

POLICY # AD 021
**SECURITY IN DEVELOPER AGREEMENTS FOR
SUBDIVISION AND DEVELOPMENT**

APPROVAL DATE:	November 8, 2011 (23-11-11)	CROSS-REFERENCE:	PD 003 Access Roads
RESPONSIBILITY:	Administration		PD 006 Acquisition of Land for Future Road Widening Purposes
APPROVER:	Council	APPENDICES:	PD 014 General Municipal Servicing Standards
REVISION DATE (s):	September 28, 2021 (2021-09-34)	REVIEW DATE:	September 2024

POLICY STATEMENT

In an effort to be both fair and consistent when dealing with subdivision and development projects, the County of Vermilion River has created a policy to outline the requirements associated with the provision of security for subdivision and development agreements. This policy will provide transparency to the developer or applicant.

BACKGROUND

The County has the obligation to provide legal access to property but is not required to provide physical access. When authorization is given to provide physical access, for a subdivision or development project, the developer of the road must enter into an agreement with the County and will be responsible for providing security and completing construction, at their own cost, to County approved standards as detailed in Policy PD 014, General Municipal Servicing Standards.

OBJECTIVE

The County will adhere to the guidelines outlined within this policy when dealing with development agreements for subdivision and development projects within the County. The policy will outline the following items:

- How the County will determine security for the development,
- The form of the security accepted by the County,
- The amount of security to be taken,

- The warranty timelines, and
- The triggering events that will allow the County to release portions of security.

SCOPE

INTERNAL STAKEHOLDERS	EXTERNAL STAKEHOLDERS
Administration	Developers
Council	

DEFINITIONS

Construction Completion Certificate (CCC) is a certificate issued by the municipality upon satisfactory and actual completion of work, as per the purposes for which the work was intended in accordance with a Development Agreement. The issuance of the certificate marks the start of the warranty period

County is the County of Vermilion River.

Developer means a person, firm or corporation named within a Development Permit, Development Agreement, or Subdivision Approval, whether as the owner or an agent for the owner of the land included therein.

Developer Agreement is a written agreement between a Developer and the County related to the construction or installation of Municipal Improvements on lands within the County. For clarity, Developer Agreements include but are not limited to Development Agreements, Subdivision Agreements, and Infrastructure Agreements.

Development Agreement is a legally binding agreement between the County and the developer which outlines (including, but not limited to) specific requirements relating to development, infrastructure standards and costs, and required security.

Development Authority is the authority that exercises development powers and duties on behalf of the County as established by the County’s Development Authority Bylaw.

Development Officer is the person(s) that on behalf of the Development Authority, sign any order, decision, approval, notice or other thing made or given by it, as established by the County’s Development Authority Bylaw.

Development Permit is a written document authorizing a development issued pursuant to the County’s Land Use Bylaw.

Final Acceptance Certificate (FAC) is a written certificate that is issued by the municipality upon the completion of any repairs, defects or deficiencies in the construction and at the end of the warranty period.

Irrevocable Letter of Credit (ILC) is a guarantee for payment issued by a chartered bank, credit union, or ATB Financial (or security firm) for goods and services purchased, which cannot be cancelled, nor in any way modified, except with the explicit agreement of all parties involved. An ILC can also be a cash deposit in the form of certified cheque or bank draft.

MGA is the Municipal Government Act including amendments made thereto.

Municipal Improvements are any improvements to lands within the County that are intended to be owned and controlled by the County upon completion.

Subdivision Agreement is a Developer Agreement associated with a condition of subdivision approval in accordance with the MGA.

Subdivision Authority is the authority that exercises subdivision powers and duties on behalf of the County, pursuant to the MGA and the County's Subdivision Authority Bylaw.

Subdivision Approval is an approval issued by the Subdivision Authority for the division of land that results in the creation of a surface parcel or the rearrangement of the boundaries or limits of a surface parcel.

Warranty (Guarantee) Period is a specific time period after the issuance of a Construction Completion Certificate, and prior to the Final Acceptance Certificate.

GUIDING PRINCIPLES

1. The County will require stamped engineered drawings and cost estimates for all Municipal Improvements associated with a proposed development project. These estimated figures will be verified by County engineers and inserted into the security schedule of the Development Agreement.
2. The County will require one hundred twenty five percent (125%) of the total costs outlined within the security schedule of the Development Agreement, either in the form of a certified bank draft or a self-renewing irrevocable letter(s) of credit PRIOR TO ENDORSEMENT of a subdivision/development.
3. An Irrevocable and unconditional Letter of Credit shall contain the following terms and conditions:
 - a. A statement that the Irrevocable and unconditional Letter(s) of Credit is issued in favour of the County in consideration of the County entering into the Development Agreement with the named customers of the issuing bank.
 - b. An acknowledgement by the issuing bank that it has full knowledge of the terms, covenants and conditions of the Development Agreement.
 - c. An acknowledgement by the issuing bank that it has full knowledge that the issuing of the Irrevocable and unconditional Letter(s) of Credit and is a condition precedent to the execution of the Development Agreement.
 - d. An acknowledgement by the issuing bank that the County shall be entitled to draw on the Irrevocable and unconditional Letter(s) of Credit in accordance with the provisions of the Development Agreement and an undertaking by the issuing

- bank to promptly honour and pay draws made by the County.
- e. The terms of the Letter(s) of Credit shall include an automatic renewal clause with a thirty (30) day notice by the issuing bank for the termination of the Letter(s) of Credit.
4. The security will be held in its entirety until a Construction Completion Certificate (CCC) is issued by the County. Verification that the built infrastructure meets County standards will require the submission of engineering tests and reports to the satisfaction of the County. Additionally, if the Developer is able to provide the County with the servicing agreements and payment receipts for shallow buried utilities (gas, power, telephone etc.), as shown within the Development Agreement, these costs will not be included in the security.
 5. Upon issuance of a CCC, the County will release, in accordance with the following: a percentage of the TOTAL costs for the infrastructure, subject to the terms of the Developer Agreement:
 - a. Developer – single development
 - i. Release one hundred percent (100%) within thirty (30) days and upon the issuance of an FAC.
 - b. Developer – multi-lot / corporate / business / industrial development
 - i. Release thirty-five percent (35%) and CCC issued for start of Warranty Period.
 6. The remaining sixty-five percent (65%) will be retained by the County for warranty purposes. The Warranty Period will be defined in the Development Agreement and will be for a term of three (3) years from the date of issuance of the CCC. The Development Agreement will allow the County to extend this Warranty Period to a term of five (5) years if issues arise during the period where the County believes an extended warranty would be of benefit to protect the County interest.
 7. Following the Warranty Period, the County will be in a position to issue a Final Acceptance Certificate (FAC) for the development. Prior to the end of the Warranty Period, the County will review the warranty and infrastructure along with any deficiencies. Subject to the satisfaction of the County, the FAC will be issued for the specific infrastructure and the County will release the remainder of the security.
 8. Failure to complete the obligations listed in the Developer Agreement(s) in the time frame specified, will result in the County retaining the complete one hundred twenty-five percent (125%) and use that security to complete the construction.

ROLES & RESPONSIBILITIES

ROLE/TASK	TITLE (s) OF PERSON RESPONSIBLE
HANDLING INQUIRIES	Director of Planning and Development
MONITORING REVIEWS AND REVISIONS	Director of Planning and Development in conjunction with the Executive Secretary
IMPLEMENTING POLICY	Council
COMMUNICATING POLICY	Chief Administrative Officer