

	<p>Planning & Design</p> <p>PROCEDURES</p>	<p>Procedure Number</p> <p>2018-17</p>
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DEVELOPMENT AGREEMENTS: PROCEDURE

Title of Document:	Development Agreements: Procedure
Title of Designated Responsible Manager:	Development Manager, Planning & Design
Original Date Approved:	-
Approved By:	General Manager, Planning & Design
Last Revision:	n/a
Next Review Date:	n/a
Governing Legislation:	Land Use Bylaw 6300 & The Municipal Government Act

Purpose

The purpose is to establish a procedure for issuing a development agreement as a condition of either a development permit or subdivision application.

Background Research

Development Agreements are generally used between the City and a developer, as a condition in either: 1) a Development Permit Application, or 2) a Subdivision Application. The legislation governing development agreements is derived from the MGA and Land Use Bylaw 6300. Land Use Bylaw 6300 Section 23 states that a development agreement may be required as a condition for development permit approval. The development agreement provides the City with the ability to “ensure compliance with the conditions of approval and/or the construction of any required facilities” (LUB 6300 Section 23(2)(e)).

Procedure Details / Process Steps

Development Agreements as a condition of issuing a development permit

1. Development permit application is received and reviewed by the Development Officer, and determine if a development agreement is needed. If agreement needed, the applicant will be notified and the appropriate development agreement fee (\$50) is collected.
2. Circulate for comments.
3. The Development Officer will draft a development agreement (**based on the attached templates**). The agreement should include:
 - a. Identification of the conditions of approval (for example: site grading/servicing, paving, vehicle/pedestrian accessibility, or landscaping/screening conditions)- see attached templates.
 - b. Explanation of how conditions will be met, which may include:
 - i. Conditions listed in **Section 650(1) of the MGA**, including:

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1. To construct or pay for the construction of a road required to give access to the development
2. To construct or pay for the construction of:
 - a. A pedestrian walkway system to serve the development
 - b. Pedestrian walkways to connect the pedestrian walkway system serving the development with a pedestrian walkway that serves or is proposed to serve an adjacent development
 - c. or both
3. to install or pay for the installation of a public utility that is necessary to serve the development, whether or not the public utility is or will be, located on the land that is the subject of the development
4. to construct or pay for the construction of:
 - a. off-street or other parking facilities, and
 - b. loading and unloading facilities
5. to pay an off-site levy or redevelopment levy imposed by bylaw
6. to give security to ensure that the terms of the agreement are carried out.
 - ii. Any landscaping requirements (in accordance with Section 640(4)(d) of the MGA, and Section 58 of Land Use Bylaw 6300).
 - c. The amount of security to be paid (typically collected in the form of a letter of credit, however a bond or security deposit is also acceptable).
 - d. Process for determining when/if conditions have been met, and schedule for returning applicant's security deposit.
 - e. Other requirements as the Development Authority sees fit
4. The draft development agreement is then sent to the City Solicitors office for review and approval.
5. Final agreement is sent to applicant for signature and the security deposit (to be held in an account) is collected.
 - a. Security deposit is returned to applicant gradually as project conditions are met.

Development Agreements as a condition of subdivision approval

1. When a subdivision application is received the Senior Subdivision Planner will review and determine if a development agreement is needed. If an agreement is needed, the applicant will be notified and the appropriate development agreement fee (\$50) is collected.
2. Circulate for comments.
3. The Senior Subdivision Planner will draft a development agreement (**based on the attached templates**) which identifies the requirements, fees and other duties of the applicant. The agreement should include:
 - a. Identification of the conditions of approval (for example: site grading/servicing, paving, vehicle/pedestrian accessibility, or landscaping/screening conditions)- see attached templates.

