Title: Development Agreements **Policy No: 6102** **Approval: County Council** **Effective Date: January 1, 1994** Supersedes Policy No:	WOODLANDS COUNTY

Policy Statement: To approve the format and signing authority for development agreements entered into by the Woodlands County.

1.   Where a developer proposes to develop land in the County under the authority of a development permit or a conditional subdivision approval, the County may request that he enter into a Development Agreement. The purpose of the Development Agreement is to protect the County from non-performance of conditions or poor workmanship to the installation of municipal services such as, but not limited to, water and sewer services, roadways, approaches, curbs and gutters.

2.   The Development Agreement shall be in a long format (Schedule "A" attached) or a short format (Schedule "B" attached) as required.

3.   Levies and securities taken and held under the terms of a Developer's Agreement shall be established by:

   a) Council in the matter of offsite levies;
   b) the Municipal Planning Commission in the matter of cash in lieu of municipal reserve; and
   c) the actual cost or a percentage thereof of the installation or completion of the municipal services where securities are required by the Developer's Agreement.

4.   Once a development permit has been issued or conditional subdivision approval has been granted by the Municipal Planning Commission, the Municipal Administrator and the Reeve may sign the Development Agreement and other related documents such as caveats, easements and other forms as may be required by the Land Titles Office.

SCHEDULE 'A'

MEMORANDUM OF AGREEMENT

BETWEEN:

WOODLANDS COUNTY

OF THE FIRST PART

- and -

(NAME OF DEVELOPER)

OF THE SECOND PART

RE:

THE EXTENSION OF MUNICIPAL SERVICES TO A DEVELOPMENT
LOCATED WITHIN THE BOUNDARIES OF
WOODLANDS COUNTY

MEMORANDUM OF AGREEMENT made this   day of   A.D. 20

BETWEEN:

WOODLANDS COUNTY
(hereinafter referred to as the "County")

OF THE FIRST PART

- and -

(NAME OF DEVELOPER)
(hereinafter referred to as the "Developer")

OF THE SECOND PART

WHEREAS the Developer is the owner or is entitled to become the owner of that portion of land located within the boundaries of Woodlands County and legally described as (**LEGAL DESCRIPTION**) (hereinafter referred to as the "development") as identified in Schedule "A" attached to this agreement;

AND WHEREAS the Developer proposes to develop the land as (proposed land use);

AND WHEREAS the County and the Developer wish to enter into an Agreement regarding the extension of municipal services to the development;

NOW THEREFORE the parties to this Agreement, in consideration of the mutual terms, covenants and conditions to be observed and performed by each party, agree as follows:

1.   For the purposes of interpretation:

   a) "Municipal Engineer" shall mean such person or corporation as is designated by the County for the purposes of this particular Agreement and development;

   b) "Development" means the area of land in the part of the (**legal description**) and which is identified in Schedule "A" attached to this Agreement;

- 2 -

c) "Plans" shall mean all subdivision plans and all plans, specifications, design standards and material standards including landscaping covering the design, construction and installation of municipal services in the subdivision;

d) "County" means the Woodlands County or such representative as the County may designate.

2.   The Developer is, subject to the terms and conditions of this Agreement, authorized to extend municipal services as hereinafter indicated to the development.

3.   The Developer will construct or install and maintain for such period of time as specified, the following municipal services in or on the development:

a) (**description of municipal services to be developed**)

4.   The Developer shall arrange for and ensure the installation of the necessary utility services within or upon the development land as follows:

a) (**natural gas, power, water & sewer**)

5.   The Developer shall grant to the utility supplier such easements as are, in the opinion of the Municipal Engineer, necessary and required for the supply of respective utilities to the development.

6.   Before commencing construction and installation of any of the municipal services referred to in paragraph 3 above or allowing the installation of any utilities referred to in paragraph 4 above, the Developer shall cause a plan of subdivision to be prepared and approved by all necessary approving authorities.

The Developer may proceed to register the plan of subdivision after entering into this Agreement and posting the necessary security as required by paragraph 24.

The Developer will give notice to the County immediately of the registration of the subdivision and will allow the County sufficient time to file a Caveat to protect the County's interest under this Agreement.

7.   The Developer will, during the term of the Agreement, retain the services of a qualified engineer or engineering firm to carry out the design and preparation of

- 3 -

plans and specifications relating to the development and to administer the obligations of the Developer, including field services, under this Agreement.

