TOWN OF NANTON
POLICY # 62 – 10/03/01

MUNICIPAL IMPROVEMENTS
CONSTRUCTION, MAINTENANCE AND ACCEPTANCE
POLICY AND PROCEDURES

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1. INTRODUCTION

1.1 Pursuant to Sections 650, 651 and 655 of the *Municipal Government Act,* the Town of Nanton (the "Town") may require a Developer to install and construct certain Municipal Improvements and services as a condition of a development permit or subdivision approval. In some circumstances, a Developer may agree to undertake the installation and construction of Municipal Improvements in advance of a development permit or subdivision application process. The obligations of a Developer regarding such installation and construction shall be addressed in the form of a Development Agreement between the Town and the Developer.

1.2 Such Municipal Improvements may include, but is not limited to, water system services, sanitary sewer system services, storm water drainage, roads and sidewalks. Upon completion of the Improvements, the Town shall undertake inspection and acceptance of the Municipal Improvements; after which, the Town becomes the owner of the Municipal Improvements and becomes responsible for the maintenance and repair thereafter of the Municipal Improvements.

1.3 This Policy and Procedures set out the Town's processes and obligations regarding the installation, construction, maintenance and acceptance of the Municipal Improvements to be undertaken by a Developer.

2. PREPARATION AND APPROVAL OF SUBDIVISION PLANS

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

2.2. In respect of any Subdivision, and the Development Agreement related thereto, the Developer shall:

a) at its sole cost and expense cause a Plan of Subdivision for the Subdivision 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 Policy and the Development Agreement, that any Plan of Subdivision must first have received approval in writing of the Town;

b) the Developer shall at its sole cost and expense register in the Land Titles Office for the South Alberta Land Registration District a Plan of Subdivision for the Development Area within Twelve (12) months of the date of the Development Agreement (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 Town shall be entitled to terminate the Development Agreement;

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

e) if the Town terminates the Development Agreement in whole or in part, it is understood and agreed that any financial obligations of the Developer to the Town shall survive and the Town shall be entitled to enforce such financial obligations as if the Development Agreement remained in full force and effect.

2.3 The Developer 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 Town or permitted to be registered in respect of a Subdivision Area, nor shall the Developer Commence Construction of any Municipal Improvements, nor shall the Developer Commence Construction of any Development upon or within any Development Area in respect of a Development, unless and until the Town in its discretion has:

a) rezoned the Subdivision Area/Development Area to a district that the Town deems appropriate;

b) passed amendments to the Town's Land Use Bylaw relating to the regulations applicable to the development within the Subdivision Area/Development Area that the Town deems appropriate;

c) passed any new statutory plans or amendments to any existing statutory plans that the Town 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 Subdivision Area/Development Area is satisfactory to the Town, including, without restriction, confirmation that the registered owner is the Developer; and

h) received all items required to be delivered to the Town pursuant to the terms of the Development Agreement.

2.5 In the event that a Plan of Subdivision for a Subdivision Area has been registered by the Developer, and the Developer fails to proceed with the construction and installation of the Municipal Improvements for the Subdivision Area within the time limits specified in this Policy or the applicable Development Agreement, the Developer shall, upon receiving written notice from Town 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 Town 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 Subdivision Area is not registered within the time limits prescribed herein, or in the event that a Plan of Subdivision for the Subdivision Area is cancelled as contemplated in this Section, or in the event that the Developer does not Commence Construction of the development of the Subdivision Area within the time limits prescribed herein, THEN the Town shall be at liberty, in the Town's sole discretion, to re-district the lands within the Subdivision Area back to the land use district in place prior to the Subdivision Area being districted for development purposes.

2.7 Notwithstanding anything to the contrary contained in this Policy and the Development Agreement, the Town shall be and is irrevocably appointed as its attorney in fact and in law for the purposes of making all necessary or desirable (in the Town's discretion or opinion) applications, executing all necessary or advisable (in the Town's discretion or opinion) documents, and taking all further necessary or advisable (in the Town'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 Policy.

2.8 The power of attorney conferred upon the Town by the Developer in Section 2.7 of this Policy may be exercised by the Town 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 Town providing written notice to the Developer pursuant to Section 2.6 of this Policy, 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 Town providing written notice to the Developer pursuant to Section 2.6 of this Policy.

2.9 The Town in its discretion may extend the time limits specified in Section 2.8, but the Town and the Developer agree that no act or omission on the part of the Town, intentional or unintentional, shall constitute a waiver of the Town's right to exercise the power of attorney conferred upon the Town by the Developer pursuant to Sections 2.7 and 2.8 of this Policy.

3. PREPARATION AND APPROVAL OF PLANS

3.1 As soon as is reasonably practicable after execution of the Development Agreement, and in any event prior to commencing construction and installation of the Municipal Improvements within or adjacent to the Subdivision Area/Development Area, the Developer shall:

a) instruct the Developer's Consultant to prepare the Plans for the Municipal Improvements in accordance with the Design Standards;

b) submit the Plans to the Town Representative for review and acceptance;

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 Town agrees that it shall not unduly delay in granting its approval, or in rejecting, the Plans which have been submitted by the Developer to the Town Representative. Once accepted, the Plans shall be deemed to be incorporated within the Development Agreement by reference, as if they had been attached to the Development Agreement as a schedule. In the event that the Plans are rejected for any reason whatsoever, the Town Representative shall provide the Developer's Consultant with a written explanation of the reasons for rejection, whereupon the Developer's Consultant must revise and correct the plans and return them to the Town Representative pursuant to clause 3.1 which shall apply *mutatis mutandis*. If the Town Representative does not approve the Plans required to be submitted by the Developer to the Town Representative, the Developer shall be entitled to refer any matter in dispute to the Town Council, and the decision of Town Council shall be final and binding and any such dispute or difference shall not be subject to arbitration under the Development Agreement.

3.3 The Plans for the construction and installation of the Municipal Improvements for the Subdivision Area/Development Area shall be designed by a qualified Professional Engineer, and shall conform strictly to the Design Standards.

3.4 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 Town 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 recreation equipment and facilities and Landscaping on other Public Properties. The Developer agrees that it shall submit Plans for Landscaping on Public Properties, to be designed by a qualified Landscape Architect, for the Town's approval in conjunction with the balance of the Plans referred to in Section 3.1 of this Policy.

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 Subdivision Area/Development Area and the Developer shall, upon approval of the construction timetable by the Town Representative and subject always to Force Majeure relief under this Policy or the Development Agreement, comply with all time limits and complete all phases of the Developer's work within the dates specified in the construction timetable. The Developer has the right to reasonably amend the timetable from time to time with the approval of the Town.

