the Section 21 on arbitration, the parties may mutually agree to resolve any dispute under this provision by means of a mutually hiring an independent engineering firm to determine causation of hidden or latent defects in any Municipal Improvements installed or constructed pursuant to this Agreement.

10.18 It is understood and agreed that the County may in its discretion issue up to two (2) separate Construction Completion Certificates for the Municipal Improvements, namely:

- (a) those underground Municipal Improvements referred to in Sections (a), (b) and (c) of Schedule "C" of this Agreement;
- and

(b) those surface Municipal Improvements referred to in Sections (d), (e), (f), (g), (i), (j), (k), (l), (m) and (o) of Schedule "C" of this Agreement and those Landscaping and fencing Municipal Improvements referred to in Sections (h) and (n) of Schedule "C" of this Agreement.

Likewise, the County may in its discretion issue up to two (2) Final Acceptance Certificates for those portions of the Municipal Improvements referred to above.

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 (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. If any repairs or replacement of Municipal Improvements are required during the Guarantee Period, as determined by the County, the Developer shall, at the Developer's sole cost and expense, within Thirty (30) days of receiving notice from the County cause such repairs or replacement to be completed. In the event that the Developer fails to take steps to repair or replace the whole or portion of the Improvement the County may, upon Thirty (30) days written notice to the Developer, affect the repair or replacement, at the Developer's cost and expense.

11.2 The Developer acknowledges and agrees that prior to the issuance of a Final Acceptance Certificate for any Landscaping work, 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 discretion; AND FURTHER, the County shall be entitled to require the replacement or repair of any other Landscaping works such as berming, rip-rap, noise attenuation fencing or screen fencing which 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 that the County shall perform the normal maintenance requirements of the County respecting the cleaning and flushing of sanitary sewers; PROVIDED, that the County's costs and expenses of the final cleaning and the removal of obstructions, immediately prior to the issuance of the Final Acceptance Certificate, shall be paid by the Developer to the County before the Final Acceptance Certificate is issued.

11.6 Without limiting any of the foregoing, maintenance for which the Developer shall be responsible shall include, but not be limited to, failure of or damage to the underground Municipal Improvements resulting from defective materials or improper installation or workmanship, settlement of ditches, grading, gravelling and oiling, removal of debris and mud, 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 cracked 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.

11.8 Notwithstanding the above, the Developer shall be required to repair and replace any sidewalks, curbs and gutters when located adjacent to an undeveloped lot within the Development Area requiring building, driveway or landscape construction that occurs after the issuance of the Final Acceptance Certificate for the Municipal Improvements for the Development Area and the end of the Guarantee Period pursuant to this Section.

12. UTILITY EASEMENTS AND OTHER INSTRUMENTS

12.1 The Plans, as approved by the County, shall designate road allowances, public utility lots, easements 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 services, natural gas, power, and telephone service 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 road allowances, public utility lots, easements and utility rights-of-way shall be granted and registered to the County (without further compensation payable to the Developer), upon the earlier of submission for registration of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision, and Commencement of Construction of the Municipal Improvements. 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 road allowances, public utility lots, easements and utility rights-of-way required by the County.

12.3 The Developer agrees that the road allowances, easements and 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.

12.4 Such road allowances, easements 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 operators of the respective utilities; or
- (b) to grant permits or licenses to install, repair and replace gas, power and telephone lines, and all drainage systems.

12.5 The Developer covenants that it shall register or cause to be registered against the Development Area or other lands controlled by the Developer, in a form acceptable to the County, restrictive covenants and other instruments that are required by any subdivision approval for the Development Area or otherwise required under the terms 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. However the provision of these municipal services (and the level of services provided) shall be, 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 The Developer shall, at all times after any premises within the Development Area are occupied and used, provide and ensure continuous roadway access to such occupied premises.

13.3 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 obliged to provide its regular services within that portion of the Development Area. Without limiting the generality of the foregoing, the County will not be obliged to provide services (including provision of public utilities, garbage removal or maintenance of internal access roads) to any portion of lands that is within the boundaries of the Condominium Plan.

14. FENCING

14.1 The Developer shall, at its own expense, as part of the development of the Development Area, construct fences 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 uniform 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 uniform fencing which is intended to separate Public Properties from other lands shall be constructed wholly upon such other lands and shall not be constructed on the boundary line between the Public Properties and the other lands.

14.5 Any uniform fencing which is not wholly located upon Public Properties shall be maintained by the Developer until the issuance of the Final Acceptance Certificate for such uniform fencing and thereafter shall be maintained by the owners of the properties upon which the uniform 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 Final Acceptance Certificate for the surface Municipal Improvements and Landscaping, 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 expense, save as hereinafter specifically limited, to maintain the Development Area 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) 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; and

(b) 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; and

(c) in respect to a residential subdivision, the Developer's obligations under this Section shall cease and determine in respect to the Development Area when housing construction has been completed on Ninety-five (95%) percent of the 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 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 the County and/or 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. Unless otherwise specifically provided within Schedule "E" attached to this Agreement, the Developer's proportionate share of existing or currently contemplated oversizing be calculated and paid upon the earlier of submission for endorsement of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision, and Commencement of Construction of the Municipal Improvements.

Any deferral of payment of oversizing costs by the Developer beyond the above-noted deadlines shall be subject to specific agreement between the County and the Developer as contained within Schedule "E" attached to this Agreement, and such conditions or other requirements that maybe imposed therein (including, without restriction, the requirement for security for payment, and/or registration and reliance upon the charge contained within Section 19.2 of this Agreement). If a Plan of Subdivision is contemplated, and at the time of registration of the Plan of Subdivision the County has not calculated or imposed oversizing costs, and subsequently the County imposes such charges, nothing in this Agreement precludes the County from collecting the Developer's proportionate share of oversizing costs at the development permit stage.

16.2 In the event that the Developer's proportionate share of existing or currently contemplated oversizing is capable of being determined as of the date of this Agreement, the Developer's proportionate share for such existing or currently contemplated oversizing shall be as shown within Schedule "E" attached to this Agreement. Otherwise, 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, in accordance with the provisions of any relevant bylaws of the County, 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, and where deemed appropriate by the County taking into account the expended useful life span of the oversized/shared Municipal Improvement.

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 Section 16.

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 additional provisions contained within Schedule "D" attached to this Agreement, 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. The method of calculating the proportionate shares of such shared costs shall be determined solely by the County in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the County, 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, and where deemed appropriate by the County taking into account the expended useful life span of the oversized/shared Municipal Improvements.

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 Municipal Improvements or as a condition of the approval of any development or subdivision applications.

16.7 The Developer shall, so soon as reasonably possible and in any event prior to the issuance of the Final Acceptance Certificates, 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 of all of the Municipal Improvements, compounded annually, at the Prime Rate plus Two (2%) percent; 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 In the event that there is a dispute between the Developer and the developer/owner of the adjacent lands considered to benefit from the oversized Municipal Improvements as to the amount of benefit or the amount determined to its proportionate share of the costs of constructing and installing the oversized Municipal Improvements, the County, at its option, may require that the dispute be arbitrated between the Developer and the benefiting developer/owner of the adjacent lands. The County shall have the option to, but shall not be obligated to, participate as a party or otherwise in such arbitration. In either event, the County agrees to endeavour to assist in the recovery of the amount, if any, of the shared costs as determined by the arbitrator.

16.12 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 Parties 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, some oversized Municipal Improvements becoming obsolete or require 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.

16.13 For purposes of this Agreement it is agreed that only water and sanitary sewer mains over three hundred (300) millimetres diameter shall be deemed to have excess capacity.

17. LEVIES AND FEES

17.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water, sanitary sewer, roadway and storm drainage facilities 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 if and when established by the County. Unless otherwise specifically provided within Schedule "E" attached to this Agreement, off site levies (or other subdivision or development charges) payable by the Developer shall be calculated and paid upon the earlier of submission for endorsement of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision, and Commencement of Construction of the Municipal Improvements.

Any deferral of payment of off-site levies by the Developer beyond the above-noted deadlines shall be subject to specific agreement between the County and the Developer as contained within Schedule "E" attached to this Agreement, and such conditions or other requirements that maybe imposed therein (including, without restriction, the requirement for security for

payment, and/or registration and reliance upon the charge contained within Section 19.2 of this Agreement). If at the time of registration of a Plan of Subdivision the County has not imposed off site levies or other subdivision or development charges, and subsequently the County imposes such levies or charges, nothing in this Agreement precludes the County from collecting off site levies at the development permit stage. Subject to the provisions of Schedule "E", in the event that payment of any off-site levy for each parcel created upon subdivision of the Development Area has been specifically agreed to be postponed (e.g. until the parcel is transferred by the Developer to a third party or when an application for a Development Permit is received by the County to construct a building within the parcel, whichever first occur), all unpaid off-site levies for the Development Area shall in any event be paid by the Developer to the County on the date One (1) year following the date of the execution of this Agreement.

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 in the event that at the time of execution of this Agreement the County does not impose off site levies (or other subdivision or development charges), the County may in the future impose such levies or charges in accordance with a bylaw of general application which shall establish the various levies or charges applicable to similar developments within the County.

17.4 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 should properly be borne by the Developer. The County and the Developer agree that unless otherwise required by 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.

17.5 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 the 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 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%) percent 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 be entitled to both the principal amount and interest thereon at the Prime Rate less Two (2%) percent (less any amounts lawfully owing from the Developer to the County).

18.3 For purposes of calculating interest under Sections 18.1 and 18.2, 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.

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 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 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; PROVIDED, that upon completion of said emergency work, the County shall give notice in writing to the Developer if the County 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.

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 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 Queen'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. INSURANCE, INDEMNITY AND SECURITY

22.1 The Developer shall indemnify and save harmless the County from any and all losses, costs, damages, actions, causes of action, suits, claims and demands resulting from anything done or omitted to be done by the Developer in pursuance or purported pursuance of this Agreement.

22.2 The Developer covenants and agrees that it shall carry comprehensive general liability insurance policy and that the following provisions shall apply to such insurance:

- (a) the County shall be an additional named insured as the interest may appear;
- (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) all policies shall contain a cross liability article;
- (d) none of the policies shall be cancelled unless Thirty (30) days prior written notice of cancellation is first given to the County;
- (e) copies of all policies of insurance shall immediately be provided to the County upon written request by the County; and
- (f) the insurance policies shall have the following minimum limits of coverage:
 - (i) Commercial General Liability insurance policy, including contractual liability coverage, products and completed operations coverage and non-owned automobile liability extension, in an amount of not less than TWO MILLION (\$2,000,000.00) DOLLARS inclusive limit for any one occurrence or claim made;
 - (ii) Automobile Public Liability (owner's form) and Third Party Property Damage for bodily injury (including death) and property damage in an amount of not less than TWO MILLION (\$2,000,000.00) DOLLARS inclusive limit covering all vehicles used in the performance of this Agreement, operation of attached machinery and such insurance shall include the passenger liability extension.