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- b. Explanation of how conditions will be met, which may include:
 - i. Any conditions to ensure that the statutory plans, land use bylaw, and any applicable ALSA regional plan affecting the land proposed to be subdivided are complied with (as per Section 655(1) of the MGA).
 - ii. A condition that the applicant enter into an agreement with the municipality to do any or all of the following (as per Section 655(1) of the MGA):
 1. To construct or pay for the construction of a road required to give access to the subdivision
 2. To construct or pay for the construction of
 - a. A pedestrian walkway system to serve the subdivision, or
 - b. Pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision.
 - c. Or both
 3. To install or pay for the installation of a public utility that is necessary to serve the subdivision, whether or not the public utility us, or will be, located on the land that is the subject of the subdivision approval
 4. To construct or pay for the construction of
 - a. Off-street or other parking facilities, and
 - b. Loading and unloading facilities
 5. To pay off-site levy or redevelopment levy imposed by bylaw
 6. To give security to ensure that the terms of the agreement are carried out
 - iii. Any landscaping requirements (in accordance with Section 640(4)(d) of the MGA, and Section 58 of Land Use Bylaw 6300).
 - c. The amount of security to be paid (typically collected in the form of a letter of credit, however a bond or security deposit is also acceptable).
 - d. Process for determining when/if conditions have been met, and schedule for returning applicant’s security deposit.
 - e. Other requirements as the Development Authority sees fit
4. The draft development agreement is then sent to the City Solicitors office for review and approval.
5. Final agreement is sent to applicant for signature and the security deposit (to be held in an account) is collected.
 - a. The security deposit is returned to applicant gradually as project conditions are met.

Supporting Information (attached)

- **Development Agreement (Template)**– Appendix ‘A’
- **Development Agreement- Schedule A: Site Grading (Template)**- Appendix ‘B’
- **Development Agreement- Schedule B: Paving (Template)**- Appendix ‘C’
- **Development Agreement- Schedule C: Vehicle & Pedestrian Accessibility (Template)** - Appendix ‘D’

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- **Development Agreement- Schedule D: Landscaping and/or Screening (Template)- Appendix 'E'**

Related Documents

- Municipal Government Act Sections 650, 655, & 640
- Land Use Bylaw 6300

Responsibility

Responsible for Policy & Procedure implementation:

- Development Manager, Planning & Design

Responsible for monitoring of Policy & Procedure Implementation:

- General Manager, Planning & Design

Definitions

- All definitions are included in the Municipal Government Act (MGA) and Land Use Bylaw 6300.

Procedure Status

Current Status:

In effect

Date Effective:

October 11, 2018

Approval Details:

Approved by: General Manager, Planning & Design

Endorsement Details

General Manager, Planning & Design

Next Review Date

n/a

Procedure Author

Planning Assistant

Authored date

October 11, 2018

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Contacts

Development Manager, Planning & Design

General Manager, Planning & Design

Procedure Location

- File Path:

\\lethbridge\data\BU\830\DEPARTMENT AREAS\DEVELOPMENT\2. POLICIES & PROCEDURES\b.
Approved and formatted PPP's\2018-17 Development Agreements\Procedure



Development Agreement DA xxxx

City of Lethbridge, Planning & Design



This Agreement

made on this _____ day of _____, 20____

Between

the City of Lethbridge (the “City”)

and

(name of owner) (the “Owner”).

Whereas,

the Owner is the registered owner of those lands in the City of Lethbridge described as

(legal description)

(legal description)

(Municipal address) (the “Property”)

and

the City may require, under the authority of Section 640(4)(q) and Section 650 of the Municipal Government Act RSA 2000 and Section 23(2)(e) of Land Use Bylaw 6300, that, as a condition of approval on a development permit that an agreement be entered into for the construction of, installation of, or payment for a variety of improvements on or off the Property,

and

the Owner or his designate has been issued a development permit which requires one or more of the following as a condition of approval:

Site Servicing and/or Site Grading

Paving

Vehicle and/or Pedestrian Accessibility

Landscaping and/or Screening

Now therefore,

the Owner covenants and agrees with the City as follows in:

Schedule A – Site Servicing and Site Grading

Schedule B – Paving

Schedule C – Vehicle and/or Pedestrian Accessibility

Schedule D – Landscaping and/or Screening

General Provisions

1. The words “shall” or “must” mean the provision is mandatory.
2. The headings in this Agreement are inserted for convenience and form no part of the Agreement.
3. No amendment to this agreement is valid unless in writing and executed by the parties.
4. Any notice given under this agreement shall be in writing, shall cite the Development Agreement file number (DA #), and may be delivered personally, sent by prepaid mail, fax or e-mail.
5. The addresses of the parties for the purpose of notice are:

Planning and Design Department City of Lethbridge
910 4th Avenue South
Lethbridge Alberta
T1J 0P6
email: developmentservices@lethbridge.ca
fax: 403-327-6571

Owner name:

Company name:

street address:

city province:

postal code:

email:

fax:

6. Either party must notify the other of any change in address or contact information.
7. If any portion of this agreement is held invalid by a Court having competent jurisdiction such portion is severed and shall not affect the validity of the remainder.
8. Time is of the essence in this Agreement.
9. This agreement shall be to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors, and assigns.
10. Prior to the assignment sale or transfer of any portion of the Property or any interest in the Property by which the rights and obligations under this Agreement are assigned, sold or transferred, in whole or in part, the Owner shall deliver to the City an Assumption Agreement executed by the Assignee, Purchaser, or Transferee.
11. The City may file and maintain a Caveat evidencing this Agreement against the interest of the Owner in any and all portions of the Property.