3.5 Subject to the terms of this Policy and Procedure, or the Development Agreement, it is understood and agreed between the Town 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 Town Representative.

3.6 It is understood and agreed that the Town Representative's approval of the Plans for the Municipal Improvements as contemplated above may be subject to the occurrence of unforeseen conditions, and in the case of unforeseen conditions which may adversely affect development the detailed design specifications for any of the Municipal Improvements shall be subject to review and revision, from time to time, by the Town Representative to account for such circumstances in accordance with the Design Standards and in accordance with accepted engineering and construction practices.

3.7 The Developer shall not Commence Construction or commence installation of the Municipal Improvements, or any portion, until such time as the Town has issued written approval of the Plans.

3.8 It is understood and agreed that the Town Representative's approval of the Plans is in no way intended to be a warranty, representation or guarantee by the Town 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 shall prepare and undertake drainage Plans, the construction and installation of all storm water management systems both within private lands and public property as Municipal Improvements, 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 shall ensure that all proposed purchasers and optionees of any of the lots within a Subdivision Area shall be fully advised of the requirements of the Town relating to the management and disposal of storm water within lots in the Subdivision Area, as outlined below in this Policy.

4.3 All of the storm water management standards and requirements of the Town pursuant to this Policy and any Development 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 Subdivision Area.

4.4 The Developer shall ensure that all lots that have fill areas in excess of One (1) meter shall be compacted, and the Developer shall ensure that the Town shall be provided with certified test results to ensure compliance with this Section and further, will provide to the Town a plan of all such lots that have fill areas in excess of the said One (1) meter.

4.5 The Developer shall prior to the Construction Completion Certificate for any of the Municipal Improvements to be constructed and installed within the Subdivision Area/Development Area, undertake and complete to the satisfaction of the Town such grading work as may be necessary to ensure that all lots within the Subdivision Area/Development Area have positive drainage and that there will be no unacceptable ponding of water within any of the lots within the Area.

4.6 All specified standards, requirements and any unfulfilled obligations due and owing to the Town by the Developer regarding the drainage standards provided by this Policy shall constitute covenants running with the land and binding upon any subsequent owners or leaseholders of all or any portion of the Subdivision Area/Development Area.

4.7 The following standards shall apply with respect to grading within the Subdivision Area/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 Town.

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 Town's 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 Town will inspect backfill prior to issuance of an Initial Acceptance 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.

The standards specified herein will apply to construction within the building sites and are to supplement the Alberta Building Code and the Town's Land Use Bylaw, and applicable policies.

5. RIGHTS OF WAY AND UTILITY LOTS

5.1 As soon as is reasonably practicable after execution of the Development Agreement, and in any event prior to commencing construction and installation of the Municipal Improvements within or adjacent to a Development Area and the registration of a Plan of Subdivision respecting a Subdivision Area, where applicable, the Developer shall:

a) execute and deliver to the Town one or more utility right of way agreement(s) for the Municipal Improvements, as well as any and all connections to and from the Municipal Improvements, to be contained within the Developer's Lands as per the Town approved Plans in form and content reasonably satisfactory to the Town; and

b) grant and dedicate to the Town, such portions of the Developer's Lands as is required for the construction and permanent operation of the Municipal Improvements upon the Developer's Lands, a Public Utility Lot, or otherwise;

as may be required for the construction, installation and operation of the Municipal Improvements. Without restricting in any manner the obligations of the Developer under the balance of the provisions of this Section the Developer shall, concurrently with delivery of the above-noted Utility Rights-of-Way, deliver or cause to be delivered all registrable postponements (duly executed by the holders of other registrations upon the Developer's Lands) as may be necessary so as to ensure that upon registration the Utility Rights-of-Way shall be in first position upon the titles.

5.2 To the extent that a registered subdivision plan, descriptive plan, or right of way plan is required in order to carry out the dedications contemplated above, or in order to define the right of way area within the Utility Rights-of-Way, the Developer shall attend to the preparation of any and all registrable subdivision plans, descriptive plans or right of way plans by a qualified Alberta Land Surveyor. Provided always that any such plans, and the dedication areas or right of way areas provided for therein, shall be:

a) subject to the review, revision, and approval of the Town, acting reasonably, so as to ensure that the dedications, and Utility Rights-of-Way and the respective right of way plan, together will adequately provide for the right and privileges required by the Town for the ownership, operation, maintenance, repair and replacement of the applicable existing utilities and/or the applicable Municipal Improvements by the Town; and

b) otherwise in compliance with the balance of the provisions of this Section 5 of the Policy.

5.3 All costs incurred in the preparation of any required subdivision, descriptive or right of way plans pursuant to the foregoing paragraph shall be the responsibility of the Developer.

5.4 The Plans, as approved by the Town Representative, shall designate dedication areas and Utility Rights-of-Way of dimensions adequate for the construction and installation of the Municipal Improvements. The Developer shall ensure that all Utility Rights-of-Way in the Subdivision Area/Development Area shall be located at the front of each lot in the Subdivision Area/Development Area or other area as approved by the Town Representative. In the case of perimeter fencing, the Developer shall ensure that any such easement in the Subdivision Area/Development Area shall be located 0.15 metres (6 inches) or a distance determined by the Town Representative, offset into the Developer's Land adjacent to the road right-of-way, Public Utility Lots and Public Properties.

5.5 The Developer agrees that all Utility Rights-of-Way granted pursuant to this Policy and Procedure, or the Development Agreement, 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. CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS

6.1 Except as otherwise specified in the application Development Agreement, or the construction timetable approved under the Development Agreement, the Developer shall Commence Construction and installation of the Municipal Improvements required under a Development Agreement within twelve (12) months of execution of the Development Agreement and shall complete the construction and installation of the Municipal Improvements, at the Developer's own cost and expense, within twelve (12) months of Commencement of Construction.

6.2 The Developer warrants to the Town that all of the Municipal Improvements shall 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 the Development Agreement, in accordance with the Design Standards, in accordance with this Policy and Procedures and in accordance with the requirements of law applicable to the Work.

6.3 In the event that the Developer has not commenced construction of the Municipal Improvements within the time limits specified in Section 6.1, then the Town shall be entitled to terminate the Development Agreement, and further, the Developer agrees:

a) that the termination of the Development Agreement shall be effective upon the Town serving written notice of termination on the Developer;

b) that in the event that the Development Agreement is terminated, any provisions in the Development Agreement relating to the cancellation of any Plan of Subdivision shall apply to the Subdivision Area;

c) that in the event that the Development Agreement is terminated, then the Developer shall not be entitled to Commence Construction of the Municipal Improvements for the Subdivision Area/Development Area unless and until a further written agreement is entered into between the Developer and the Town.