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 accordance with the Municipality's Policy # D-021 and 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 upon the earlier of:
 - (i) submission for endorsement of a Plan of Subdivision for the Development Area and prior to the sale of any lots covered by a Plan of Subdivision;
 - (ii) prior to Commencement of Construction;
- (b) the security in respect of the Development Area, shall be an amount equal to Sixty (60%) percent of the estimated costs of constructing and installing all of the Municipal Improvements, including Landscaping, and such other amounts as are required elsewhere under the provisions of this Agreement; and
- (c) for purposes of this Section, the estimated cost for the Municipal Improvements shall be determined as follows:
 - (i) if known at the time that this Agreement is made, as set out in Schedule "F" of this Agreement;
 - (ii) if unknown at the time that this Agreement is made, where actual tendered costs are available the tendered costs shall be used;
 - (iii) where actual tendered costs are not available, the Developer's Consultant shall prepare cost estimates which shall be submitted to the County for approval together with all applicable background documentation, and if approved by the County, such cost estimates shall be used; and
 - (iv) where actual tendered costs are not available, and the Developer and the Developer's Consultant has not provided estimates for the County to approve, the County may establish estimated costs in its sole discretion for the purposes of establishing the required security.

22.4 It is understood and agreed by the Developer that the Developer shall, during the currency of this Agreement (including the Guarantee Period for the Municipal Improvements prescribed by this Agreement), maintain in full force and effect all security and liability insurance prescribed herein.

22.5 The security referred to above shall consist of:

- (a) an "Irrevocable Letter of Credit" issued by a "Chartered Bank" or the "Treasury Branch", or such other security as may be approved by the solicitors for the County; or
- (b) a cash security deposit in the form of a certified bank draft;

or combination thereof, in the amount of the security required from time to time as described above; PROVIDED, that all security shall be in terms and form to be approved by the County's solicitors. Provided further that the Developer covenants and agrees that upon the occurrence of a default on the part of the Developer under this Agreement, the County may, at its option and without limiting any of its other remedies, accelerate and require payment in full of the security amount that would otherwise be required for a cash security deposit account, and such obligation shall be secured by the mortgage charge and/or encumbrance.

22.6 Any Irrevocable Letter of Credit provided as security by the Developer shall contain provisions for either:

- (a) 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; or
- (b) a right on the part of the County to draw upon the full amount of the Irrevocable Letter of Credit, or any portion thereof, in the event that the County has not received a replacement letter, or confirmation of an extension or renewal of the existing letter, at least Sixty (60) days prior to the expiry of the security.

22.7 In regards to security providing 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 deposit) 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 or of any provision of any contract with any project manager(s), subcontractor or supplier, and, after receiving notice thereof, the Developer does not promptly remedy such default or breach or commence and diligently prosecute the remedy of such breach or default, the County may (but shall not be obligated to) take any measures it considers reasonably necessary to remedy such default or breach and any costs or liabilities incurred by the 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. Without limiting the generality of the foregoing the County may

require an increase in security if the Developer has failed to comply with the construction timetable approved under Section 3.5, or if the Developer has been issued a notice of default under Section 20.

22.9 The amount of security and 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; PROVIDED THAT, after the issuance of any Construction Completion Certificates and prior to the issuance of Final Acceptance Certificates for all of the Municipal Improvements, the security maintained by the County shall not be less than:

- (a) Twenty-Five (25%) percent of the estimated costs of the Municipal Improvements which were the subject of the Construction Completion Certificate; and
- (b) Sixty (60%) percent of the estimated costs of constructing and installing all of the Municipal Improvements yet to be completed, being all those portions of the Municipal Improvements for which no Construction Completion Certificate has been issued.

22.10 Upon the issuance of the Final Acceptance Certificates for all of the Improvements, the County shall release to the Developer all remaining security.

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 Municipal 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; or
- (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 security provided by the Developer to the County pursuant to the requirements of this Agreement.

22.12 In the event that the County has negotiated, called upon, or otherwise received proceeds from, the security to be deposited by the Developer for any reason contemplated within this Agreement, then the County shall be entitled to hold and apply any such funds as a security deposit in lieu of the original security.

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.

23. DELIVERY OF DOCUMENTS TO COUNTY

23.1 Prior to the issuance of a Construction Completion Certificate for the above ground Municipal 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 municipal 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 Municipal 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 Municipal Improvements and the issuance of a Construction Completion Certificate for the same by the County, the Developer shall, within Six (6) months following issuance of the Construction Completion Certificate, deliver to the County all inspection and testing records and four (4) copies of the "as built" Plans and records, as herein required (and as specified in the Design Standards), in a form and to standards specified by the County which may include digital AutoCAD 2000 format, paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the County. The Final Acceptance Certificate shall not be issued until Eighteen (18) months have elapsed subsequent to the date of the submission of the records and the as built drawings; AND PROVIDED, that the Final Acceptance Certificate shall not be issued prior to the expiration of the Guarantee Period.

24. COMPLIANCE WITH LAW

24.1 The Developer shall at all times comply with all legislation, regulations and municipal 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 part hereof shall be governed by the laws of the Province of Alberta.

25.2 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.

25.3 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.

25.4 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, or by registered mail sent to, the respective addresses of the Parties being:

COUNTY OF VERMILION RIVER
PO Box 69
Kitscoty, Alberta T0B 2P0

Phone: (780) 853-5792
Fax: (780) 8546-2716

Attention: Chief Administrative Officer

AND

Phone: (____) ____ - ____
Fax: (____) ____ - ____

Attention: _____

PROVIDED, HOWEVER, that such addresses may be changed upon Ten (10) days notice; if a notice is mailed it is deemed to be received Seven (7) days from the date of mailing; 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 or by hand.

25.5 The Parties covenant and agree that in addition to the provisions contained in the text of this Agreement, the Parties shall be bound by the additional provisions found in the Schedules to this Agreement as if the provisions of those Schedules were contained in the text of this Agreement.

25.6 The Developer acknowledges and agrees that the County shall be at liberty, pursuant to the Municipal Government Act (Alberta), 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; PROVIDED THAT such caveat shall be discharged by the County upon the issuance of the Final Acceptance Certificate.

25.7 This Agreement shall not be assignable by the Developer without the express written approval of the County. Such approval shall be subject to Section 25.8 and may be withheld by the County in its discretion. This Agreement shall enure to the benefit of, and shall remain binding upon (joint 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 respective 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.

25.8 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; and
- (b) the proposed assignee has deposited with the County all insurance and security as required by the terms of this Agreement.

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

25.10 The Developer shall be responsible for, and within Thirty (30) days of the presentation of an account, paying to 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.

25.11 Providing that the Developer is not in default of any of the provisions of this Agreement or any condition of subdivision approval:

- (a) the County shall, at the request of the Developer, deliver to Alberta Environmental Protection any confirmations or undertakings reasonably required (and in respect of which the County can attest) in order for the Developer to obtain any necessary permits and licenses from Alberta Environmental Protection; and
- (b) the County may apply for grant money for construction of the Municipal Improvements. However, it is expressly understood and agreed that:
 - (i) the County has made no representations to the Developer whatsoever, regarding the availability of any grant monies or the qualification of the Municipal Improvements for any grant monies;
 - (ii) the County shall not be liable to the Developer, nor shall the Developer's liability hereunder be affected if any grant monies are not received by the County; and
 - (iii) although the County will work with the Developer to obtain grants for the Municipal Improvements, the County need not apply for such grants if they will negatively impact grants for other Municipally related projects.

25.12 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 Queen'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.

COUNTY OF VERMILION RIVER

Per: _____
Reeve

Per: _____
Chief Administrative Officer

[IF CORPORATION – SIGN AND SEAL]

DEVELOPER [INSERT NAME]

Per: _____ c/s

[IF INDIVIDUAL – SIGN AND WITNESS w/ AFFIDAVIT OF EXECUTION]

WITNESS

Per: _____

DEVELOPER [INSERT NAME]

Per: _____
Director

INDEX OF SCHEDULES

- Schedule "A" - Legal Description of the Lands
- Schedule "B" - The Development Area
- Schedule "C" - Municipal Improvements
- Schedule "D" - Additional Provisions
- Schedule "E" - Oversize Costs, Levies and Fees
- Schedule "F" - Security
- Schedule "G" - Inapplicable Provisions

SCHEDULE "A" - LEGAL DESCRIPTION OF LANDS

[Insert legal description of land being subdivided or developed]

SCHEDULE "B" - THE DEVELOPMENT AREA

[Insert Copy of approved revised Subdivision Plan]

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, but in no manner limited to, holding tanks, service lines, manholes, mains and appurtenances and service connections;
- (b) all storm water drainage systems, including, but in no manner limited to, storm sewers, storm sewer connections, provisions for weeping tile flow where a high water table or other subsurface conditions cause continuous flow in the weeping tile, storm retention ponds, catch basins, catch basin leads, manholes and associated works, all as and where required by the County;
- (c) all water distribution systems, wells, pumps, lines and service connections, including, but in no manner limited to, 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 curb and gutter, subgrade, base gravel and base asphalt, sidewalks and sub-grade, base and asphaltic pavement; 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) 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 Plans for Landscaping to be submitted for the approval of the County;
- (i) such construction or development of streets and lanes as may be required by the County; including, but in no manner limited to, a second or temporary access for vehicular traffic from the Development Area;
- (j) the restoration of all Public Properties to the County's satisfaction which are disturbed or damaged in the course of the Developer's work;
- (k) the relocation, to the County's satisfaction, of all existing utilities and Municipal Improvements as required by the County as a result of the installation and construction of other utilities and Municipal Improvements pursuant to this Agreement;
- (l) 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;
- (m) 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 the construction of other facilities as may be required by the County in order to provide proper and complete and up to date information to proposed purchasers and residents within the Development Area;
- (n) such uniform fencing, (noise attenuation, or screen) either permanent or temporary, of a standard and of a design satisfactory to the County, all of which is to be constructed and located to the satisfaction of the County; and

(o) all utilities including electricity, natural gas, cable television and telephone. 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:

[Insert any conditions listed in the subdivision approval or development permit, any unique or specific conditions to this development, etc.]

SCHEDULE "E" - OVERSIZE COSTS, LEVIES AND FEES

A. Developer Contributions and/or Off-site Levies

1. The Developer shall pay the following as servicing contributions and/or Off-site Levies, pursuant to the provisions of this Agreement and Sections 650 or 655 of the MGA:

[DRAFT NOTE: \$ per residential lot x ** lots = \$ INSERT TOTAL AMOUNT or
\$ ** per hectare x ** hectare area = \$ INSERT TOTAL AMOUNT]**

2. Payment – the Developer shall pay the amounts described in this Schedule as and when required within Sections 16 and 17 of this Agreement.

[DRAFT NOTE: If an alternative time for payment is preferred, insert special payment terms here. Any deferral of payments and/or contributions beyond the release of the Plan of Subdivision and/or commencement of construction should be secured, eg. by an Irrevocable Letter of Credit]

B. Approval & Inspection Fees

1. Fees and Calculation – the approval and inspection fees currently due and payable by the Developer pursuant to Section 17 of this Agreement are as follows:

[DRAFT NOTE: Insert Current Fees, Refer to General Fees Bylaw, or Leave Blank as Section 17 Will Apply]

2. Payment – the Developer shall pay the approval and inspection fees applicable to the lands contained within the Development Area as and when required within Section 17 of this Agreement.