12. Wherever the Owner is obliged or required to carry out an action in accordance with this Agreement it shall be done at the Owner's sole expense.
13. The Owner shall pay a \$50 fee for this Agreement.
14. The Owner shall pay a \$25 fee to amend this Agreement whenever such amendment is required.
15. All charges shall be invoiced to the Owner and the Owner shall make immediate payment. Outstanding fees or charges shall incur interest penalties. Non-payment of outstanding fees or charges may cause the fee or charge to be placed on the tax roll as an additional tax on the Property.

In Witness Whereof

The Owner and the City of Lethbridge have caused to be affixed hereto their respective corporate seals, attested to by their respective proper officials, on the date set out above.

City of Lethbridge

Mayor

City Clerk

Owner

Definitions

C 1. In this schedule:

- a. Development Permit means a document which authorizes development on the Property pursuant to Land Use Bylaw 6300 and which may include plans, drawings, specifications, or other documents and attached as Appendix 1 to this Schedule.
- b. Development Authority means the Municipal Planning Commission or an employee of the City designated by City Council as a Development Officer.
- c. Complete or Completion means a state of grading that is satisfactory to the Development Authority that meets, in the opinion of the Development Authority, the grading requirements identified in the Development Permit and the Grade Plan and as evidenced by a Letter of Grading Completion.
- d. Contractor Firm means a contractor holding a valid City of Lethbridge Business License.
- e. Grade: means the average elevation of the finished ground surface adjacent to a building, excluding localized depressions such as vehicle or pedestrian entrances.
- f. Grading: mean any alteration to the average elevation of the finished ground surface adjacent to a building, excluding localized depressions such as vehicle or pedestrian entrances.
- g. Grade Plan means a plan, approved by the Development Authority, showing proposed elevations and slopes of the site (attached as Appendix 2 to this schedule).
- h. Grading Estimate means the cost associated with the grading identified in the Grade Plan and Development Permit.
- i. Grade Completion Assessment means a document prepared by a contractor firm and submitted to the Development Authority indicating to what degree the finished grade complies with the Grade Plan and Development Permit.
- j. Letter of Grade Completion means a document issued by the Development Authority indicating that the grade required by this agreement has been satisfactorily completed.
- k. Maintenance means activities and actions intended to:
 - Ensure the final grade, identified in this agreement, remains intact.
- l. Security means an unconditional and irrevocable Letter of Credit in favour of the City drawn on a Canadian chartered bank or other financial institution satisfactory to the City or certified cheque or cash.

Grading Estimate

- C 2. The Grading Estimate shall be determined by the Development Authority based on three written estimates prepared by three different contractor firms which shall all be submitted to the Development Authority by the time specified in the Development Permit.

The Security

- C 3. A Letter of Credit shall be automatically renewable and shall allow for partial draws and amendment to a reduced amount.
- C 4. A cash or cheque deposit shall be held in an account with the City. No interest will be paid on the deposit.
- C 5. The Security shall be calculated at 150% of the Grading Estimate.
- C 6. The Owner shall pay the City upon execution of this Agreement any applicable fee and a Security in the amount of \$ xx,xxx.
- C 7. 100% of the Security shall be released upon the Development Authority's approval of the Grade Completion Assessment and issuance of a Letter of Grade Completion.

Grade Completion Assessments

- C 8. The Grade Completion Assessment shall be prepared and submitted by the xx day of xx, 20xx. The Owner or his designate or agent shall rectify any deficiencies noted in the Grade Completion Assessment and shall submit a revised assessment, repeatedly if necessary, for approval by the Development Authority.

Non-Compliance and Remedial Action

- C 9. If the grade is not in accordance with the Development Permit and Grade Plan by the date specified in this Agreement or the grade has not been, in the opinion of the Development Authority, sufficiently maintained, the Owner is deemed to be in default and the City may issue a demand letter and draw upon the Letter of Credit or may use the cash security to carry out whatever remedial actions it deems necessary.
- C 10. Within 30 days of the completion of the remedial action whatever Security remains shall be released to the Owner. Should the Security prove insufficient to the cost of the remedial action the City may charge the Owner for the shortfall.
- C 11. All expenses incurred by the City to draw upon the security may be charged to the Owner or may be reimbursed through the proceeds of the Security.