6.4 In the event that it is necessary or reasonable, in the opinion of the Town, 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 Town acting reasonably and the Developer shall grant to the Town an easement, in a form acceptable to the Town, across the required land for the period for which the access is required. Further, during the course of development, the Developer shall be required to construct and maintain temporary graveled turn-arounds with wood bollards at all dead-end roadways.

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

6.6 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 Town 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 Town may:

(i) exercise such inspection of the performance of the Work as the Town may deem necessary and advisable to ensure to the Town the full and proper compliance by the Developer with the Developer's undertakings to the Town, and to ensure the proper performance of the Work;

(ii) reject any design, material or Work which is not in accordance with the Design Standards or accepted engineering and construction practices;

(iii) order that any unsatisfactory Work be re-executed at the Developer's cost;

(iv) order the re-execution of any unsatisfactory design and the replacement of any unsatisfactory material, at the Developer's cost;

(v) order the Developer within a reasonable time to bring on the job and use additional labour, machinery and equipment, at the Developer's cost, as the Town 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 Municipal Improvements;

and the Developer at its own cost and expense shall comply with the said orders and requirements of the Town unless the Developer takes issue with any such order or requirement, in which case the Developer shall request, in writing, that such issue be referred to the Dispute Resolution Procedure; PROVIDED that in no event shall the Developer be entitled to dispute nor arbitrate any decision made by the Town pursuant to sections (b)(v), (b)(vi) or (b)(vii); AND PROVIDED FURTHER, that the affected work, excepted as otherwise agreed by the Town in writing, shall stop until such dispute resolution has taken place.

6.7 Notwithstanding anything expressed or implied in the preceding paragraph:

a) the Town shall have no obligation or duty to exercise any of the Town'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) 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, at the Developer's sole cost and expense; and

c) nothing set forth in the preceding paragraph shall in any way be construed so as to relieve the Developer of any responsibilities as set forth in the Development Agreement and these Policies and Procedures, 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 the Development Agreement and this Policy and Procedures.

6.8 During the construction and installation of the Municipal Improvements, and during the Guarantee Period for the Municipal Improvements, the Developer shall pay all contractors and other parties hired by the Developer to fulfill the Developer's obligations under the Development Agreement and this Policy and Procedures, and that the failure of the Developer to pay any such contractors or other parties shall constitute a breach of the Development Agreement by the Developer unless there is a bona fide dispute between the Developer and the contractor or other party.

6.9 The Developer shall take effective measures to reasonably control dust, dirt and building construction litter in the Subdivision Area/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 Subdivision Area/Development Area. The Developer is solely responsible for ensuring dust and dirt control within the Subdivision Area/Development Area; the Developer is also responsible for ensuring that work done by the Developer or its contractors in and around the Subdivision Area/Development Area does not result in dust or dirt becoming an annoyance or nuisance. In the event, however, that the Town Representative deems that there is dust or dirt problems the Town shall attempt to notify the Developer of the problem by telephoning the Developer, or the Developer's Consultant. 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 Municipality:

(a) in an emergency (as deemed by the Town);

(b) if the Town is not able to contact the Developer or the Developer's Consultant;

(c) if the Developer by its conduct or statement leaves the Town with the impression that it will not perform the necessary work within the required time frames.

The Town may take such steps as are necessary to eliminate the dust or dirt problem after expiry of the notification period or if the notice is waived; all measures shall be at the expense of the Developer and the Town shall within SEVENTY-TWO (72) hours notify the Developer in writing of the action taken by the Town.

6.10 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 Town 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.

6.11 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 Town 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.

6.12 Notwithstanding anything hereinbefore contained or contained in the Development Agreement to the contrary, the Developer shall (such covenant being fundamental to the Development Agreement) plan and stage the development of the Subdivision Area/Development Area so as to guarantee and ensure to the Town that:

(a) water service is operational (for fire protection) prior to issuance of building permits or development permits for buildings on lots; and

(b) all Essential Services shall have been installed and rendered operative in any part of the Subdivision Area/Development Area before any buildings or facilities are occupied in any such part of the Subdivision Area/Development Area, except as otherwise permitted in writing by the Town.

Notwithstanding the foregoing, the Town 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 Subdivision Area/Development Area prior to completion of the underground water and sewer improvements in any part of the Subdivision Area/Development Area (subject always to emergency vehicle access and other interim safety concerns), but this shall in no way oblige the Town to issue permits or approve occupancy earlier than provided in the regulations and bylaws of the Town.

6.13 The Developer shall take effective measures to reasonably control garbage in and around the Subdivision Area/Development Area, including, and without limiting the generality of the foregoing, any buildings 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 Subdivision Area/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.

7. INSTALLATION OF OTHER UTILITIES

7.1 The Developer shall, at no cost to the Town whatsoever, arrange for and ensure the installation, to the Town's satisfaction, of electric power and natural gas to the Subdivision Area/Development Area and within the streets adjoining the lots to be created in a Subdivision Area. The Developer shall indemnify and

save harmless the Town 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 a Subdivision 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 Subdivision 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 high speed internet, telephone and cable services to lots within the Subdivision Area/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 and cable services excepting the normal hook-up costs charged to the customer.

8. USE OF PUBLIC PROPERTIES IN THE PERFORMANCE OF WORK

8.1 The Town shall, acting reasonably and upon application by the Developer, grant to the Developer under written agreement or consent the right, permission and power to use, break-up, dig, trench, or excavate in the public streets, roads and boulevards, under the control of the Town, within or adjacent to the Subdivision Area/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 Policy and Procedure, and the Development 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 Town detailed written proposals, for approval by the Town Representative, for the work to be done within any such property, including:

   (i) a specific work schedule and procedures proposed to be followed;

   (ii) detailed engineering drawings of all connections to existing municipal services;

   (iii) provisions to be implemented for temporary access and services;

   (iv) installation of temporary traffic control devices and personnel deployment to minimize traffic disruption;

   (v) form and schedule of notification and public relation strategy to be utilized.

b) That the performance of such Work shall be done under the supervision of the Town Representative whose requirements shall be strictly followed;

c) That no such Work shall be commenced prior to the Developer obtaining the written consent of the Town to enter upon such Public Properties; and the Town shall not unreasonably delay or withhold such written consent;

d) That the Developer shall do as little damage as possible in the performance of such Work, and will cause as little obstruction to such Public Properties as possible;

e) That upon completion of such Work the Developer shall restore all such Public Properties to a condition and state of repair equivalent to that which prevailed prior to the performance of such

Work, including, where necessary, the re-planting or replacement of trees and shrubs, and shall maintain such restored portions of such Public Properties, including such replaced or re-planted trees and shrubs, for a period of TWO (2) years thereafter, ordinary wear and tear excepted;

f) That the restoration of Public Properties shall be part of the Municipal Improvements to be constructed and installed by the Developer and the Developer shall be required to obtain Construction Completion Certificates and Final Acceptance Certificates for the restoration work;

g) That the Developer shall indemnify and save harmless the Town from and against all losses, costs, claims, suits or demands of any nature (including all legal costs and disbursements on a solicitor and client basis) which may arise by reason of the performance of work by the Developer; and

h) That the Developer shall at all times during the construction and installation of the Municipal Improvements provide safe and acceptable access to residents adjacent to the Subdivision Area/Development Area.