[DRAFT NOTE: Insert Special Payment Terms or Leave Blank Any deferral of payments and/or contributions beyond the release of the Plan of Subdivision and/or commencement of construction should be secured, eg. by an Irrevocable Letter of Credit]

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 are as follows:

[The amounts below are DRAFT amounts, for the purposes of discussion, the final amounts are to be inserted in accordance with the County's most updated cost estimates at the date of entering this Agreement]

<u>Underground Improvements</u>	
Water Distribution System	\$
Drainage Systems (including Storm Sewer System)	\$
Sanitary Sewer System	\$
Storm Sewer System	\$
Engineering and Contingency	\$
Underground Subtotal	\$
 <u>Surface Improvements</u>	
Earthworks and Berming	\$
Sidewalk, Curb and Gutter	\$
Granular Base	\$
Asphalt	\$
Fencing and Landscaping	\$
Signage	\$
Engineering and Contingency	\$
Above Ground Subtotal	\$
Shallow Bury	
Utilities Subtotal	\$
Total Value of all Municipal Improvements & Services	\$
Total Value of Security required for Municipal Improvements (60% of total)	\$
Total Value of Other Security Required	\$
Total Value of Security Required	\$

2. 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.
3. 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.
4. 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" - INAPPLICABLE PROVISIONS

The Parties agree that the following terms, covenants and conditions contained within this Agreement shall not apply:

1. *[DRAFT NOTE: subject to negotiation, insert number and full text of inapplicable conditions];*

DEVELOPMENT AGREEMENT

BETWEEN:

COUNTY OF VERMILION RIVER

AND

Subdivision:
Stage: Single Stage Development Agreement
File:
Doc. #:
July 9, 2012

COUNTY OF VERMILION RIVER

Short Form Development Agreement

Development Permit

COUNTY OF VERMILION RIVER

AND

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

MEMORANDUM OF AGREEMENT made this ____ day of _____, 20__.

COUNTY OF VERMILION RIVER
a municipal corporation,
(hereinafter referred to as "the County")

OF THE FIRST PART

- and -

_____ a named Alberta Corporation duly authorized to carry on business in the Province of Alberta,
(hereinafter referred to as "the Developer")

OR

_____ the registered owner(s) of the "Lands", as that term is defined herein
(hereinafter referred to as "the Developer")

OF THE SECOND PART

WHEREAS:

- A.** The Developer is, or is entitled to become, the registered owner of all or a portion of the lands described in Schedule "A" attached to this Agreement (hereinafter referred to as "the Lands").
- B.** Pursuant to Development Permit No. _____, the Developer proposes to develop a _____ on that portion of the Lands (hereinafter referred to as "the Development Area") outlined in heavy black or bold, or otherwise delineated, on the map attached hereto as Schedule "B" to this Agreement.
- C.** The County and the Developer are agreeable to the Developer completing or contributing to the 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.
- D.** The County and the Developer have agreed to enter into this Agreement to ensure adequate and timely provision of required services to the Development Area.
- E.** Upon satisfactory completion of the construction and installation of the Improvements by the Developer, as signified by the issuance of a Construction Completion Certificate, and the Final Acceptance of them by the County, as signified by the issuance of a Final Acceptance Certificate, the Improvements which are on or under Public Property shall become the property of the County.
- F.** The County and the Developer have agreed that the said construction and installation of the 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 and the Developer agree as follows:

1. INTERPRETATION - for the purposes of this Agreement, words defined with the Recitals to this Agreement shall have the meaning ascribed therein and the following words shall have the meaning ascribed below:

1.1 "Construction Completion Certificate" shall mean a Certificate issued by the County, certifying the completion of all or a portion of the Improvements.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

1.2 "Design Standards" shall mean the designs, procedures, standards and specifications established by the County respecting the design, construction and installation of the Improvements, as amended and revised from time to time.

1.3 "Essential Services" shall mean those improvements and services to be constructed or installed within the Development Area and identified as Essential Services within Schedule "C" to this Agreement

1.4 "Final Acceptance Certificate" shall mean a written acceptance issued by the County for the Improvements, or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Guarantee Period.

1.5 "Guarantee Period" except where otherwise stated within this agreement, shall mean a period of THREE (3) years for all Improvements, including landscaping, but in any event the Guarantee Period shall not expire before the issuance of a Final Acceptance Certificate.

1.6 "Improvements" shall mean and include, within and outside the Development Area, those services and facilities identified in Schedule "C" to this Agreement.

1.7 "Plans" shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction, location and installation of all Improvements, as approved by the County.

1.8 "Public Property" or "Public Properties" shall include all properties within and adjacent to the Development Area to be owned or administered by the County, including roadways, utility rights-of-way or easements, following the registration of the Plan or Plans of Subdivision for the Development Area.

2. PLANS

2.1 Prior to commencing construction and installation of the Improvements within or adjacent to the Development Area, the Developer shall submit Plans for the Improvements for approval by the County. The Plans shall give all necessary details of the Improvements to be constructed by the Developer, and shall conform to the Design Standards. The Plans shall include a construction timetable for the construction and installation of all of the Improvements and the Developer shall comply with all time limits and dates specified in the construction timetable. Where the design of all or any portion of the required Improvements are entirely contained within the Design Standards, the Developer shall submit the County's standard design obtained from the Design Standards.

2.2 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.

2.3 If the County does not approve whatever Plans are submitted by the Developer, the Developer shall be entitled to refer any dispute with regard to the Plans to the County's Council. The decision of the County's Council shall be final and binding.

2.4 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 Engineer respecting the content of the Plans, including, without restricting the generality of the foregoing, whether the Plans are suitable for the intended purpose or whether the Plans comply with any required federal, provincial or municipal legislation or regulation, Design Standards or engineering practices.

3. CONSTRUCTION AND INSTALLATION IMPROVEMENTS

3.1 All of the Improvements shall be constructed and installed in a good and workmanlike manner, in strict conformance with the Plans, with 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.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

3.2 Notwithstanding the foregoing, it is understood and agreed that the Developer may contract with third party service providers for the purposes of supplying, installing, owning an operating improvements, services or systems forming part of the Improvements including, without restriction, natural gas, electricity, and telephone services. In such instances, the Plans applicable to such portions of the Improvements shall include copies of the Developer's contract for supply, installation, ownership and operation of such third party improvements, services or systems.

3.3 The Developer shall commence construction and installation of the Improvements within Twelve (12) months of endorsement of this Development Agreement and shall complete the construction and installation within Twenty-four (24) months of the endorsement of this Agreement.

3.4 In the event that the Developer has not commenced construction of the Improvements within the time limits required above, then without limiting other remedies of the County, the County shall be entitled to terminate this Agreement and the Developer shall not be entitled to commence construction of the Improvements for the Development Area unless and until a further written agreement is entered into between the Developer and the County.

3.5 At all times during the construction and installation of the 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 engineer or 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 approved Plans, applicable 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; and
- (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.

3.6 The County shall have no obligation or duty to exercise 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.

3.7 The Developer shall, during the course of the construction and installation of the Improvements, provide and maintain adequate inspection services, supervised by a professional engineer.

3.8 The Developer shall take effective measures to reasonably control dust and dirt in and around the Development Area caused by the construction or installation of the Improvements.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

3.9 Upon the completion of the work by the Developer, and prior to the issuance of Construction Completion Certificates for the Improvements, the Developer's engineer or consultant shall submit to the County a statement under his professional seal certifying that the Developer's engineer or consultant has provided adequate periodic inspection services during the course of the work and that the Developer's engineer or 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.

3.10 The Developer covenants and agrees as follows:

(a) that it shall plan and complete the development of the Development Area so as to guarantee and ensure to the County that the Essential Services will have been installed and rendered operative before any buildings or facilities are occupied on the Development Area;

(b) to undertake and complete to the satisfaction of the County such work as may be necessary to ensure that the Development Area has positive drainage away from any building to the gutter, ditch or drainage channels and that there will be no unacceptable ponding of water within any of the lots within the Development Area;

(c) 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 electric power, natural gas and telephone service to the Development Area; and

(d) 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 detailed written proposals for the work to be done within any such property, for approval by the County and to the satisfaction of the County, and no such work shall be commenced prior to the Developer obtaining the written consent of the County to enter upon such Public Properties and complete the work, and 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.

4. ACCEPTANCE OF IMPROVEMENTS

4.1 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 construction practices;

(c) all testing has been completed and the results approved by the County within a reasonable time of receipt;

(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 or repaired, as reasonable in the circumstances, by the Developer;

(f) the Improvement is suitable for the purpose intended in accordance with the approved Plans; and

(g) the Developer has provided the County with any applicable operation plans, operation manuals or maintenance manuals, for the Improvements having special operation or maintenance requirements.

4.2 When the Developer claims that each of the Improvements for the Development Area as identified in Schedule "C" 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.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

4.3 Within Sixty (60) days of receipt of such claim of completion, the County will notify the Developer in writing of its acceptance (by the issuance of a Construction Completion Certificate) or rejection of the Improvements so completed, together with all reasons for rejections, in writing.

4.4 Notwithstanding the preceding paragraph, 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 no later than Sixty (60) days following the elimination of such adverse site or weather conditions.

4.5 It is understood between the County and the Developer that the County shall be at liberty to issue a conditional Construction Completion Certificate for the Improvements and such acceptance shall be conditional upon the completion of minor deficiencies by the Developer within Thirty (30) days.

4.6 In the event that an inspection reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Improvement, the County may refuse to issue a Construction Completion Certificate for the Improvement and require the Developer to repair or replace the whole or any portion of any such 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.

4.7 Not more than Ninety (90) days nor less than Sixty (60) days prior to the expiration of any Guarantee Period for the Improvements or any portion the Developer shall give notice to the County of expiration of the Guarantee Period for the Improvements and the Developer shall request a Final Acceptance Certificate in respect to the Improvements. The Developer's notice shall be accompanied by a list of any deficiencies.

4.8 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 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 Improvements (i.e. any deficiencies referred to by the Developer and any additional deficiencies); PROVIDED, that the above provisions respecting extension to inspection deadlines shall also apply to any request for the issuance of a Final Acceptance Certificate.

4.9 In the event that there are any deficiencies (ordinary wear and tear excepted) in relation to a particular Improvement the County may refuse to issue the Final Acceptance Certificate of the Improvements and require the Developer to repair or replace the whole or any portion of any such 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 Final Acceptance Certificate.

4.10 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 Improvements and such acceptance shall be conditional upon the completion of minor deficiencies by the Developer within Thirty (30) days.

4.11 Upon the issuance of a Construction Completion Certificate by the County for the Improvements, the Developer hereby acknowledges that all right, title and interest in the 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 Improvements shall become the property of the County.

4.12 The County and the Developer agree, notwithstanding the issuance of a Final Acceptance Certificate for the Improvements located on or under public properties (including utility rights-of-way and easement areas), that the Developer shall be responsible, for a period of Five (5) years following the issuance of a Final Acceptance Certificate for such Improvements, to repair or replace any of such Improvements where there were any hidden or latent defects (which were reasonably not capable of being detected by inspections or tests actually undertaken) in any of these Improvements, which are causally connected to the performance or non-performance of the obligations of the Developer 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, the parties may mutually agree to resolve any dispute under this provision by means of a mutually hiring an

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

independent engineering firm to determine causation of hidden or latent defects in any Improvements installed or constructed pursuant to this Agreement.

5. MAINTENANCE OF IMPROVEMENTS BY DEVELOPER

5.1 The Guarantee Period in respect to any of the Improvements shall commence with the County's written Construction Completion Certificate for any such Improvements (ordinary wear and tear excepted).

5.2 The Developer shall repair or replace the whole or any portion of a Improvement at its cost and expense during the Guarantee Period where such repair or replacement is required due to anything other than normal wear and tear, in the reasonable opinion of the County. In the event that the Developer fails to take steps to repair or replace the whole or portion of the Improvement the County may, upon Thirty (30) days written notice to the Developer, affect the repair or replacement, at the Developer's cost and expense.

6. UTILITY EASEMENTS AND OTHER INSTRUMENTS

6.1 Prior to commencing construction and installation of the Improvements within or adjacent to the Development Area, the Developer shall grant to the County or other service provider such easements, rights-of-way, restrictive covenants or other instruments, as may be applicable, adequate for the construction and installation of Improvements and services, natural gas, power, and telephone service. The Developer shall provide proof of the registration satisfactory to the County prior to any development upon the Development Area.