8. Prior to commencing the construction and installation of the municipal services in paragraph 3 or allowing the installation of utilities referred to in paragraph 4 above, and prior to the carrying out of any site work, the Developer shall submit detailed plans and specifications prepared by a qualified engineer or firm to the Municipal Engineer for his review.

    All such plans shall give such necessary detail as is required by the Municipal Engineer and shall conform strictly to proper and accepted design and engineering standards and, as well, conform to the requirements of the County. After reviewing the plans for general compliance with the County's requirements, the Municipal Engineer may authorize the Developer to proceed with the above, but such authorization shall not limit the Developer's overall responsibilities and duties under this Agreement.

9. In the event the said plans are unacceptable to the Municipal Engineer, they shall be amended or corrected by or on behalf of the Developer and resubmitted to the Municipal Engineer. In the event that a further dispute arises between the Developer and the Municipal Engineer as to the plans, such dispute or difference may be referred to Council for the County and the decision of the Council shall be final and binding on both parties, and such a dispute shall not be subject to further arbitration.

10. On or before the   day of   A.D. 200 , the Developer shall carry out all necessary site work and shall construct and install said municipal services at his own cost and expense in a good and workmanlike manner and in strict compliance with the plans and proper and accepted engineering practices and in accordance with any requirements of law applicable to the work, and shall cause the development, at no cost to the County, to be serviced with those utilities referred to in paragraph 4 above in accordance with the above time limitation.

11. All public or municipal lands which are or are to be open areas within the development and all ditches shall be seeded to grass by the Developer at his expense.

12. There shall be no construction other than for municipal services and utilities on any lot in the development until the installation and construction of municipal services and utilities have been completed for that lot.

- 4 -

13.   There shall be no development permit issued for any construction on a particular lot until the subdivision plan has been registered and the municipal services and utilities have been completed for that lot.

14.   At all times during the performance of work required pursuant to this Agreement:

   a) The Municipal Engineer shall have free and immediate access to records of work available to the Developer relating to the performance of the work including, without limiting the generality of the foregoing, all design, inspection, material testing and construction records;

   b) In order to ensure the proper performance of the obligations of the Developer under the provisions of this Agreement and to ensure compliance with existing by-laws or regulations of the County, the Municipal Engineer may:

      (i) make such inspection of the Development and the construction thereon as the Municipal Engineer may deem necessary and advisable to ensure compliance with this Agreement;

      (ii) reject any unsatisfactory design, material or work, provided it has not previously been approved by the County;

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

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

      (v) order the Developer to bring on the job such additional labour, machinery and equipment at the Developer's cost as the Municipal Engineer may deem necessary to ensure the proper performance of the work;

      (vi) order the testing of any materials incorporated or to be incorporated in the work.

   c) The Developer shall provide all necessary tools, labour, and other assistance necessary to carry out the inspections by the Municipal Engineer, including the inspection at the completion of the maintenance period.

- 5 -

15.   The Developer shall comply with the orders and requirements of the Municipal Engineer, but in the event of a dispute between the Developer and the Municipal Engineer, the matter may be referred to Council for the County for its decision. The decision of the Council will be final and binding on the Municipal Engineer and the Developer and will not be subject to further arbitration.

16.   Upon completion of those items required to be performed by the Developer under this Agreement, the Developer shall give notice in writing to the Municipal Engineer. The Municipal Engineer shall have forty-five (45) days to accept or reject the work in writing and in the event of rejecting same shall inform the Developer of the reasons for the rejection.

       In the event that weather conditions prevent the Municipal Engineer from making an inspection of the development and the construction thereon, the forty-five (45) day period referred to above shall not commence to run until the Municipal Engineer is able to come onto the development and conduct the necessary inspection. This decision will be one totally within the discretion of the Municipal Engineer.

       In the event of a dispute between the Developer and the Municipal Engineer on the question of whether the work has been adequately completed, the matter will be referred to Council for the County whose decision shall be final and binding and not subject to further arbitration.

17.   Upon the Municipal Engineer so accepting the municipal services, the Developer shall transfer all rights, title and interest therein to the County without any cost or expense to the County and the municipal services shall thereafter become the property of the Coutny, subject only to the Developer's responsibility for maintenance thereof as required pursuant to the terms of this Agreement.