9. CONTRACTS FOR INSTALLATION OF THE MUNICIPAL IMPROVEMENTS

9.1 Notwithstanding anything contained in this Section, the Developer shall be fully responsible to the Town for the performance by the Developer of all the Developer's obligations as set forth in the Development Agreement or this Policy and Procedures; AND FURTHER the Town 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.

9.2 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 the Development Agreement or this Policy and Procedures to construct and maintain the Municipal Improvements, or any of them, shall provide:

a) That the Third Party shall indemnify and save harmless the Town and the Developer from and with respect to any damages, claims or demands whatsoever (including all legal costs and disbursements on a solicitor and client basis) arising out of the performance of any work undertaken by the Third Party or arising in any way from the negligence of the Third Party's servants, agents or employees;

b) That the Third Party shall provide reasonable proof of financial responsibility;

c) That the Third Party shall comply with the provisions of the Workers Compensation Act and the Occupational Health and Safety Act for the Province of Alberta;

d) That the Third Party will allow the Town 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 Town;

f) The Third Party shall coordinate with the Town 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 Town to protect the Third Party and the Town 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 Town, 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.

10. COMPLIANCE WITH ALL PLANS AND SPECIFICATIONS

10.1 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 Town, and such terms and conditions as may otherwise be required pursuant to the Development Agreement or this Policy and Procedure or be which may be agreed upon in writing between the Town and the Developer.

10.2 The provisions of the Development Agreement and this Policy and Procedures shall be additional to and not in substitution for any law, whether Federal, Provincial or Municipal, prescribing requirements relating to construction standards and the granting of permits under the terms of the Land Use Bylaw of the Town and the Safety Codes Act and Regulations thereunder.

11. ACCEPTANCE OF MUNICIPAL IMPROVEMENTS AND TRANSFER OF MUNICIPAL IMPROVEMENTS TO TOWN

11.1 For purposes of this Section and the Development Agreement, 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 Town;

d) all easements, utility rights-of-way and restrictive covenants have been registered in a form acceptable to the Town;

e) all Public Properties which have been disturbed or damaged have been fully restored by the Developer;

f) the Improvement is suitable for the purpose intended; and

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

11.2 When the Developer claims that the Municipal Improvements of the Subdivision Area/Development Area have been constructed and installed in accordance with the requirements of this Policy and Procedure, and the Development Agreement, then the Developer shall give notice in writing of such claimed completion to the Town Representative and request that the Town provide a Construction Completion Certificate which acknowledges the completion of the Work to the Town's satisfaction.

11.3 Within SIXTY (60) days of receipt of such claim of completion, the Town shall undertake an inspection of the constructed Municipal Improvements and will notify the Developer in writing of its acceptance (by the issuance of a Construction Completion Certificate) or rejection of the Municipal Improvements so completed.

11.4 Notwithstanding the preceding Section, the Town may give notice to the Developer of the Town's inability to conduct an inspection within the said SIXTY (60) days due to adverse site or weather conditions, and in such an event the time limit for such an inspection shall be extended until SIXTY (60) days following the elimination of such adverse site or weather conditions.

11.5 It is understood and agreed between the Developer and the Town that any notices required under this Section shall be given only between the Town and the Developer and in no event shall either the Town 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.

11.6 In the event that any inspection contemplated in Section 11.3 or 11.4 reveals any deficiencies (ordinary wear and tear excepted) in relation to a particular Improvement, the Town 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 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.

11.7 It is understood and agreed between the Developer and the Town that the Town 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 Town; 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 Town in accordance with this Agreement.

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

11.9 Within SIXTY(60) days of the receipt by the Town of a request for a Final Acceptance, the Town shall undertake an inspection of the Municipal Improvements and the Town 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 11.4 shall also apply to any request for the issuance of a Final Acceptance Certificate.

11.10 In the event that there are any deficiencies (ordinary wear and tear excepted) in relation to a particular Municipal Improvement the Town may refuse to issue the Final Acceptance 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.

11.11 In the event that any inspection contemplated in Section 11.9 reveals that there are no deficiencies in relation to the Municipal Improvements, the Town shall issue in writing its Final Acceptance Certificate for the Municipal Improvements.

11.12 It is understood between the Town and the Developer that the Town 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.

11.13 Upon the issuance of a Construction Completion Certificate by the Town 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 Town without any cost or expense to the Town therefore, and the Municipal Improvements shall become the property of the Town.

11.14 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 Town 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.

11.15 Following the issuance of a Construction Completion Certificate for the Municipal Improvements, the Town 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.

11.16 The Town and the Developer agree, notwithstanding the issuance of a Final Acceptance Certificate for the Municipal Improvements, that the Developer shall be responsible, for a period of FIVE (5) years following the issuance of a Final Acceptance Certificate for the Municipal Improvements, to repair or replace any of the Municipal Improvements where there were any hidden or latent defects (which were reasonably not detected by inspections or tests actually undertaken) in any of the Municipal Improvements, which are causally connected to the performance or non-performance of the obligations 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 Dispute Resolution Procedure, the parties may mutually agree to resolve any dispute under this provision by means of mutually hiring an independent engineering firm to determine causation of hidden or latent defects in any Municipal Improvements installed and constructed pursuant to this Agreement.

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

(a) those underground Municipal Improvements; and

(b) those surface Municipal Improvements and those Landscaping and fencing.