6.2 The Developer agrees that the easements and 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.

6.3 Such easements 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 operators of the respective utilities; or
- (b) to grant permits or licenses to install, repair and replace gas, power and telephone lines, and all drainage systems.

7. OVERSIZING AND SHARING OF SERVICING COSTS

7.1 The Developer recognizes and agrees that the Development within the Development Area will benefit from the oversizing or construction of Improvements that have been or will be constructed by the County and/or parties other than the Developer in areas adjacent to the Development Area and other benefiting areas. The Developer agrees that it shall bear and pay its proportionate share of such other Improvements as determined in the discretion of the County in the amount provided within Schedule "E" attached to this Agreement. The Developer shall provide proof of payment satisfactory to the County prior to the commencement of construction upon the Development Area.

7.2 The Developer, in constructing the Improvements as contemplated herein, shall bear the costs of oversizing and extending 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 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 additional provisions contained within Schedule "D" attached to this Agreement, 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.

7.3 The costs of the oversizing or extensions contemplated in Section 7.2 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 any applicable provisions contained in Schedule "D" attached to this Agreement. The method of calculating the proportionate shares of such shared costs shall be determined solely by the County in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the County, in accordance with

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

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 Improvements, and where deemed appropriate by the County taking into account the expended useful life span of the oversized/shared Improvements.

7.4 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 and endeavours to assist 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 or subdivision applications.

8 LEVIES AND FEES

8.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water, sanitary sewer, roadway and/or storm drainage facilities that will be utilized to provide municipal services to the Development Area, and accordingly the Developer covenants and agrees to pay to the Municipality off-site levies if and when established by the County or as specifically provided within Schedule "E" attached to this Agreement. The Developer shall provide proof of payment satisfactory to the County prior to the commencement of construction upon the Development Area.

8.2 The Developer acknowledges that the County will incur costs and expenses in the checking of the Plans for the Improvements, as well as costs and expenses for the testing and inspection of the Improvements, which costs and expenses are properly part of the costs of constructing and installing the Improvements and should properly be borne by the Developer. The County and the Developer agree that unless otherwise required by 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.

9 AMOUNTS PAYABLE UNDER THIS AGREEMENT

9.1 The Developer acknowledges and agrees that the Municipality 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 Municipality of the various sums prescribed in this Agreement, AND FURTHER that 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 Municipality to enter into this Agreement.

9.2 The Developer for itself and its successors and assigns hereby releases and forever discharges the Municipality 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 Municipality in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the Municipality pursuant to this Agreement.

10 DEFAULT BY THE DEVELOPER

10.1 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 require the Developer to rectify same within the said period of Thirty (30) days. Without limiting in any way the rights and remedies available to the County pursuant to this agreement, statute, or otherwise, upon a failure by the Developer to rectify a default, the County shall have the option, but not any obligation, to perform the Developer's obligations in default without further notice and at the Developer's sole cost and expense. The Developer shall reimburse the County for all such costs incurred by the County immediately upon demand.

10.2 Notwithstanding the foregoing, in the event that the County, in its discretions, considers a situation to be an emergency it may undertake or cause to be done any immediate work in connection with the construction, installation or

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

repair of the Improvements. The Developer shall reimburse the County for all such costs incurred by the County immediately upon demand.

11 INDEMNITY AND SECURITY

11.1 The Developer shall indemnify and save harmless the County from any and all losses, costs (including, without restriction, all legal costs on a solicitor and his own client full indemnity basis), damages, actions, causes of action, suits, claims and demands resulting from anything done or omitted to be done by the Developer in pursuance or purported pursuance of this Agreement.

11.2 The Developer covenants and agrees that it shall carry comprehensive liability insurance in the amount of \$2,000,000.00, which insurance shall name the County as an additional insured (as its interest may appear, including with respect to any and all operations by the Developer or its contractors upon or affecting property owned by, or under the care, control and management of, the County) and require that the County shall receive Thirty (30) days notice of change or cancellation.

11.3 Prior to the earlier of the endorsement of the Plan of Subdivision or the commencement of construction of the Improvements, the Developer shall deliver and deposit with the County security in accordance with the Municipality's Policy # D-021 and in particular, in the form of an irrevocable letter of credit or a cash security deposit in the form of a certified bank draft, in an amount equal to Sixty Percent (60%) of the estimated costs of constructing and installing all of the Improvements and the letter of credit or the pledge of the cash security deposit shall be in terms and form acceptable to the County's solicitor. The estimated cost for the Improvements are as set out in Schedule "F" of this Agreement, based on actual tenders or cost estimates provided by the Developer's engineer or consultant and approved by the County.

11.4 In the event that the irrevocable letter of credit shall expire prior to the date for release of the security under this Agreement, and the Developer has failed to provide a replacement or letter of credit or evidence of renewal satisfactory to the County not less than Thirty (30) days prior to that expiration date, the County may draw upon all or any portion of the security and hold or apply the proceeds in the same manner as a cash security deposit. In the event that the County negotiates or calls upon the security for any reason 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.

11.5 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 first financial 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.

11.6 It is understood and agreed by the Developer that the Developer shall, during the currency of this Agreement (including the Guarantee Period for the Improvements prescribed by this Agreement), maintain in full force and effect all security and liability insurance prescribed herein.

11.7 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. Without limiting the generality of the foregoing the County may require an increase in security if the Developer has failed to comply with the construction timetable approved under Section 2.1, or if the Developer has been issued a notice of default under Section 10.

11.8 The amount of security and 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 Improvements, or any of them, so completed; PROVIDED THAT, after the issuance of any Construction Completion Certificates and prior to the issuance

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

of Final Acceptance Certificates for all of the Improvements, the security maintained by the County shall not be less than:

(a) Twenty-five (25%) percent of the estimated costs of the Improvements which were the subject of the Construction Completion Certificate; and

(b) Sixty (60%) percent of the estimated costs of constructing and installing all of the Improvements yet to be completed, being all those portions of the Improvements for which no Construction Completion Certificate has been issued.

11.9 Upon the issuance of the Final Acceptance Certificates for all of the Improvements, the County shall release to the Developer all remaining security.

11.10 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.

12 DELIVERY OF DOCUMENTS TO COUNTY

12.1 The Developer shall, within Six (6) months following issuance of the Construction Completion Certificate, deliver to the County all inspection and testing records and "as built" Plans and records, 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.

13 COMPLIANCE WITH LAW

13.1 The Developer shall, at all times during the construction, installation, maintenance, repair and/or replacement of the Improvements, comply fully with all terms, conditions, provisions, covenants and details relating to this Agreement, including as may be set out in the Plans as approved by the County, as may otherwise be required pursuant to this Agreement, or as may be agreed upon in writing between the County and the Developer.

13.2 The Developer shall at all times comply with all legislation, regulations and municipal bylaws and resolutions relating to the development of the Development Area by the Developer. 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.

13.3 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.

14 GENERAL

14.1 The Agreement shall be governed by the laws of the Province of Alberta.

14.2 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.

14.3 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.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

14.4 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, or by registered mail sent to, the respective addresses of the parties being:

COUNTY OF VERMILION RIVER
PO Box 69
Kitscoty, Alberta T0B 2P0

Phone: (780) 853-5792
Fax: (780) 8546-2716
Attention: Chief Administrative Officer

Phone: ()
Fax: ()
Attention:

14.5 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.

14.6 The Developer acknowledges and agrees that the County shall be at liberty, to file at the Land Titles Office a caveat against the Development Area and against the undeveloped portion of the Lands for purposes of protecting the County's interests and rights pursuant to this Agreement; PROVIDED THAT such caveat shall be discharged by the County upon the issuance of the Final Acceptance Certificate.

14.7 Notwithstanding anything contained within this Agreement, 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.

14.8 This Agreement shall not be assignable by the Developer without the express written approval of the County. Such approval shall be subject to Section 14.9 and may be withheld by the County in its discretion. 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 respective 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.

14.9 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; and
- (b) the proposed assignee has deposited with the County all insurance and security as required by the terms of this Agreement.

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

14.11 The Developer shall be responsible for and within Thirty (30) days of the presentation of an account, pay to 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.

14.12 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

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

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 Queen’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.

15 ARBITRATION

15.1 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.

15.2 Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the Municipality and the Developer, and his decision shall be final and binding. In the event that the Municipality and the Developer shall fail to agree on an arbitrator within Forty-eight (48) hours of either party giving to the other party notice of a dispute or difference pursuant to Section 16.1 hereof, then an application shall be made to a Justice of the Court of Queen's Bench of Alberta to select the arbitrator.

15.3 All charges, fees and expenses of the arbitrator shall be borne and paid by the Municipality or the Developer, or proportionately by both the Municipality and the Developer, depending upon their respective fault as found by the arbitrator.

15.4 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 Municipality, the Committee of the Whole or the Council of the Municipality or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by the Municipality, the Committee of the Whole or the Council of the Municipality. In any such instance the discretion, decision, opinion or determination of the Municipality, the Committee of the Whole or the Council of the Municipality, as the case may be, shall be final and binding upon the Developer.

16 EXECUTION OF AGREEMENT

16.1 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.

COUNTY OF VERMILION RIVER

Per: _____
Reeve
(corporate seal)

Per: _____
Municipal Administrator

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

[WHERE DEVELOPER IS CORPORATION]

Per: _____

Director and Shareholder
(corporate seal)

Per: _____

Director and Shareholder

[OR WHERE DEVELOPER IS INDIVIDUAL, PLUS AN AFFIDAVIT OF EXECUTION]

Witness

[INSERT NAME OF OWNER]

Witness

[INSERT NAME OF OWNER]

SCHEDULE "A" - LEGAL DESCRIPTION OF LANDS

THE LANDS

[NTD: Insert legal description of the lands being developed]

SCHEDULE "B" - THE DEVELOPMENT AREA

[NTD: Insert Diagram of the Development Area; ideally, a diagram of the approved subdivision plan]

SCHEDULE "C" - IMPROVEMENTS

A. Improvements

Improvements shall mean and include the following to be constructed in an adjacent to the Development Area:

- 1. Approach, Entrance and Driveway/Off-street Parking** – the Improvements shall include construction and installation of all vehicle approaches, entrances and driveways/off-street parking, and associated culvert and road improvements, contained within the municipal road allowance necessary to provide access to the Development Area to the minimum of a gravel standard, in accordance with the County's Design Standards.
- 2. On-Site Services** – the Improvements shall include the following:
 - (a) Sanitary Sewer Service – subject to approval of Plans in relation thereto, an on-site private sanitary sewer system including a tank and field septic system;
 - (b) Water Service – subject to approval of Plans in relation thereto, an on-site private water system and supply suitable for domestic use and fire suppression;
 - (c) Storm Water/Drainage – all drainage systems, including surface drainage, provisions for weeping tile flow where a high water table or other subsurface conditions cause continuous flow in the weeping tile, connection of weeping tile to appropriation/permitted discharge outlet and associated works within the Development Area;

in accordance with all applicable laws, regulations, codes or bylaws, the County's Design Standards and the approved Plans, as and where required by the County and sufficient to safeguard and ensure the continuous and safe supply of such services for the Development Area.