18.   The County hereby grants to the Developer the right, permission and power to use, break, dig, bore, auger, tunnel and excavate in the public highway, street, roads, lanes, boulevards, parks and other public places within or adjacent to the subdivision and otherwise to do such work thereon as may be necessary for the purpose of this Agreement; provided:

       a) that the performance of such work shall be subject to the inspection of the Municipal Engineer whose requirements shall be strictly followed;

- 6 -

b) 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 places as possible;

c) upon completion of such work, the Developer shall restore all such public places to a condition and state of repair equivalent to that which prevailed prior to the performance of such work;

d) that the Developer shall indemnify and save harmless the County from and against all losses, claims, suits or demands of any nature which may arise by reason of the performance of the work of the Developer in any such public place.

19.   The Developer shall pay to the County the following sums for the items mentioned below:

a) The sum of $_____ for off-site levies (# of lots at $200.00 per lot);

b) The sum of $_____ for cash-in-lieu of municipal reserve (# of acres x $500.00 per acre x 10%);

c) All outstanding property taxes.

20.   The Developer shall, for a period of two (2) years after the acceptance of the Municipal Engineer under paragraph 17, be responsible for any and all repairs and replacements to any municipal services and utilities which may, in the opinion of the Municipal Engineer, become necessary for any cause whatsoever. The Municipal Engineer will, prior to the end of the two (2) year maintenance period, conduct an inspection to determine if the Developer has properly maintained the utilities and services. He will indicate in writing to the Developer any matters requiring rectification, and the two (2) year maintenance period will not end until these matters have been completed to the satisfaction of the Municipal Engineer.

21.   In the event that the Developer is in default of the observance and performance of the terms, covenants and conditions of this Agreement, the County shall give the Developer thirty (30) days' notice in writing of such default and require the Developer to rectify the same within the said thirty (30) days. In the event that the Developer fails to rectify the defaults as required, the County may cause the default to be rectified at the Developer's sole cost and expense. If, in the opinion of the Municipal Engineer, there is an emergency, the default

- 7 -

by the Developer may be rectified immediately at the sole cost and expense of the Developer.

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

23.   The Developer shall, without limiting his obligations or liabilities herein, at his own expense provide and maintain the following insurance in a form acceptable to the County with an insurer licensed in the Province of Alberta:

   a) comprehensive general liability insurance in an amount of not less than One ($1,000,000.00) Million Dollars inclusive per occurrence against bodily injury, death and property damage, including loss of use thereof;

   b) automobile liability insurance for all vehicles owned, operated or licensed in the name of the Developer, in the amount of One ($1,000,000.00) Million Dollars.

24.   Prior to the commencement of the construction and installation of municipal services and to ensure to the County full compliance by the Developer with the terms, covenants and conditions of this Agreement respecting the construction, installation and maintenance of the said municipal services, the Developer shall deliver to and deposit with the County at the time of signature securities hereinafter prescribed of a value of _____.   The term of such securities shall be a minimum of two (2) years.

25.   The said securities shall consist of irrevocable letters of credit issued by a chartered bank or the Treasury Branch or a term deposit, provided that such securities shall be in the terms and form approved by the County's solicitor. The letter of credit shall contain the following terms and provisions:

   a) a statement that the said irrevocable letter(s) of credit are issued in favour of the County in consideration of the County entering into this Agreement with the named customers of the issuing bank;

   b) an acknowledgement of the issuing bank that it has full knowledge of the terms, covenants and conditions of this Agreement;

- 8 -

c) an acknowledgement by the issuing bank that it has full knowledge that the issuing of the said irrevocable letter(s) of credit was and is a condition precedent to the execution of this Agreement by the County;

d) an acknowledgement by the issuing bank that the County shall be entitled to draw on the irrevocable letter(s) of credit in accordance with the provisions of this Agreement and an undertaking by the issuing bank to promptly honour and pay draws made by the County.

26.   a) The County may require the Developer to increase any security or insurance herein required to be deposited by the Developer pursuant to this Agreement within thirty (30) days of each anniversary of the execution of this Agreement throughout the currency of this Agreement if it should appear to the County that insufficient security or insurance has been provided.

   One (1) month prior to the first anniversary date of the irrevocable letter(s) of credit, the County shall draw upon the letter of credit the amount necessary or the Developer shall provide a new letter of credit to the County. This is to be a matter solely within the discretion of the County.

b) The County may reduce the amount of security required to be deposited by the Developer as the construction and installation of municipal services and utilities progresses. Such reduction shall be a matter solely within the discretion of the County.