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

12. MAINTENANCE OF MUNICIPAL IMPROVEMENTS BY DEVELOPER

12.1 The Guarantee Period in respect to any of the Municipal Improvements shall commence with the Town's written Construction Completion Certificate for any such Municipal Improvements in good condition and repair (ordinary wear and tear excepted), and the Developer shall, subject to Section11.16 of this Policy and Procedures, maintain each of the Municipal Improvements in good condition and repair, reasonable wear and tear excepted, during the Guarantee Period, which, without limiting the generality of the foregoing, shall include maintenance Work and repairs specified by the Design Standards and replacing to original condition any and all damage caused due to subsistence and settling or any cause, and shall include repair or replacement of the whole or any portion thereof where such repair or replacement is required, as determined by the Town, as a result of any cause other than the neglect by the Town, its servants, agents or contractors in the use and operation thereof.

12.2 Prior to the issuance of a Final Acceptance Certificate for any Landscaping work, the Town 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 Town in its discretion; AND FURTHER, the Town shall be entitled to require the replacement or repair of any other Landscaping works such as berming, rip-rap, or fencing which is not in accordance with the Plans as a result of any cause other than neglect by the Town, its servants, agents or contractors in the use and operation thereof.

12.3 The Developer 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.

12.4 In the event of any emergency arising during the Guarantee Period, the Town being the sole judge of what constitutes an emergency, the Town shall have the right in its discretion to undertake any repair or remedial work to the Municipal Improvements deemed necessary or appropriate by the Town and all costs and expenses incurred by the Town in that regard shall be paid by the Developer to the Town upon demand.

12.5 The Town and the Developer agree that during the Guarantee Period that the Town shall perform the normal maintenance requirements of the Town respecting the cleaning and flushing of sanitary sewers; PROVIDED, that the Town'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 Town before the Final Acceptance Certificate is issued.

12.6 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, repairs or replacement of road and lane surfaces, sidewalks, curbs, and gutters, catch basins and leads, road surfaces constructed by the Developer or its contractor, adjustment and repairs to water mains, main valves, water hydrants, hydrant valves, service lines and valves and valve operating mechanisms; repairs, replacements and adjustments to sewer mains, sewer services, manholes, manhole frames and covers, but shall not include ordinary wear and tear. The Developer covenants that during the Guarantee Period that the Developer shall be responsible, at the Developer's own cost and expense, for adjusting and maintaining all hydrants, valve boxes (for both hydrants and mains) manholes and catch basins and appurtenances thereto and any crack filling of roadways until the Town has issued the Construction Completion Certificate for all aspects of roadway improvements.

12.7 In the event that the Town is of the opinion that any repair or replacement required during the Guarantee Period is of a major nature, the Town 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 Town issuing a Construction Completion Certificate for the repair or replacement work.

12.8 Notwithstanding anything contained within this Policy, nor any rule of law, any improvements constructed on-site and not on Public Property or within utility right of ways or easements (and which title and ownership interest is not transferred to the Town as provided in Section 11.13) shall at all times remain the property of the Developer, subsequent owners of all or any portions of the Subdivision Area/Development Area, or the third party utility and/or other service providers, as the case may be. The Town shall not be responsible for any repair or replacement of the whole or any portion of such improvements, which responsibility shall at all times fall upon the owners of the respective improvements.

13. DEVELOPER CONTRIBUTIONS, REIMBURSEMENT COSTS AND OFF-SITE LEVIES

13.1 The calculation of Developer Contributions and Reimbursement Costs payable by the Developer

shall be determined by the Town in its sole discretion, acting reasonably, and subject always to and in accordance with good engineering and construction practices, the provisions of any relevant bylaws of the Town, any agreements which the Town has entered into or may enter into with contractors, other developers or other persons in respect to the Work and costs applicable, Developer Contributions or Reimbursement Costs, and where deemed appropriate by the Town taking into account the expended useful life span of the applicable improvements or services.

13.2 The calculation of Off-Site Levies payable by the Developer shall be conducted in accordance with the provisions of the applicable off-site levy bylaw, as amended or replaced from time to time.

13.3 Unless otherwise specifically provided within a Development Agreement or other binding agreement with the Town, all Developer Contributions, Reimbursement Costs, and Off-Site Levies payable by the Developer shall be calculated and paid upon the earlier of:

(a) in the case of a subdivision, the submission for registration of a Plan of Subdivision for the Subdivision Area; and

(b) in the case of a Development, Commencement of Construction upon or within the Development Area.

13.4 Any deferral of payment of Developer Contributions, Reimbursement Costs, and Off-Site Levies by the Developer beyond the above-noted deadlines shall be subject to specific agreement between the Town and the Developer evidenced in writing, and such conditions or other requirements that may be imposed therein (including, without restriction, the requirement for security for payment, and/or registration and reliance upon any charge against the Lands and/or the Subdivision Area/Development Area). Subject to the provisions of any binding agreement with the Town, all unpaid Developer Contributions, Reimbursement Costs, and Off-Site Levies shall in any event be paid by the Developer to the Town on the date One (1) year following the date of the respective Development Agreement or other agreement evidencing the postponement.

13.5 The Developer covenants and agrees that:

(a) Developer Contributions, Reimbursement Costs, and Off-Site Levies are and shall be subject to adjustment including, without restriction, due to changes to the design or specifications of the related works, the need or requirement for new works, changes to costs (estimates or actual), and interest expense;

(b) at any time prior to payment of the Developer Contributions, Reimbursement Costs, and Off-Site Levies applicable to the Lands and the Subdivision Area/Development Area, the amount may be increased or decreased in the discretion of the Town, acting reasonably, or otherwise contemplated within this Policy or, if applicable, the respective bylaw;

(c) unless otherwise agreed to in writing by the Town, the calculation of the Developer Contributions, Reimbursement Costs, and Off-Site Levies actually payable by the Developer in respect of the Lands and the Subdivision Area/Development Area shall be conducted as of the date of payment, and based upon the then current cost calculations, contribution/levy rates, and other variables established from time to time including, without restriction, under any applicable off-site levy bylaw;

(d) the Town may impose Developer Contributions, Reimbursement Costs, and Off-Site Levies at any time after the execution of any Development Agreement, in which event:

    a. if imposed prior to endorsement or release of a Plan of Subdivision in the case of a Subdivision, or prior to the Commencement of Construction in the case of a Development, the applicable Developer Contributions, Reimbursement Costs, and/or Off-

Site Levies shall be payable by the Developer prior to endorsement of the Plan of Subdivision or permission to Commence Construction, as the case may be; and

b. if imposed after endorsement or release of a Plan of Subdivision in the case of a Subdivision, or after the Commencement of Construction in the case of a Development, the applicable Developer Contributions, Reimbursement Costs, and/or Off-Site Levies may be imposed by the Town in its discretion as conditions of subsequent subdivision approvals or development permits affecting the Lands and the Subdivision Area/Development Area;

(e) if at the time of registration of a Plan of Subdivision in the case of a Subdivision, or the Commencement of Construction in the case of a Development, the Town has not imposed Developer Contributions, Reimbursement Costs, and/or Off-Site Levies, nothing shall prevent the Town from imposing and collecting such amounts upon subsequent Subdivisions or Developments.