- 3. Roads** – the Improvements shall include:
 - (a) Roads – new or upgraded streets and lanes necessary to provide access to the Development Area (including but in no manner limited to, a second or temporary access for vehicular traffic from the Development Area) including, without restriction, all subgrade, base gravel, surface gravel and ditches;
 - (b) Lighting – all lighting systems for streets, walkways and public properties as and where required by the Plans approved by the County, or the applicable Land Use Bylaw or development permit; and
 - (c) Road Appurtenances – all traffic signs, street signs, zoning signs, and directional signs, berming and noise attenuation devices;

in accordance with all applicable laws, regulations, codes or bylaws, the County's Design Standards, and the approved Plans, as and where required by the County and sufficient to safeguard and ensure the continuous and safe supply of such services for the Development Area.

- 4. Third Party Services** – the Improvements shall include the following services, which the Developer shall either construct and install itself, or contract for service through a third party utility service provider satisfactory to the County:
 - (a) in lieu of water service and system through the above-noted on-site private water system, potable water service and system through third party service provider (e.g. water co-op, private utility, etc.);
 - (b) in lieu of sanitary sewer service and system through the above-noted on-site private sanitary sewer system, sanitary sewer service and system through third party service provider (e.g. wastewater co-op, private utility, etc);

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

- (c) Electricity;
- (d) Natural Gas;
- (e) Telephone;

in accordance with all applicable laws, regulations, codes or bylaws, to be provided in a location and to a standard to be approved by the appropriate service provider and the County as contemplated within the approved Plans, and otherwise as and where required to safeguard and ensure the continuous and safe supply of such services for the Development Area.

5. General Services & Improvements - the Improvements shall include:

- (a) the restoration of all public properties to the County's satisfaction which are disturbed or damaged in the course of the Developer's work;
- (b) 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; and
- (c) such uniform fencing (noise attenuation, or screen) either permanent or temporary, of a standard and of a design satisfactory to the County, all of which is to be constructed and located to the satisfaction of the County.

B. Essential Services

1. Essential Services shall consist of the following Subsections 1, 2 and 4 under Section A.

SCHEDULE "D" - ADDITIONAL PROVISIONS

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

1. Construction of Improvements – Without restriction, all work or Improvements within the Development Area, including the work or Improvements described within this Schedule “D”, shall be constructed and installed:
 - (a) as and where required by the County, in accordance with:
 - (i) the County’s Land Use Bylaw and Municipal Development Plan;
 - (ii) any applicable municipal development permit, redistricting approval, and/or subdivision approval conditions; and
 - (iii) the Design Standards, except where the parties agree in writing that the Design Standards must be varied in order to ensure compliance with municipal, provincial, or other governmental approvals; and
 - (b) as authorized under federal, provincial, and municipal laws existing as at the time of commencement.
2. Occupancy – Prior to occupancy of any buildings within the Development Area, the Developer shall provide the County with evidence satisfactory to the County that the Developer has, in respect to the development of the Development Area, obtained and complied with all applicable governmental approvals or consents required pursuant to the governing legislation and regulations, including, without restriction, the *Safety Codes Act* (Alberta).

[OPTIONAL PROVISIONS: For testing of lands for suitable water and septic system]

3. On-site Services – The Developer shall conduct Near Surface Ground Water Testing and Percolation Testing for the Development Area, which testing shall be determinative of the type of on-site water and septic services that may be constructed and installed within the Development Area.
4. (a) In the event that the proposed on-site water and septic systems for the Development Area are demonstrated as being suitable to the satisfaction of the County, the responsibility for the construction, installation and maintenance of the on-site systems shall be the responsibility of the developer or builder and not the County.

(b) In the event that on-site water and septic systems for the Development Area are demonstrated as not being suitable to the satisfaction of the County, the Developer shall provide the County Plans for and construct and install an alternative design and type of on-site water and septic services for the Development Area, upon the approval of the County. Furthermore, the Developer shall provide security, in the form acceptable to the County and in accordance with the terms of this Agreement, for the construction and installation costs of the proposed alternative on-site services. If necessary, the Developer shall prepare and have registered a caveat in regards to the maintenance of the said alternative on-site systems on the title of the Lands with the Land Titles Office for the North Alberta Land Registration District. Notwithstanding any other provision of this Agreement, within Twenty-Four (24) months of endorsement of this Agreement, and in respect to the Development Area, the Developer shall provide the County with an approved Safety Codes permit and satisfactory inspection report for a County approved and completed on-site water and septic systems and appurtenances. Such on-site water and septic services and appurtenances shall not be accepted by the County and shall remain the property of the Developer or subsequent registered owners of the Lands.
5. Notwithstanding any other provision of this Agreement, within Twenty-Four (24) months of endorsement of this Agreement, and in respect to the Development Area, the Developer shall provide the County with an approved Safety Codes permit and satisfactory inspection report for a County approved and completed on-site water and septic systems and appurtenances.
6. Notwithstanding anything else within this Agreement, the on-site water and septic services and appurtenances shall not be accepted by the County and shall remain the property of the Developer or subsequent registered owners of the Lands

[OPTIONAL PROVISIONS: For recovery of shared costs of oversized Improvements]

7. Oversized Improvements and Endeavour to Assist – Further to Section 8.2 of the Agreement and the Improvements described in Schedule “C”, the Developer shall construct and install the following oversized Improvements which may benefit future development on land adjacent to the Development Area:

(a) _____;

(b) _____.

8. Further to Sections 7.3 and 7.4 of this Agreement and the County’s obligation to endeavour to assist in the recovery of shared costs for the oversized Improvements described above, the following terms and conditions shall apply to the County and the Developer:

(a) the Developer shall, so soon as reasonably possible and in any event prior to the issuance of the Final Acceptance Certificates, provide the County with the details of the costs of oversizing or extension of the 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 7.3 of the Agreement;

(b) The County agrees that in the event any land adjacent to the Development Area, and other benefiting areas which may benefit from the 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.

(c) 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 Certificates of all of the Improvements, compounded annually, at the prime rate plus Two (2%) percent; PROVIDED, that interest shall cease to accrue Five (5) years from the date of the issuance of Construction Completion Certificates for all of the Improvements.

(d) For purposes of calculating interest payable under subsection (c) above, the prime rate shall be the prime lending rate established from time to time at the nearest Royal Bank of Canada, in relation to the Development Area, as 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.

(e) In the event that there is a dispute between the Developer and the developer/owner of the adjacent lands considered to benefit from the oversized Improvements as to the amount of benefit or the amount determined to its proportionate share of the costs of constructing and installing the oversized Improvements, the County, at its option, may require that the dispute be arbitrated between the Developer and the benefiting developer/owner of the adjacent lands. The County shall have the option to, but shall not be obligated to, participate as a party or otherwise in such arbitration. In either event, the County agrees to endeavour to assist in the recovery of the amount, if any, of the shared costs as determined by the arbitrator.

(f) 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 Parties 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, some oversized Improvements becoming obsolete or require 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 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.

[NTD: PROVISIONS TO BE INSERTED: ADDITIONAL PROVISIONS IN ACCORDANCE WITH RELEVANT PROVINCIAL AND/OR MUNICIPAL APPROVALS, INCLUDING PROVISIONS ARISING FROM THE OUTSTANDING PLANNING PROCESS (E.G. AGENCY CIRCULATIONS, PUBLIC HEARING PROCESS, DEVELOPMENT PERMIT APPROVAL CONDITIONS, AND POTENTIAL APPEAL PROCESSES).]

SCHEDULE "E" - OVERSIZE COSTS, LEVIES AND FEES

[Insert Calculation of Developer's Contributions and Off-Site Levies]

A. Developer Contributions and/or Off-site Levies

1. The Developer shall pay the following as servicing contributions and/or Off-site Levies, pursuant to the provisions of this Agreement and Sections 650 or 655 of the MGA:

[DRAFT NOTE: \$ per residential lot x ** lots = \$ INSERT TOTAL AMOUNT or
\$ ** per hectare x ** hectare area = \$ INSERT TOTAL AMOUNT]**

2. Payment – the Developer shall pay the amounts described in this Schedule as and when required within Sections 7 and 8 of this Agreement.

[DRAFT NOTE: If an alternative time for payment is preferred, insert special payment terms here. Any deferral of payments and/or contributions beyond the release of the Plan of Subdivision and/or commencement of construction should be secured, eg. by an Irrevocable Letter of Credit]

B. Approval & Inspection Fees

1. Fees and Calculation – the approval and inspection fees currently due and payable by the Developer pursuant to Section 8 of this Agreement are as follows:

[DRAFT NOTE: Insert Current Fees, Refer to General Fees Bylaw, or Leave Blank as Section 17 Will Apply]

2. Payment – the Developer shall pay the approval and inspection fees applicable to the lands contained within the Development Area as and when required within Section 8 of this Agreement.

[DRAFT NOTE: Insert Special Payment Terms or Leave Blank Any deferral of payments and/or contributions beyond the release of the Plan of Subdivision and/or commencement of construction should be secured, eg. by an Irrevocable Letter of Credit]

SCHEDULE "F" - SECURITY

1. For purposes of calculating, the security required to be deposited by the Developer the cost estimates for the construction and installation of the Improvements are as follows:

Surface Improvements

<i>Access road</i>	\$
<i>Approach, Entrance and Driveway/Off-street Parking</i>	\$
<i>Granular Base</i>	\$
<i>Gravel</i>	\$
<i>On-site Water Service</i>	\$
<i>On-Site Septic Service</i>	\$
<i>Storm Water/Drainage</i>	\$
<i>Fencing and Landscaping</i>	\$
<i>Signage</i>	\$
<i>Engineering and Contingency access road</i>	\$
<i>Above Ground Subtotal</i>	\$
<i>Shallow Bury</i>	
<i>Utilities Subtotal</i>	\$ _____
Total Value of all Improvements & Services	\$
Total Value of Security required for Improvements (60% of the total)	\$
Total Value of Other Security Required (Including for Developer Improvements)	\$
Total Value of Security Required	\$

2. In the event that any of the costs for the construction and installation of the Improvements for the Development Area, as set out above, are estimates, and in the further event that actual tendered costs become available prior to the Developer commencing the construction and installation of the Improvements, THEN, the estimated costs set out above shall be adjusted in accordance with the security provisions of this Agreement.

SCHEDULE "G" - INAPPLICABLE PROVISIONS

The parties agree that the following terms, covenants and conditions contained within this Agreement shall not apply:

1. *[NTD: Insert Section Number and description or full text of inapplicable conditions];*

[NTD: TO BE USED WHERE DEVELOPER IS INDIVIDUAL]

AFFIDAVIT OF EXECUTION

I, _____, of the _____, in the Province of Alberta, MAKE OATH AND SAY:

1. That I was personally present and did see _____, who on the basis of the identification provided to me, I believe to be the person(s) named in the within instrument, duly sign the instrument.
2. That the same was executed at the _____, in the Province of Alberta, and that I am the subscribing witness thereto.
3. I believe the person(s) whose signatures I witnessed is at least eighteen (18) years of age.

SWORN BEFORE ME at the _____ of _____, in the Province of Alberta,
 this ____ day of _____, 20__.

) _____
)
)
)
)

 A Commissioner for Oaths in and for
 the Province of Alberta

COUNTY OF VERMILION RIVER

Short Form Development Agreement

Subdivision Approval

COUNTY OF VERMILION RIVER

AND

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

MEMORANDUM OF AGREEMENT made this ____ day of _____, 20__.