Non-Compliance due to Failure to Commence or Complete Development

- C 12. If the Owner fails to commence the development during the period of validity of the Development Permit and does not make a development application for an extension of the development commencement deadline, the Owner may apply in writing for release of the Security and the City shall release the Security within 30 days of receipt of the written application.
- C 13. If the Owner commences the development but fails to complete it to occupancy stage, the City may use any or all of the Security to finish any required grading it deems appropriate and maintain it for 2 years thereafter, and, within 30 days of completion of this action, shall release whatever remains of the Security to the Owner.

Changes

- C 14. The Development Authority may approve minor changes to the Grade Plan. If, in the opinion of the Development Authority, the changes are extensive he may require a revised plan be submitted for Development Approval and an amendment made to this Agreement.
- C 15. Any change to the deadline for grading requires an application for a Development Permit and an amendment to this Agreement.

Development Authority's Discretion

- C 16. Wherever the Development Authority's approval is required or some act or thing must be done to the satisfaction of the Development Authority such approval or satisfaction is at the sole discretion of the Development Authority and shall not be deemed to have been given or fulfilled unless indicated in writing by the Development Authority.

The Owner

C 17. The Owner shall:

- a. Not engage any contractor with respect to the grading of the Property unless that contractor holds a valid City of Lethbridge Business License.
- b. Allow the Development Authority or any agent or representative of the City to enter the Property for the purpose of inspecting the grade or for the purposes of remedying non-compliance with this Agreement and to permit such remedies and actions to be carried out without interference.
- c. Release and indemnify and save the City harmless from and against:
 - All costs and expenses arising, directly or indirectly, from the installation or maintenance of the grading or other actions required by this Agreement.
 - All costs and expenses incurred by reasons of liens for nonpayment of labour or material, worker's compensation assessments, unemployment insurance or provincial or federal taxes in relation to the installation and maintenance of the grading or other actions required by this Agreement.

The City

C 18. The City shall discharge any Caveat brought under this agreement within six months of the issuance of a Letter of Grade Completion.

Definitions

C 1. In this schedule:

- a. Development Permit means a document which authorizes development on the Property pursuant to Land Use Bylaw 6300 and which may include plans, drawings, specifications, or other documents and attached as Appendix 1 to this Schedule.
- b. Development Authority means the Municipal Planning Commission or an employee of the City designated by City Council as a Development Officer.
- c. Complete or Completion means a state of pavement installation and maintenance satisfactory to the Development Authority that is in accordance with, in the opinion of the Development Authority, the Development Permit and the Paving Plan and as evidenced by a Letter of Pavement Completion.
- d. Contractor Firm means a contractor holding a valid City of Lethbridge Business License.
- e. Paving Plan means a plan, approved by the Development Authority, showing areas to be paved and identifying paving materials used (attached as Appendix 2 to this schedule).
- f. Paving Estimate means the cost associated with the paving identified in the Paving Plan and Development Permit.
- g. Pavement Completion Assessment means a document prepared by a contractor firm and submitted to the Development Authority indicating to what degree the finished paving complies with the Paving Plan and Development Permit.
- h. Letter of Pavement Completion means a document issued by the Development Authority indicating that the paving required by this agreement has been satisfactorily completed.
- i. Maintenance means activities and actions intended to:
 - Ensure adequate condition of pavement on road or walkways identified in this agreement.
 - Ensure any related built elements remain intact, functional and safe.
- j. Security means an unconditional and irrevocable Letter of Credit in favour of the City drawn on a Canadian chartered bank or other financial institution satisfactory to the City or certified cheque or cash.

Paving Estimate

C 2. The Paving Estimate shall be determined by the Development Authority based on three written estimates prepared by three different contractor firms which shall all be submitted to the Development Authority by the time specified in the Development Permit.

The Security

- C 3. A Letter of Credit shall be automatically renewable and shall allow for partial draws and amendment to a reduced amount.
- C 4. A cash or cheque deposit shall be held in an account with the City. No interest will be paid on the deposit.
- C 5. The Security shall be calculated at 150% of the Paving Estimate.
- C 6. The Owner shall pay the City upon execution of this Agreement any applicable fee and a Security in the amount of \$ xx,xxx.
- C 7. 100% of the Security shall be released upon the Development Authority's approval of the Pavement Completion Assessment and issuance of a Letter of Pavement Completion.