14. OVERSIZING – SHARED COSTS

14.1 The calculation of Shared Costs, and the respective proportionate shares of such Shared Costs recoverable by a Developer through the imposition of Reimbursement Costs by the Town, shall be determined by the Town in its sole discretion, acting reasonably, and subject always to and in accordance with good engineering and construction practices, the provisions of any relevant bylaws of the Town, any agreements which the Town has entered into or may enter into with contractors, other developers or other persons in respect to the Work and costs applicable the Shared Costs, and where deemed appropriate by the Town taking into account the expended useful life span of the applicable improvements or services.

14.2 The Town shall not be responsible for payment of any portion of the Shared Costs, except as may be specifically provided in a binding agreement with the Town, or except in respect to lands owned or acquired by the Town, but the Town 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 Town 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 applications.

14.3 The Developer shall, so soon as reasonably possible and in any event prior to issuance of the Final Acceptance Certificates, provide the Town with the details of the costs of oversizing or extension of the Municipal Improvements that accommodate future development on land adjacent to the Subdivision Area and in other benefiting areas for approval by the Town, and upon the Town 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 this Policy. The details provided by the Developer shall include a statement of the total Shared Costs incurred by the Developer, certified by the Developer's Consultant. In the event that the Town requires further analysis, the Town may require the Developer to provide an audited statement.

14.4 In the event any land adjacent to the Subdivision Area/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 Town is advised of any such development, the Town will endeavour to notify the Developer in writing of the intended development. Upon notice of such intended development being sent by the Town, the Developer shall notify the Town in writing of any claims it has in writing under its Development Agreement(s) 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 Town, the Town 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 Town, the Town will take the steps contemplated by this Policy to facilitate the recovery by the Developer of the applicable Shared Costs.

14.5 In calculating any Shared Costs payable to the Developer, the Town shall include interest, calculated from the date of Construction Completion of all of the Municipal Improvements required under the applicable Development Agreement, 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 required under the applicable Development Agreement.

14.6 For purposes of calculating interest forming part of Shared Costs, 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.

14.7 Due to the potential for significant passage of time between the development of the Subdivision Area/Development Area and the development of other properties, the corresponding potential for change in development and servicing needs in the near and long term (including, without restriction, alternative servicing options, and some oversized Municipal Improvements becoming obsolete or require replacement or renewal prior to payment of all potential proportionate shares by other developers), as well as 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, the Town cannot and will not guarantee eventual recovery of proportionate shares of Shared Costs.

15. DELIVERY OF DOCUMENTS TO THE TOWN

15.1 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 Town all other documentation and information relating to the development of the Development Area which the Town Representative 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 Town a list of all documents and information required by the Town.

15.2 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 Town, the Developer shall, within SIX(6) months following issuance of the Construction Completion Certificate, deliver to the Town all inspection and testing records and "as built" Plans and records, as herein required (and as specified in the Design Standards), in a form and to standards specified by the Town which may include paper form, reproducible nylon, video tapes, computer records or design, or any other form required by the Town. 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.

16. MUNICIPAL SERVICES

16.1 Upon the issuance of a Construction Completion Certificate by the Town, the Town shall provide to all or a portion of the Subdivision Area/Development Area all municipal services which are normally supplied to all other parts of the Town subject to such limitations that may be imposed by reason of the progress of the Developer's Work, existing infrastructures and services as stipulated the Development Agreement.

16.2 The Developer shall at all times after any premises are occupied within the Subdivision Area/Development Area, and prior to the final acceptance by the Town of Municipal Improvements by issuance of a Final Acceptance Certificate as herein provided for, provide and continuously maintain public access to such occupied premises for all municipal services.

16.3 If any portion of the Subdivision Area/Development Area is subdivided by way of condominium plan rather than conventional subdivision plan, the Town is not obligated to provide its regular services within that portion of the Subdivision Area/Development Area. Without limiting the generality of the foregoing, the Town will not be obligated to provide services (including provision of public utilities, garbage removal or maintenance of internal access road) to any portion of lands that is within the boundaries of the condominium plan.

17. FENCING

17.1 The Developer shall, at its own expense, as part of the development of the Subdivision Area/Development Area, construct fences of the type hereinafter referred to where required by the Town, including public utility lots and walkways. The Plans shall include a description of the location of fences, and the design and construction.

17.2 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 Town in its sole and absolute discretion.

17.3 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 Policy.

17.4 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.

17.5 Any uniform fencing which is not wholly located upon Public Properties shall be maintained by the Developer until the expiration of the Guarantee Period 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 Town, which shall impose such maintenance obligations upon the future owners of such properties.

17.6 In addition to the requirements of any permanent fencing within the Subdivision Area/Development Area, the Developer shall prior to the issuance of a Construction Completion Certificate for the above ground Municipal Improvements, at the Developer's own cost and expense, construct and maintain temporary fencing of a type and to a standard acceptable to the Town around all municipal and environmental reserve parcels within the Subdivision Area/Development Area.

18. MINIMUM BUILDING STANDARDS

18.1 Development permits for any building in the Subdivision Area/Development Area may at the sole discretion of the Town be issued by the Town when the Town Representative has verified the substantial completion of all Essential Services and reasonable access to the lot for which the development permit is being sought; PROVIDED THAT the Developer shall include in all agreements relating to the sale of lots a notice advising purchasers that the Town reserves the right not to allow occupancy of a building constructed on any lot until such time as a Construction Completion Certificate for the Essential Services has been issued and the Town is hereby granted the right not to allow such occupancy.

18.2 All developments shall comply fully with all Town resolutions, bylaws and amendments thereto as of the date of the Development Agreement.

18.3 The provisions of this clause shall be in addition to and not in substitution for any lawful requirements, whether federal, provincial or municipal, relating to building standards and the granting of development and building permits.

18.4 Upon the sale of any lot or lots by the Developer to building contractors, residential developers or other persons, the Developer shall notify and inform such purchaser or contractor that, prior to construction, permits must be obtained from municipal and provincial authorities and, in particular, in the case of municipal authorities, that it is necessary first to obtain a development permit and second to obtain a building permit to carry out construction work of any kind. Further, the purchasers or contractors are to be advised that all service contractors are to be advised that all service connections to buildings to be constructed are to be underground.