COUNTY OF VERMILION RIVER
a municipal corporation,
(hereinafter referred to as "the County")

OF THE FIRST PART

- and -

_____ a named Alberta Corporation duly authorized to carry on business in the Province of Alberta,
(hereinafter referred to as "the Developer")

OR

_____ the registered owner(s) of the "Lands", as that term is defined herein
(hereinafter referred to as "the Developer")

OF THE SECOND PART

WHEREAS:

- A.** The Developer is, or is entitled to become, the registered owner of all or a portion of the lands described in Schedule "A" attached to this Agreement (hereinafter referred to as "the Lands").
- B.** Pursuant to Subdivision Approval No. _____, the Developer proposes to subdivide all or a portion of the Lands into country residential lots (hereinafter referred to as "the Development Area") outlined in heavy black or bold, or otherwise delineated, on the map attached hereto as Schedule "B" to this Agreement.
- C.** The County and the Developer are agreeable to the Developer completing or contributing to the 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.
- D.** The County and the Developer have agreed to enter into this Agreement to ensure adequate and timely provision of required services to the Development Area.
- E.** Upon satisfactory completion of the construction and installation of the Improvements by the Developer, as signified by the issuance of a Construction Completion Certificate, and the Final Acceptance of them by the County, as signified by the issuance of a Final Acceptance Certificate, the Improvements which are on or under Public Property shall become the property of the County.
- F.** The County and the Developer have agreed that the said construction and installation of the 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 and the Developer agree as follows:

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

1. INTERPRETATION - for the purposes of this Agreement, words defined with the Recitals to this Agreement shall have the meaning ascribed therein and the following words shall have the meaning ascribed below:

1.1 "Construction Completion Certificate" shall mean a Certificate issued by the County, certifying the completion of all or a portion of the Improvements.

1.2 "Design Standards" shall mean the designs, procedures, standards and specifications established by the County respecting the design, construction and installation of the Improvements, as amended and revised from time to time.

1.3 "Developer's Consultant" shall mean the consulting professionals retained by the Developer and shall include, but not be limited to professional engineers, landscape architects, land use planners, and land surveyors.

1.4 "Essential Services" shall mean those improvements and services to be constructed or installed within the Development Area and identified as Essential Services within Schedule "C" to this Agreement

1.5 "Final Acceptance Certificate" shall mean a written acceptance issued by the County for the Improvements, or a portion thereof, upon the completion of any repairs for defects or deficiencies and the expiration of the Guarantee Period.

1.6 "Guarantee Period" except where otherwise stated within this agreement, shall mean a period of THREE (3) years for all Improvements, including landscaping, but in any event the Guarantee Period shall not expire before the issuance of a Final Acceptance Certificate.

1.7 "Improvements" shall mean and include, within and outside the Development Area, those services and facilities identified in Schedule "C" to this Agreement.

1.8 "Plans" shall mean plans and specifications prepared by the Developer's Consultant covering the design, construction, location and installation of all Improvements, as approved by the County.

1.9 "Plan of Subdivision" or "Plans of Subdivision" shall mean the subdivision or subdivisions which subdivide the Development Area into separate lots for further development.

1.10 "Public Property" or "Public Properties" shall include all properties within and adjacent to the Development Area to be owned or administered by the County, including roadways, utility rights-of-way or easements, following the registration of the Plan or Plans of Subdivision for the Development Area.

2. PLAN OF SUBDIVISION

2.1 Prior to construction or installation of any of the Improvements, the Developer shall cause a Subdivision Plan of the said Lands to be prepared and approved by all necessary approving authorities.

2.2 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.

2.3 In the event that the Developer does not register the Plan of Subdivision within Twelve (12) months of the date of this Agreement or in the case of an extension granted by the County's Council pursuant to Section 657(2) of the *Municipal Government Act* prior to the expiration of that extension, the County shall be entitled to terminate this Agreement forthwith, and the Developer shall not register any Plan of Subdivision for any portion of the Development Area or commence or complete the obligations under this agreement until a further written Agreement is entered into between the Developer and the County.

3. PLANS

3.1 Prior to commencing construction and installation of the Improvements within or adjacent to the Development Area, the Developer shall submit Plans for the Improvements for approval by the County. The Plans shall give all necessary details of the Improvements to be constructed by the Developer, and shall conform to the Design Standards. The Plans shall include a construction timetable for the construction and installation of all of the Improvements and the Developer shall comply with all time limits and dates specified in the construction timetable. Where the design of all or any portion of the required Improvements are entirely contained within the Design Standards, the Developer shall submit the County's standard design obtained from the Design Standards.

3.2 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.

3.3 If the County does not approve whatever Plans submitted by the Developer, the Developer shall be entitled to refer any dispute with regard to the Plans to the County's Council. The decision of the County's Council shall be final and binding.

3.4 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 Engineer respecting the content of the Plans, including, without restricting the generality of the foregoing whether the Plans are suitable for the intended purpose or whether the Plans comply with any required federal, provincial or municipal legislation or regulation, Design Standards or engineering practices.

4. CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS

4.1 All of the Improvements shall be constructed and installed in a good and workmanlike manner, in strict conformance with the Plans, with 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.

4.2 The Developer shall commence construction and installation of the Improvements within Twelve (12) months of endorsement of this Development Agreement and shall complete the construction and installation within Twenty four (24) months of the endorsement of this Agreement.

4.3 In the event that the Developer has not commenced construction of the Improvements within the time limits required above, then the County shall be entitled to terminate this Agreement and the Developer shall not be entitled to commence construction of the Improvements for the Development Area unless and until a further written agreement is entered into between the Developer and the County.

4.4 The Developer shall, where no reasonable access is available, construct and install temporary or emergency accesses satisfactory to the County and the Developer hereby grants to the County an easement across the required land for the period for which the temporary access is required.

4.5 At all times during the construction and installation of the 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 engineer or 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;

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

- (ii) reject any design, material or work which is not in accordance with the approved Plans, applicable 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.

4.6 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.

4.7 The Developer shall during the course of the construction and installation of the Improvements provide and maintain adequate inspection services, supervised by a professional engineer.

4.8 The Developer shall take effective measures to reasonably control dust and dirt in and around the Development Area caused by the construction or installation of the Improvements.

4.9 Upon the completion of the work by the Developer, and prior to the issuance of Construction Completion Certificates for the Improvements, the Developer's Consultant shall submit to the County a statement under his professional seal certifying that the Developer's Consultant has provided adequate periodic inspection services during the course of the work and that the Developer's Consultant is satisfied that the work has been completed in a good and workmanlike manner in accordance with the Plans; in accordance with accepted engineering and construction practices; and in accordance with the Design Standards.

4.10 The Developer covenants and agrees as follows:

(a) that it shall plan and complete the development of the Development Area so as to guarantee and ensure to the County that the Essential Services will have been installed and rendered operative in any part of the Development Area before any buildings or facilities are occupied in any such part of the Development Area;

(b) to undertake and complete to the satisfaction of the County such work as may be necessary to ensure that the Development Area has positive drainage away from any building to the gutter, ditch or drainage channels and that there will be no unacceptable ponding of water within any of the lots within the Development Area;

(c) 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 electric power, natural gas and telephone service to the Development Area and within the streets adjoining the Development or the lots to be created in the Development Area;

(d) 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 detailed written proposals for the work to be done within any such property, for approval by the County and to the satisfaction of the County, and no such work shall be commenced prior to the Developer obtaining the written consent of the County to enter upon such Public

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

Properties and complete the work, and 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

(e) to obtain any necessary approvals from Alberta Environment for storm water management within the Development Area prior to the endorsement of the Plan of Subdivision or commencement of construction of the Improvements within and adjacent to the Development Area.

5. ACCEPTANCE OF IMPROVEMENTS: TRANSFER OF IMPROVEMENTS TO COUNTY

5.1 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 within a reasonable time of receipt;
- (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 or repaired, as reasonable in the circumstances, by the Developer;
- (f) the Improvement is suitable for the purpose intended in accordance with the approved Plans; and
- (g) the Developer has provided the County with any applicable operation plans, operation manuals or maintenance manuals, for the Improvements having special operation or maintenance requirements.

5.2 When the Developer claims that each of the Improvements for the Development Area as identified in Schedule "C" 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.

5.3 Within SIXTY (60) days of receipt of such claim of completion, the County 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, together with all reasons for rejection, in writing.

5.4 Notwithstanding the preceding paragraph, 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 no later than SIXTY (60) days following the elimination of such adverse site or weather conditions.

5.5 It is understood between the County and the Developer that the County shall be at liberty to issue a conditional Construction Completion Certificate for the Improvements and such acceptance shall be conditional upon the completion of minor deficiencies by the Developer within Thirty (30) days.

5.6 In the event that an inspection reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Improvement, the County may refuse to issue a Construction Completion Certificate for the Improvement and require the Developer to repair or replace the whole or any portion of any such 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.

5.7 Not more than NINETY (90) days nor less than SIXTY (60) days prior to the expiration of any Guarantee Period for the Improvements or any portion the Developer shall give notice to the County of expiration of the Guarantee

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

Period for the Improvements and the Developer shall request a Final Acceptance Certificate in respect to the Improvements. The Developer's notice shall be accompanied by a list of any deficiencies.

5.8 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 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 Improvements (i.e. any deficiencies referred to by the Developer and any additional deficiencies); PROVIDED, that the above provisions respecting extension to inspection deadlines shall also apply to any request for the issuance of a Final Acceptance Certificate.

5.9 In the event that there are any deficiencies (ordinary wear and tear excepted) in relation to a particular Improvement the County may refuse to issue the Final Acceptance Certificate of the Improvements and require the Developer to repair or replace the whole or any portion of any such 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.

5.10 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 Improvements and such acceptance shall be conditional upon the completion of minor deficiencies by the Developer within THIRTY (30) days.

5.11 Upon the issuance of a Construction Completion Certificate by the County for the Improvements, the Developer hereby acknowledges that all right, title and interest in the 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 Improvements shall become the property of the County.

5.12 The County and the Developer agree, notwithstanding the issuance of a Final Acceptance Certificate for the Improvements located on or under public properties (including utility rights-of-way and easement areas), that the Developer shall be responsible, for a period of Five (5) years following the issuance of a Final Acceptance Certificate for such Improvements, to repair or replace any of such Improvements where there were any hidden or latent defects (which were reasonably not capable of being detected by inspections or tests actually undertaken) in any of these Improvements, which are causally connected to the performance or non-performance of the obligations of the Developer 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, the parties may mutually agree to resolve any dispute under this provision by means of a mutually hiring an independent engineering firm to determine causation of hidden or latent defects in any Improvements installed or constructed pursuant to this Agreement.

6. MAINTENANCE OF IMPROVEMENTS BY DEVELOPER

6.1 The Guarantee Period in respect to any of the Improvements shall commence with the County's written Construction Completion Certificate for any such Improvements (ordinary wear and tear excepted).

6.2 The Developer shall repair or replace the whole or any portion of a Improvement at its cost and expense during the Guarantee Period where such repair or replacement is required due to anything other than normal wear and tear, in the reasonable opinion of the County. In the event that the Developer fails to take steps to repair or replace the whole or portion of the Improvement the County may, upon Thirty (30) days written notice to the Developer, affect the repair or replacement, at the Developer's cost and expense.

7. UTILITY EASEMENTS AND OTHER INSTRUMENTS

7.1 Prior to commencing construction and installation of the Improvements within or adjacent to the Development Area, the Developer shall grant to the County or other service provider such road allowances, public utility lots, easements, rights-of-way, restrictive covenants or other instruments, as may be applicable, adequate for the construction and installation of Improvements and services, natural gas, power, and telephone service. The Developer shall provide proof of the registration satisfactory to the County prior to any development upon or subdivision of the Development Area.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

7.2 The Developer agrees that the easements and 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.

7.3 Such easements 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 operators of the respective utilities; or
- (b) to grant permits or licenses to install, repair and replace gas, power and telephone lines, and all drainage systems.