27.   Forthwith upon the completion of construction and installation of the municipal services, the Developer shall deliver to the County certified copies of all inspection and test records, plus certified copies of as-built plans and engineering plans on polyester base film.

28.   All covenants, undertakings and obligations set out in this Agreement shall constitute covenants running with all lands within the development, and the County may register a Caveat against all lands within the development to protect and enforce the County's rights under this Agreement. The County may grant a postponement of the Agreement and/or of the Caveat in respect to any of the land in the development. The Minister will discharge the Caveat promptly upon acceptance by the Municipal Engineer of the various matters required to be performed by the Developer under this Agreement.

- 9 -

29.   This Agreement does not constitute approval of any subdivision and is not a development permit or other permit granted by the County.

30.   Where anything provided for herein cannot lawfully be done without the approval or permission of any authority, person or board, the obligation to do it does not come into force until such approval or permission is obtained, provided that the parties will do all things necessary by way of application or otherwise in an effort to obtain such approval and permission. It is the responsibility of the Developer to make any required applications.

31.   Any provision of this Agreement that is contrary to law shall be severed and the remainder of the Agreement shall be in full force and effect.

32.   The validity and interpretation of this Agreement or each clause or part thereof shall be governed by the laws of the Province of Alberta.

33.   Both parties shall execute and deliver all further documents and assurances necessary to give effect to this Agreement and to discharge their respective obligations.

34.   Time is to be of the essence of this Agreement.

35.   A waiver by either party hereto of the strict performance by the other of any covenant or provision of this Agreement shall not of itself constitute a waiver of any subsequent breach of such covenant or provision.

36.   Any notices required by either party to be given to the other shall be given at the following addresses:

In the case of the County to:

Woodlands County
Box 60
WHITECOURT, Alberta
T7S 1N3

- 10 -

In the case of the Developer to:

Developer's Address

37.   This Agreement shall not be assignable by the Developer without the written approval of the County.

38.   This Agreement shall enure to the benefit of and be binding upon the parties hereto and except as hereinafter otherwise provided, upon their executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals and affixed their corporate seals by the hands of their proper signing officers the day and year first above written.

WOODLANDS COUNTY

Per:_____
Reeve

Per:_____
Chief Administrative Officer

_____
_____   Developer
WITNESS

SCHEDULE "B"

MEMORANDUM OF AGREEMENT

BETWEEN:

WOODLANDS COUNTY

OF THE FIRST PART

- and -

(NAME OF DEVELOPER)

OF THE SECOND PART

RE:

THE EXTENSION OF MUNICIPAL SERVICES TO A DEVELOPMENT
LOCATED WITHIN THE BOUNDARIES OF
WOODLANDS COUNTY

MEMORANDUM OF AGREEMENT made this   day of   A.D. 200_

BETWEEN:

WOODLANDS COUNTY
(hereinafter referred to as the "County")

OF THE FIRST PART

- and -

(NAME OF DEVELOPER)
(hereinafter referred to as the "Developer")

OF THE SECOND PART

WHEREAS the Developer is the owner or is entitled to become the owner of that portion of land located within the boundaries of Woodlands County and legally described as (**LEGAL DESCRIPTION**) (hereinafter referred to as the "development") as identified in Schedule "A" attached to this agreement;

AND WHEREAS the Developer proposes to develop the land as (proposed land use);

AND WHEREAS the County and the Developer wish to enter into an Agreement regarding the extension of municipal services to the development;

NOW THEREFORE the parties to this Agreement, in consideration of the mutual terms, covenants and conditions to be observed and performed by each party, agree as follows: **(The following is an example that may be followed. Conditions may vary as required.)**

1.   All outstanding property taxes be paid.

2.   That the Developer pay an offsite levy of $_____ (# of lots x $200.00 per lot.

3.   That the Developer pay cash in lieu of municipal reserve in the amount of $_____ (# of acres x $500.00 per acre x 10%).

- 2 -

4.   That the Developer shall construct or pay for the construction of approaches to all lots to the standards and specifications of the County.

        IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals and affixed their corporate seals by the hands of their proper signing officers the day and year first above written.

                                                            WOODLANDS COUNTY

                                        Per:_____
                                                                                Reeve

                                        Per:_____
                                                                    Chief Administrative Officer

                                        _____
_____   Developer
WITNESS