19. MAINTENANCE OF BOULEVARDS AND OTHER PUBLIC AREAS

19.1 The Developer shall be responsible, at the Developer's expense, save as hereinafter specifically limited, to maintain the Developer's lands and all Public Properties within the Subdivision Area/Development Area in such condition as may be reasonably required by the Town, by mowing grass thereon, and eliminating weeds, refuse, litter and undesirable vegetation.

19.2 Where the Developer has sold a lot (and transferred possession) within the Subdivision Area/Development Area, the Developer's obligations under Section 19.1, in respect only to such lot, shall cease.

19.3 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 Subdivision Area/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;

b) in the event that the Town 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 Town, take all necessary action as determined by the Town, failing which, the Town 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 Subdivision Area when housing construction has been completed on Ninety-five (95%) percent of the lots within the Subdivision Area.

19.4 The Town 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 Construction Completion Certificate.

20. FORCE MAJEURE

20.1 In the event that either party is rendered unable wholly, or in part, by force majeure to carry out its obligations under the Development Agreement or this Policy and Procedures, 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.

21. DISPUTE RESOLUTION PROCEDURE

21.1 **Definitions** - For the purposes of this Dispute Resolution Procedure, the following words and phrases have the following meanings:

"**Arbitrator**" means the person appointed to act as such to resolve any Dispute;
"**Arbitration**" means a process whereby each of the Parties, with or without legal counsel, agrees to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any Disputes;
"**Dispute**" means any disagreement or controversy between the Parties concerning any matter arising out of a Development Agreement;
"**Mediation**" means a process whereby a Representative of each Party, with or without legal counsel, agrees to jointly engage the services and meet with a Mediator to participate in a mediation, conciliation or similar dispute resolution process;
"**Mediator**" means the person appointed to facilitate the resolution of a Dispute between the Parties;
"**Party**" means a party to the Development Agreement to which this Dispute Resolution Procedure is attached, and "**Parties**" means more than one of them; and
"**Representative**" means an individual who has no direct operational responsibility for the matters comprising the Dispute who holds a senior position with a Party and who has full authority to settle a Dispute.

21.2 **Dispute Process** - In the event of any Dispute, the Parties agree that prior to commencing litigation, they shall undertake a process to promote the resolution of a Dispute in the following order:

a) first, by negotiation;

b) second, by way of Mediation;

c) third, by arbitration, if mutually agreed to in writing at the time of the Dispute, by the Parties.

Negotiation, Mediation or Arbitration shall refer to, take into account, and apply the intentions and principles stated by the Parties within Agreement to which this Schedule is attached.

21.3 **Negotiation** - A Party shall give written notice ("Dispute Notice") to the other Party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within seven (7) days following receipt of the Dispute Notice, the Parties shall each appoint a Representative, who shall meet and attempt to resolve the Dispute through discussion and negotiation. If the Dispute is not resolved within thirty (30) days of receipt of the Dispute Notice, the negotiation shall be deemed to have failed.

21.4 **Mediation** - If the Representatives cannot resolve the Dispute within such thirty (30) day period, then the Dispute shall be referred to Mediation. Any one of the Parties shall provide the other Party with written notice ("Mediation Notice") specifying the subject matters remaining in Dispute, and the details of the matters in Dispute that are to be mediated. If the Mediation is not completed within sixty (60) days from the date of receipt of the Dispute Notice, the Dispute shall be deemed to have terminated and failed to be resolved by Mediation.

21.5 **Arbitration**

a) If the Mediation fails to resolve the Dispute and if both Parties so agree in writing, at the time of the dispute, the Dispute shall be submitted to binding Arbitration. One of the Parties may provide the other Party with written notice ("Arbitration Notice") specifying the subject matters remaining in Dispute and the details of the matters in Dispute that are to be arbitrated. If the other Party agrees to proceed to Arbitration, such Dispute shall proceed to Arbitration. A failure to respond to the Arbitration Notice shall be deemed to constitute a refusal to proceed with Arbitration;

b) The Arbitrator shall conduct the Arbitration in accordance with the commercial arbitration rules (the "Rules") established from time to time by the ADR Institute of Canada Inc., unless the Parties agree to modify the same pursuant to any arbitration agreement. The Arbitration Act (Alberta) shall apply to all Arbitrations but if there is a conflict between the Rules and the provisions of the Act, the Rules shall prevail. Notwithstanding the foregoing, any such Arbitration shall be conducted in the English language;

c) The Arbitrator shall proceed to hear and render a written decision concerning any Dispute within:

   i) forty-five (45) days, if the subject matter of the Dispute is less than $50,000.00; or

   ii) one hundred and twenty (120) days, if the subject matter of the Dispute is greater than $50,000.00.

d) The Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest but does not have the right to award punitive, consequential or other exemplary damages.

e) The Arbitrator's decision is final and binding but is subject to appeal or review by any court of proper jurisdiction only with respect to an allegation of fraud.

21.6 **Participation** - The Parties and their Representatives will participate in good faith in the negotiation, Mediation and, if applicable, Arbitration processes and provide such assistance and Disclosed Information as may be reasonably necessary and notwithstanding that litigation may have commenced as contemplated in this Schedule.

21.7 **Location** – Unless otherwise agreed upon by the Parties, the place for Mediation and Arbitration shall be the Town of Nanton, Alberta.

21.8 **Selection of Mediator and Arbitrator** - If the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within ten (10) days after receipt of the Mediation Notice or Arbitration Notice, either of the Parties may request that a single Mediator or Arbitrator, as the case may be, of suitable training, experience and independence, and who in respect of the subject matter of the Dispute has a reasonable practical understanding, be appointed by the executive director or other individual fulfilling that role for the ADR Institute of Canada, Inc. The executive director shall be requested to make this determination within five (5) days of receipt of the request.

21.9 **Costs -** Subject to Section 21.5(d) in the case of an Arbitration, the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation and, if applicable, Arbitration except that the Parties shall equally share the fees and expenses of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.

21.10 **Disclosed Information** - All Disclosed Information shall be treated as confidential and neither its delivery nor disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules of discovery, each Party agrees not to disclose the Disclosed Information to any other Person or for any other purpose. Such Disclosed Information cannot be used in any subsequent proceedings without the consent of the Party who has made the disclosure. The Parties agree that any Representative, Mediator and, if applicable, Arbitrator shall not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of any dispute resolution process that may arise in relation to any matter that is a subject of the applicable Development Agreement. Nothing in this dispute resolution procedure shall require a Party to disclose information that is subject to confidentiality provisions with third Parties.