7.4 The Developer covenants that it shall register or cause to be registered against the Development Area or other lands controlled by the Developer, in a form acceptable to the County, restrictive covenants and other instruments that are required by any subdivision approval for the Development Area or otherwise required under the terms of this Agreement.

8. OVERSIZING AND SHARING OF SERVICING COSTS

8.1 The Developer recognizes and agrees that the Development within the Development Area will benefit from the oversizing or construction of Improvements that have been or will be constructed by the County and/or parties other than the Developer in areas adjacent to the Development Area and other benefiting areas. The Developer agrees that it shall bear and pay its proportionate share of such other Improvements as determined in the discretion of the County in the amount provided within Schedule "E" attached to this Agreement. The Developer shall provide proof of payment satisfactory to the County prior to the earlier of endorsement of the Plan of Subdivision or the commencement of construction upon the Development Area.

8.2 The Developer, in constructing the Improvements as contemplated herein, shall bear the costs of oversizing and extending 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 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 additional provisions contained within Schedule "D" attached to this Agreement, 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.

8.3 The costs of the oversizing or extensions contemplated in Section 8.2 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 any applicable provisions contained in Schedule "D" attached to this Agreement. The method of calculating the proportionate shares of such shared costs shall be determined solely by the County in accordance with good engineering and construction practices, in accordance with the provisions of any relevant bylaws of the County, 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 Improvements, and where deemed appropriate by the County taking into account the expended useful life span of the oversized/shared Improvements.

8.4 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 and endeavours to assist 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 or subdivision applications.

9 LEVIES AND FEES

9.1 The Developer agrees that the Development Area will benefit from new or expanded off-site water, sanitary sewer, roadway and/or storm drainage facilities that will be utilized to provide municipal services to the Development Area, and accordingly the Developer covenants and agrees to pay to the Municipality off-site levies if and when established by the County or as specifically provided within Schedule "E" attached to this Agreement. The Developer shall provide proof of payment satisfactory to the County prior to the earlier of endorsement of the Plan of Subdivision or the commencement of construction upon the Development Area.

9.2 The Developer acknowledges that the County will incur costs and expenses in the checking of the Plans for the Improvements, as well as costs and expenses for the testing and inspection of the Improvements, which costs and expenses are properly part of the costs of constructing and installing the Improvements and should properly be borne by the Developer. The County and the Developer agree that unless otherwise required by 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.

10 AMOUNTS PAYABLE UNDER THIS AGREEMENT

10.1 The Developer acknowledges and agrees that the Municipality 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 Municipality of the various sums prescribed in this Agreement, AND FURTHER that 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 Municipality to enter into this Agreement.

10.2 The Developer for itself and its successors and assigns hereby releases and forever discharges the Municipality 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 Municipality in respect to any right or claim, if any, for the refund or repayment of any sums paid by the Developer to the Municipality pursuant to this Agreement.

11 DEFAULT BY THE DEVELOPER

11.1 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. Without limiting in any way the rights and remedies available to the County pursuant to this agreement, statute, or otherwise, upon a failure by the Developer to rectify a default the County shall have the option, but not any obligation, to perform the Developer's obligations in default without further notice and at the Developer's sole cost and expense. The Developer shall reimburse the County for all such costs incurred by the County immediately upon demand.

11.2 Notwithstanding the foregoing, in the event that the County, in its discretion, considers a situation to be an emergency it may undertake or cause to be done any immediate work in connection with the construction, installation or repair of the Improvements. The Developer shall reimburse the County for all such costs incurred by the County immediately upon demand.

12 INDEMNITY AND SECURITY

12.1 The Developer shall indemnify and save harmless the County from any and all losses, costs (including, without restriction, all legal costs on a solicitor and his own client full indemnity basis), damages, actions, causes of action, suits, claims and demands resulting from anything done or omitted to be done by the Developer in pursuance or purported pursuance of this Agreement.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

12.2 The Developer covenants and agrees that it shall carry comprehensive liability insurance in the amount of \$2,000,000.00, which insurance shall name the County as an additional insured (as its interest may appear, including with respect to any and all operations by the Developer or its contractors upon or affecting property owned by, or under the care, control and management of, the County) and require that the County shall receive Thirty (30) days notice of change or cancellation.

12.3 Prior to the earlier of the endorsement of the Plan of Subdivision or the commencement of construction of the Improvements,, the Developer shall deliver and deposit with the County security in accordance with the Municipality's Policy # D-021and and in particular, in the form of an irrevocable letter of credit or a cash security deposit in the form of a certified bank draft, in an amount equal to Sixty Percent (60%) of the estimated costs of constructing and installing all of the Improvements and the letter of credit or the pledge of the cash security deposit shall be in terms and form acceptable to the County's solicitor. The estimated cost for the Improvements are as set out in Schedule "F" of this Agreement, based on actual tenders or cost estimates provided by the Developer's engineer or consultant and approved by the County.

12.4 In the event that the irrevocable letter of credit shall expire prior to the date for release of the security under this Agreement, and the Developer has failed to provide a replacement or letter of credit or evidence of renewal satisfactory to the County not less than Thirty (30) days prior to that expiration date, the County may draw upon all or any portion of the security and hold or apply the proceeds in the same manner as a cash security deposit. In the event that the County negotiates or calls upon the security 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.

12.5 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 first financial 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.

12.6 It is understood and agreed by the Developer that the Developer shall, during the currency of this Agreement (including the Guarantee Period for the Improvements prescribed by this Agreement), maintain in full force and effect all security and liability insurance prescribed herein.

12.7 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. Without limiting the generality of the foregoing the County may require an increase in security if the Developer has failed to comply with the construction timetable approved under Section 3.1, or if the Developer has been issued a notice of default under Section 11.

12.8 The amount of security and 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 Improvements, or any of them, so completed; PROVIDED THAT, after the issuance of any Construction Completion Certificates and prior to the issuance of Final Acceptance Certificates for all of the Improvements, the security maintained by the County shall not be less than:

- (a) Twenty-five (25%) percent of the estimated costs of the Improvements which were the subject of the Construction Completion Certificate; and
- (b) Sixty (60%) percent of the estimated costs of constructing and installing all of the Improvements yet to be completed, being all those portions of the Improvements for which no Construction Completion Certificate has been issued.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

12.9 Upon the issuance of the Final Acceptance Certificates for all of the Improvements, the County shall release to the Developer all remaining security.

12.10 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.

13 DELIVERY OF DOCUMENTS TO COUNTY

13.1 The Developer shall, within SIX (6) months following issuance of the Construction Completion Certificate, deliver to the County all inspection and testing records and "as built" Plans and records, 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.

14 COMPLIANCE WITH LAW

14.1 The Developer shall, at all times during the construction, installation, maintenance, repair and/or replacement of the Improvements, comply fully with all terms, conditions, provisions, covenants and details relating to this Agreement, including as may be set out in the Plans as approved by the County, as may otherwise be required pursuant to this Agreement, or as may be agreed upon in writing between the County and the Developer.

14.2 The Developer shall at all times comply with all legislation, regulations and municipal bylaws and resolutions relating to the development of the Development Area by the Developer. 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 development, building and occupancy permits. 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 and produce to the County within Twenty-four (24) months of the endorsement of this Agreement all approvals and permits which may be required by the County or any governmental authority.

14.3 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.

15 GENERAL

15.1 The Agreement shall be governed by the laws of the Province of Alberta.

15.2 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.

15.3 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.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

15.4 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, or by registered mail sent to, the respective addresses of the parties being:

COUNTY OF VERMILION RIVER
PO Box 69
Kitscoty, Alberta T0B 2P0

Phone: (780) 853-5792
Fax: (780) 8546-2716
Attention: Chief Administrative Officer

Phone: (780)
Fax: (780)
Attention:

15.5 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.

15.6 The Developer acknowledges and agrees that the County shall be at liberty, to file at the Land Titles Office a caveat against the Development Area and against the undeveloped portion of the Lands for purposes of protecting the County's interests and rights pursuant to this Agreement; PROVIDED THAT such caveat shall be discharged by the County upon the issuance of the Final Acceptance Certificate.

15.7 Notwithstanding anything contained within this Agreement, 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.

15.8 This Agreement shall not be assignable by the Developer without the express written approval of the County. Such approval shall be subject to Section 15.9 and may be withheld by the County in its discretion. 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 respective 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.

15.9 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; and
- (b) the proposed assignee has deposited with the County all insurance and security as required by the terms of this Agreement.

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

15.11 The Developer shall be responsible for and within thirty (30) days of the presentation of an account, pay to 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.

15.12 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

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

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 Queen’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.

16. ARBITRATION

16.1 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.

16.2 Arbitration hereunder shall be by a reference to an independent person to be selected jointly by the Municipality and the Developer, and his decision shall be final and binding. In the event that the Municipality and the Developer shall fail to agree on an arbitrator within Forty-eight (48) hours of either party giving to the other party notice of a dispute or difference pursuant to Section 16.1 hereof, then an application shall be made to a Justice of the Court of Queen’s Bench of Alberta to select the arbitrator.

16.3 All charges, fees and expenses of the arbitrator shall be borne and paid by the Municipality or the Developer, or proportionately by both the Municipality and the Developer, depending upon their respective fault as found by the arbitrator.

16.4 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 Municipality, the Committee of the Whole or the Council of the Municipality or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by the Municipality, the Committee of the Whole or the Council of the Municipality. In any such instance the discretion, decision, opinion or determination of the Municipality, the Committee of the Whole or the Council of the Municipality, as the case may be, shall be final and binding upon the Developer.

17 EXECUTION OF AGREEMENT

17.1 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.

COUNTY OF VERMILION RIVER

Per: _____

Reeve
(corporate seal)

Per: _____

Municipal Administrator

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

[WHERE DEVELOPER IS CORPORATION]

Per: _____
Director and Shareholder
(corporate seal)

Per: _____
Director and Shareholder

*[OR WHERE DEVELOPER IS INDIVIDUAL, PLUS AN
AFFIDAVIT OF EXECUTION]*

Witness

[INSERT NAME OF OWNER]

Witness

[INSERT NAME OF OWNER]

SCHEDULE "A" - LEGAL DESCRIPTION OF LANDS

[NTD: Insert Legal Description of the Lands to be development or subdivided]

SCHEDULE "B" - THE DEVELOPMENT AREA

[NTD: Insert Diagram of the Development Area; ideally, a diagram of the approved subdivision plan]

SCHEDULE "C" - IMPROVEMENTS

A. Improvements

The Improvements shall consist of the following:

1. Approaches, Culverts and Entrances – the Improvements shall include construction and installation of all vehicle entrances and driveways, and associated culvert and road improvements, contained within the municipal road allowance necessary to provide access to the Development Area and to each individual lot, in accordance with the County's Design Standards.

2. Storm Water Management System - the Improvements shall include an approved storm water management system including, but not restricted to, surface drainage, ditches or swales, storm retention ponds, catch basins, catch basin leads, and associated works, in accordance with all applicable laws, regulations, codes or bylaws, the County's Design Standards, and the approved Plans, as and where required by the County and sufficient to safeguard and ensure the continuous and safe supply of such services for the Development Area.