Pavement Completion Assessments

- C 8. The Pavement Completion Assessment shall be prepared and submitted by the xx day of xx, 20xx. The Owner or his designate or agent shall rectify any deficiencies noted in the Pavement Completion Assessment and shall submit a revised assessment, repeatedly if necessary, for approval by the Development Authority.

Non-Compliance and Remedial Action

- C 9. If the pavement is not installed in accordance with the Development Permit and Paving Plan by the date specified in this Agreement or the pavement has not been, in the opinion of the Development Authority, sufficiently maintained, the Owner is deemed to be in default and the City may issue a demand letter and draw upon the Letter of Credit or may use the cash security to carry out whatever remedial actions it deems necessary.
- C 10. Within 30 days of the completion of the remedial action whatever Security remains shall be released to the Owner. Should the Security prove insufficient to the cost of the remedial action the City may charge the Owner for the shortfall.
- C 11. All expenses incurred by the City to draw upon the security may be charged to the Owner or may be reimbursed through the proceeds of the Security.

Non-Compliance due to Failure to Commence or Complete Development

- C 12. If the Owner fails to commence the development during the period of validity of the Development Permit and does not make a development application for an extension of the development commencement deadline, the Owner may apply in writing for release of the Security and the City shall release the Security within 30 days of receipt of the written application.
- C 13. If the Owner commences the development but fails to complete it to occupancy stage, the City may use any or all of the Security to install whatever amount of pavement it deems appropriate and maintain it for 2 years thereafter, and, within 30 days of completion of this action, shall release whatever remains of the Security to the Owner.

Changes

- C 14. The Development Authority may approve minor changes to the Paving Plan. If, in the opinion of the Development Authority, the changes are extensive he may require a revised plan be submitted for Development Approval and an amendment made to this Agreement.
- C 15. Any change to the deadline for pavement installation requires an application for a Development Permit and an amendment to this Agreement.

Development Authority's Discretion

- C 16. Wherever the Development Authority's approval is required or some act or thing must be done to the satisfaction of the Development Authority such approval or satisfaction is at the sole discretion of the Development Authority and shall not be deemed to have been given or fulfilled unless indicated in writing by the Development Authority.

The Owner

C 17. The Owner shall:

- a. Not engage any contractor with respect to the paving of the Property unless that contractor holds a valid City of Lethbridge Business License.
- b. Allow the Development Authority or any agent or representative of the City to enter the Property for the purpose of inspecting the pavement or for the purposes of remedying non-compliance with this Agreement and to permit such remedies and actions to be carried out without interference.
- c. Release and indemnify and save the City harmless from and against:
 - All costs and expenses arising, directly or indirectly, from the installation or maintenance of the pavement or other actions required by this Agreement.
 - All costs and expenses incurred by reasons of liens for nonpayment of labour or material, worker's compensation assessments, unemployment insurance or provincial or federal taxes in relation to the installation and maintenance of the pavement or other actions required by this Agreement.

The City

C 18. The City shall discharge any Caveat brought under this agreement within six months of the issuance of a Letter of Pavement Completion.

Definitions

C 1. In this schedule:

- a. Development Permit means a document which authorizes development on the Property pursuant to Land Use Bylaw 6300 and which may include plans, drawings, specifications, or other documents and attached as Appendix 1 to this Schedule.
- b. Development Authority means the Municipal Planning Commission or an employee of the City designated by City Council as a Development Officer.
- c. Complete or Completion means a state of road and/or walkway installation and maintenance satisfactory to the Development Authority that is in accordance with, in the opinion of the Development Authority, the Development Permit and the Accessibility Plan and as evidenced by a Letter of road and/or walkway Completion.
- d. Contractor Firm means a contractor holding a valid City of Lethbridge Business License.
- e. Accessibility Plan means a plan, approved by the Development Authority, showing access into and throughout the Property and attached as Appendix 2 to this schedule.
- f. Accessibility Estimate means the cost of installing the road and/or walkway in accordance with the Accessibility Plan and Development Permit.
- g. Road and/or walkway Installation Assessment means a document prepared by a contractor firm and submitted to the Development Authority indicating to what degree the installed road and/or walkway complies with the Accessibility Plan and Development Permit.
- h. Letter of Road and/or Walkway Completion means a document issued by the Development Authority indicating that the road and/or walkway required by this agreement has been satisfactorily installed and maintained for the period specified in and by this agreement.
- i. Maintenance means activities and actions intended to:
 - Ensure adequate condition of paving materials on road or walkways identified in this agreement.
 - keep pedestrian pathways in good repair and safe for use, and
 - ensure any related built elements remain intact, functional and safe.
- j. Security means an unconditional and irrevocable Letter of Credit in favour of the City drawn on a Canadian chartered bank or other financial institution satisfactory to the City or certified cheque or cash.
- k. Walkway means a public right-of-way for pedestrian use on which no motor vehicles are allowed.