21.11 **Litigation and Limitations Act** - No Party shall commence litigation concerning the Dispute until the negotiation and Mediation processes have concluded. The Parties agree that during the time any Dispute is subject to the negotiation and Mediation processes, the limitation periods set forth in the Limitations Act (Alberta) shall be stayed. The limitation periods shall be reinstated once the Mediation terminates or is deemed terminated so that each of the Parties shall have the respective rights and remedies that were available to them before the commencement of these processes. Any Party may commence litigation on any date, if necessary, to preserve its legal rights and remedies if the commencement of litigation after that date would otherwise be banned by any applicable limitation period or if the commencement of litigation is otherwise necessary to prevent irreparable harm to that Party.

MUNICIPAL IMPROVEMENTS POLICY DEFINITIONS

"Approved Engineering Drawings" means those Plans depicting the Municipal Improvements which have been approved by the Town's Representative pursuant to the provisions of Section 2 of this Policy.

"Construction Completion Certificate" shall mean the Certificate issued by the Town, as contemplated in Section 11 of this Policy and Procedures, 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 Town in accordance with this Policy and the Development Agreement.

"Commencement of Construction" or "Commence Construction" shall mean:

(a) in respect of the construction of a Development, the date upon which the Developer commences the actual grading of the Development Area for purposes of constructing a Development; and

(b) in respect of the construction of Municipal improvements, the date upon which the Developer commences actual grading, excavation, or installation of or within the Subdivision Area/Development Area for the purposes of construction or installing Municipal Improvements;

or such other date as may be agreed upon in writing by the Town and the Developer; provided, that commencement of construction and/or grading shall not include the placement of machinery or equipment within the Subdivision Area/Development Area nor any work preparatory to construction and/or grading such as design, demolition or removal of any buildings or improvements, or placement of materials or or other goods within or upon the Subdivision Area/Development Area.

"Design Standards" shall mean the procedures, standards and specifications which are specified and set forth in the Town's design standards which are established and revised from time to time by the Town's engineer, or as revised by the Town's Council from time to time, namely that version in place at the time of Commencement of Construction for the Subdivision Area/Development Area, provided that the Town and the Developer may, by written agreement only, vary or change any of the procedures, standards or specifications set forth in the Design Standards.

"Developer" shall mean that certain developer of a Subdivision or Development pursuant to a subdivision approval or development permit, respectively, issued by the Town, and who has entered into a Development Agreement with the Town as contemplated under Sections 655 and 650 of the *Municipal Government Act*.

"Developer Contributions" shall mean those contributions to the Work and cost of designing, constructing and installing improvements and/or services required in order to access or service a Subdivision or Development, imposed by the Town in lieu of obligations to perform the Work associated therewith, as contemplated under Sections 650, 651 and 655 of the *Municipal Government Act*.

"Developer's Consultant" shall mean the consulting professional(s) retained by the Developer at the Developer's expense and appointed by the Developer as its representative upon written notice to the Town. The Developer's Consultant shall include, but not be limited to, professional engineers, landscape architects, land use planners and land surveyors.

"Development" shall mean that certain development (as defined within the *Municipal Government Act*) proposed to be constructed upon or within the Lands and the Development Area by the Developer, pursuant to a development permit issued by the Town, and which is the subject matter of a Development Agreement entered into between the Town and the Developer.

"Development Agreement" shall mean that certain Development Agreement entered into between the Town and the Developer respecting a Subdivision or a Development, as contemplated under Sections 655 and 650 of the *Municipal Government Act*, as amended from time to time.

"Development Area" shall mean that portion of the Lands upon or within which the Developer proposes to construct the Development.

"Dispute Resolution Procedure" shall mean that certain dispute resolution procedure contained within Section 21 of this Policy.

"Essential Services" shall mean:

(a) those Municipal Improvements described by Schedule to the Development Agreement, and

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

(c) the internal subdivision road, sewage collection system and potable water system.

"Final Acceptance Certificate" shall mean a written acceptance, as contemplated in Section 6 of this Policy and Procedures, issued by the Town 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.

"Guarantee Period" with respect to the Municipal Improvements, subject to Sections 11, 12 and 21 of this Policy and Procedures and any default and dispute resolution provisions of the Development Agreement, shall mean a period of TWO (2) years for all Municipal Improvements, including Landscaping.

"Lands" shall mean those lands owned by the Developer and subject to the Developer's proposed Subdivision or Development, which lands are legally described within Schedule "A" attached to the Development Agreement.

"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);

(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.

"Municipal Improvements" shall mean and include, within and without the Subdivision Area/Development Area, those services and facilities identified by Schedule to the Development Agreement.

"Off-Site Levies" shall mean those levies imposed by the Town pursuant to bylaw, as contemplated under Section 648 of the *Municipal Government Act*.

"Plans" shall mean the plans and specifications prepared by the Developer's Consultant covering the design, construction and installation of all Municipal Improvements identified by Schedule to the Development Agreement.

"Prime Rate" shall mean the prime-lending rate established from time to time by the nearest Alberta Treasury Branch or ATB Financial, in relation to the Subdivision Area/Development Area.

"Public Property" or **"Public Properties"** shall include all properties within and adjacent to the Subdivision Area/Development Area to be owned or administered by the Town, including utility rights-of-way granted to the Town.

"Reimbursement Costs" shall mean the oversizing or partial costs, as approved by the Town, incurred by a third party, in designing, constructing and installing the Municipal Improvements that also serve future benefiting developments and development areas owned by other developers.

"Shared Costs" shall mean the oversizing costs, as approved by the Town, incurred by the Developer in designing, constructing and installing the Municipal Improvements to also serve future developments.

"Subdivision" shall mean that certain subdivision (as defined within the *Municipal Government Act*) proposed to be created upon or within the Lands and the Subdivision Area by the Developer, pursuant to a subdivision approval issued by the Town, and which is the subject matter of a Development Agreement entered into between the Town and the Developer.

"Subdivision Area" shall mean that portion of the Lands upon or within which the Developer proposes to create the Subdivision.

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

"Town" shall mean the municipal corporation of the TOWN OF NANTON, and the Town shall be represented by the Chief Administrative Officer, unless otherwise designated in writing by the Town.

"Town Representative" shall mean the Town's Chief Administrative Officer, Planning and Development Officer, and/or the Director of Public Works and/or such other duly qualified person as the Town may from time to time designate in writing.

"Utility Rights-of-Way" shall mean the utility right of way agreements described within Section 5 of this Policy and Procedure.

"Work" shall mean any and all design, construction, excavation, fabrication, engineering, survey, testing, maintenance or other service whatsoever required to be performed by or on behalf of the Developer in order to construct and install the Municipal Improvements in accordance with the terms, covenants and conditions contained within the Development Agreement and this Policy and Procedure.