3. On-Site Services – subject to Schedule D, the Improvements shall include the following:

- (a) Sanitary Sewer Service - subject to approval of Plans in relation thereto, in lieu of individual on-site sanitary sewer service, an on-site private sanitary sewer system including a tank and field septic system;
- (b) Water Service - subject to approval of Plans in relation thereto, in lieu of individual on-site water supply, an on-site private water system and supply suitable for domestic use, commercial use, and fire suppression;

in accordance with all applicable laws, regulations, codes or bylaws, the County's Design Standards and the approved Plans, as and where required by the County and sufficient to safeguard and ensure the continuous and safe supply of such services for the Development Area.

4. Roads and Sidewalks - the Improvements shall include:

- (a) Roads – new or upgraded streets and lanes necessary to provide access to the Development Area (including, but in no manner limited to, a second or temporary access for vehicular traffic from the Development Area) including, without restriction, all subgrade, base gravel, surface gravel and ditches;
- (b) Lighting - all lighting systems for streets, walkways and public properties as and where required by the Plans approved by the County, or the applicable Land Use Bylaw or development permit; and
- (c) Road Appurtenances - all traffic signs, street signs, zoning signs, and directional signs, berming and noise attenuation devices;

in accordance with all applicable laws, regulations, codes or bylaws, the County's Design Standards, and the approved Plans, as and where required by the County and sufficient to safeguard and ensure the continuous and safe supply of such services for the Development Area.

5. General Services & Improvements – the Improvements shall include:

- (a) the restoration of all public properties to the County's satisfaction which are disturbed or damaged in the course of the Developer's work;
- (b) 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; and
- (c) such uniform fencing, (noise attenuation, or screen) either permanent or temporary, as contemplated by the approved Plans of a standard and of design satisfactory to the County, all of which is to be constructed and located to the satisfaction of the County; and

6. Third Party Services – the Improvements shall include the following services, which the Developer shall either construct and install itself, or contract for service through a third party utility service provider satisfactory to the County:

- (a) Electricity;
- (b) Natural Gas; and
- (c) Telephone;

in accordance with all applicable laws, regulations, codes or bylaws, to be provided in a location and to a standard to be approved by the appropriate service provider and the County as contemplated within the approved Plans, and otherwise as and where required to safeguard and ensure the continuous and safe supply of such services for the Development Area.

B. Essential Services

1. Essential Services shall consist of the following Subsections 1, 2, 6 and, where applicable, 3 of Section A.

SCHEDULE "D" - ADDITIONAL PROVISIONS

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

1. Construction of Improvements – Without restriction, all work or improvements within the Development Area, including the work or improvements described within this Schedule “D”, shall be constructed and installed:
 - (a) as and where required by the County, in accordance with:
 - (i) the County’s Land Use Bylaw and Municipal Development Plan;
 - (ii) any applicable municipal development permit, redistricting approval, and/or subdivision approval conditions; and
 - (iii) the Design Standards, except where the parties agree in writing that the Design Standards must be varied in order to ensure compliance with municipal, provincial, or other governmental approvals; and
 - (b) as authorized under federal, provincial, and municipal laws existing as at the time of commencement.
2. Occupancy – Prior to occupancy of any buildings within the Development Area, the Developer shall provide the County with evidence satisfactory to the County that the Developer has, in respect to the development of the Development Area, obtained and complied with all applicable governmental approvals or consents required pursuant to the governing legislation and regulations, including, without restriction, the *Safety Codes Act* (Alberta).

[OPTIONAL PROVISIONS: For testing of lands for suitable water and septic system]

3. On-site Services – The Developer shall conduct Near Surface Ground Water Testing and Percolation Testing for the Development Area, which testing shall be determinative of the type of on-site water and septic services that may be constructed and installed within the Development Area.
4. (a) In the event that the proposed on-site water and septic systems for the Development Area are demonstrated as being suitable to the satisfaction of the County, the responsibility for the construction, installation and maintenance of the on-site systems shall be the responsibility of the developer or builder and not the County.

(b) In the event that on-site water and septic systems for the Development Area are demonstrated as not being suitable to the satisfaction of the County, the Developer shall provide the County Plans for and construct and install an alternative design and type of on-site water and septic services for the Development Area, upon the approval of the County. Furthermore, the Developer shall provide security, in the form acceptable to the County and in accordance with the terms of this Agreement, for the construction and installation costs of the proposed alternative on-site services. If necessary, the Developer shall prepare and have registered a caveat in regards to the maintenance of the said alternative on-site systems on the title of the Lands with the Land Titles Office for the North Alberta Land Registration District. Notwithstanding any other provision of this Agreement, within Twenty-Four (24) months of endorsement of this Agreement, and in respect to the Development Area, the Developer shall provide the County with an approved Safety Codes permit and satisfactory inspection report for a County approved and completed on-site water and septic systems and appurtenances. Such on-site water and septic services and appurtenances shall not be accepted by the County and shall remain the property of the Developer or subsequent registered owners of the Lands.
5. Notwithstanding any other provision of this Agreement, within Twenty-Four (24) months of endorsement of this Agreement, and in respect to the Development Area, the Developer shall provide the County with an approved Safety Codes permit and satisfactory inspection report for a County approved and completed on-site water and septic systems and appurtenances.
6. Notwithstanding anything else within this Agreement, the on-site water and septic services and appurtenances shall not be accepted by the County and shall remain the property of the Developer or subsequent registered owners of the Lands

[OPTIONAL PROVISIONS: For recovery of shared costs of oversized Improvements]

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

7. Oversized Improvements and Endeavour to Assist – Further to Section 8.2 of the Agreement and the Improvements described in Schedule “C”, the Developer shall construct and install the following oversized Improvements which may benefit future development on land adjacent to the Development Area:

(a) _____;

(b) _____.

8. Further to Sections 8.3 and 8.4 of this Agreement and the County’s obligation to endeavour to assist in the recovery of shared costs for the oversized Improvements described above, the following terms and conditions shall apply to the County and the Developer:

(a) the Developer shall, so soon as reasonably possible and in any event prior to the issuance of the Final Acceptance Certificates, provide the County with the details of the costs of oversizing or extension of the 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 8.3 of the Agreement;

(b) The County agrees that in the event any land adjacent to the Development Area, and other benefiting areas which may benefit from the 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.

(c) 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 Certificates of all of the Improvements, compounded annually, at the prime rate plus Two (2%) percent; PROVIDED, that interest shall cease to accrue Five (5) years from the date of the issuance of Construction Completion Certificates for all of the Improvements.

(d) For purposes of calculating interest payable under subsection (c) above, the prime rate shall be the prime lending rate established from time to time at the nearest Royal Bank of Canada, in relation to the Development Area, as 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.

(e) In the event that there is a dispute between the Developer and the developer/owner of the adjacent lands considered to benefit from the oversized Improvements as to the amount of benefit or the amount determined to its proportionate share of the costs of constructing and installing the oversized Improvements, the County, at its option, may require that the dispute be arbitrated between the Developer and the benefiting developer/owner of the adjacent lands. The County shall have the option to, but shall not be obligated to, participate as a party or otherwise in such arbitration. In either event, the County agrees to endeavour to assist in the recovery of the amount, if any, of the shared costs as determined by the arbitrator.

(f) 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 Parties 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, some oversized Improvements becoming obsolete or require 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 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.

DRAFT DEVELOPMENT AGREEMENT JUL. 9, 12 - FOR DISCUSSION PURPOSES ONLY

[NTD: PROVISIONS TO BE INSERTED: ADDITIONAL PROVISIONS IN ACCORDANCE WITH RELEVANT PROVINCIAL AND/OR MUNICIPAL APPROVALS, INCLUDING PROVISIONS ARISING FROM THE OUTSTANDING PLANNING PROCESS (E.G. AGENCY CIRCULATIONS, PUBLIC HEARING PROCESS, SUBDIVISION OR DEVELOPMENT PERMIT APPROVAL CONDITIONS, AND POTENTIAL APPEAL PROCESSES).]

SCHEDULE "E" - OVERSIZE COSTS, LEVIES AND FEES

[Insert Calculation of Developer's Contributions and Off-Site Levies]

A. Developer Contributions and/or Off-site Levies

1. The Developer shall pay the following as servicing contributions and/or Off-site Levies, pursuant to the provisions of this Agreement and Sections 650 or 655 of the MGA:

[DRAFT NOTE: \$ per residential lot x ** lots = \$ INSERT TOTAL AMOUNT or
\$ ** per hectare x ** hectare area = \$ INSERT TOTAL AMOUNT]**

2. Payment – the Developer shall pay the amounts described in this Schedule as and when required within Sections 8 and 9 of this Agreement.

[DRAFT NOTE: If an alternative time for payment is preferred, insert special payment terms here. Any deferral of payments and/or contributions beyond the release of the Plan of Subdivision and/or commencement of construction should be secured, eg. by an Irrevocable Letter of Credit]

B. Approval & Inspection Fees

1. Fees and Calculation – the approval and inspection fees currently due and payable by the Developer pursuant to Section 9 of this Agreement are as follows:

[DRAFT NOTE: Insert Current Fees, Refer to General Fees Bylaw, or Leave Blank as Section 17 Will Apply]

2. Payment – the Developer shall pay the approval and inspection fees applicable to the lands contained within the Development Area as and when required within Section 9 of this Agreement.

[DRAFT NOTE: Insert Special Payment Terms or Leave Blank Any deferral of payments and/or contributions beyond the release of the Plan of Subdivision and/or commencement of construction should be secured, eg. by an Irrevocable Letter of Credit]

SCHEDULE "F" - SECURITY

1. For purposes of calculating, the security required to be deposited by the Developer the cost estimates for the construction and installation of the Improvements are as follows:

Surface Improvements

<i>Access road</i>	\$
<i>Approaches, Culverts and Entrances</i>	\$
<i>Granular Base</i>	\$
<i>Gravel</i>	\$
<i>On-site Water Service (if applicable)</i>	\$
<i>On-site Septic Service (if applicable)</i>	\$
<i>Storm Water Management System</i>	\$
<i>Fencing and Landscaping</i>	\$
<i>Signage</i>	\$
<i>Engineering and Contingency access road</i>	\$
<i>Above Ground Subtotal</i>	\$
<i>Shallow Bury</i>	
<i>Utilities Subtotal</i>	\$ _____
Total Value of all Improvements & Services	\$
Total Value of Security required for Improvements (60% of the total)	\$
Total Value of Other Security Required	\$
Total Value of Security Required	\$

2. In the event that any of the costs for the construction and installation of the Improvements for the Development Area, as set out above, are estimates, and in the further event that actual tendered costs become available prior to the Developer commencing the construction and installation of the Improvements, THEN, the estimated costs set out above shall be adjusted in accordance with the security provisions of this Agreement.

SCHEDULE "G" - INAPPLICABLE PROVISIONS

The parties agree that the following terms, covenants and conditions contained within this Agreement shall not apply:

1. ***[NTD: Insert Section Number and description or full text of inapplicable conditions];***

[NTD: TO BE USED WHERE DEVELOPER IS INDIVIDUAL]

AFFIDAVIT OF EXECUTION

I, _____, of the _____, in the Province of Alberta, MAKE OATH AND SAY:

1. That I was personally present and did see _____, who on the basis of the identification provided to me, I believe to be the person(s) named in the within instrument, duly sign the instrument.
2. That the same was executed at the _____, in the Province of Alberta, and that I am the subscribing witness thereto.
3. I believe the person(s) whose signatures I witnessed is at least eighteen (18) years of age.

SWORN BEFORE ME at the _____ of _____, in the Province of Alberta, this ____ day of _____, 20__.

) _____
)
)
)
)

A Commissioner for Oaths in and for
the Province of Alberta