Accessibility Estimate

- C 2. The Accessibility Estimate shall be determined by the Development Authority based on three written estimates prepared by three different contractor firms which shall all be submitted to the Development Authority by the time specified in the Development Permit.

The Security

- C 3. A Letter of Credit shall be automatically renewable and shall allow for partial draws and amendment to a reduced amount.
- C 4. A cash or cheque deposit shall be held in an account with the City. No interest will be paid on the deposit.
- C 5. The Security shall be calculated at 150% of the Accessibility Estimate.
- C 6. The Owner shall pay the City upon execution of this Agreement any applicable fee and a Security in the amount of \$ xx,xxx.
- C 7. 100% of the Security shall be released upon the Development Authority's approval of the Road and/or Walkway Installation Assessment and issuance of a Letter of Road and/or Walkway Completion.

Road and/or Walkway Installation Assessments

- C 8. The Road and/or Walkway Installation Assessment shall be prepared and submitted by the xx day of xx, 20xx. The Owner or his designate or agent shall rectify any deficiencies noted in the Road and/or Walkway Installation Assessment and shall submit a revised assessment, repeatedly if necessary, for approval by the Development Authority.

Non-Compliance and Remedial Action

- C 9. If the road or walkway is not installed in accordance with the Development Permit and Accessibility Plan by the date specified in this Agreement or the installed road or walkway has not been, in the opinion of the Development Authority, sufficiently maintained, the Owner is deemed to be in default and the City may issue a demand letter and draw upon the Letter of Credit or may use the cash security to carry out whatever remedial actions it deems necessary.
- C 10. Within 30 days of the completion of the remedial action whatever Security remains shall be released to the Owner. Should the Security prove insufficient to the cost of the remedial action the City may charge the Owner for the shortfall.
- C 11. All expenses incurred by the City to draw upon the security may be charged to the Owner or may be reimbursed through the proceeds of the Security.

Non-Compliance due to Failure to Commence or Complete Development

- C 12. If the Owner fails to commence the development during the period of validity of the Development Permit and does not make a development application for an extension of the development commencement deadline, the Owner may apply in writing for release of the Security and the City shall release the Security within 30 days of receipt of the written application.
- C 13. If the Owner commences the development but fails to complete it to occupancy stage, the City may use any or all of the Security to install whatever remaining amount of road or walkway it deems appropriate and maintain it for 2 years thereafter, and, within 30 days of completion of this action, shall release whatever remains of the Security to the Owner.

Changes

- C 14. The Development Authority may approve minor changes to the Accessibility Plan. If, in the opinion of the Development Authority, the changes are extensive he may require a revised plan be submitted for Development Approval and an amendment made to this Agreement.
- C 15. Any change to the deadline for road and/or walkway installation requires an application for a Development Permit and an amendment to this Agreement.

Development Authority's Discretion

- C 16. Wherever the Development Authority's approval is required or some act or thing must be done to the satisfaction of the Development Authority such approval or satisfaction is at the sole discretion of the Development Authority and shall not be deemed to have been given or fulfilled unless indicated in writing by the Development Authority.

The Owner

C 17. The Owner shall:

- a. Not engage any contractor with respect to the Accessibility of the Property unless that contractor holds a valid City of Lethbridge Business License.
- b. Allow the Development Authority or any agent or representative of the City to enter the Property for the purpose of inspecting the road and/or walkway or for the purposes of remedying non-compliance with this Agreement and to permit such remedies and actions to be carried out without interference.
- c. Release and indemnify and save the City harmless from and against:
 - All costs and expenses arising, directly or indirectly, from the installation and maintenance of the road and/or walkway or other actions required by this Agreement.
 - All costs and expenses incurred by reasons of liens for nonpayment of labour or material, worker's compensation assessments, unemployment insurance or provincial or federal taxes in relation to the installation and maintenance of the Road and/or walkway or other actions required by this Agreement.

The City

C 18. The City shall discharge any Caveat brought under this agreement within six months of the issuance of a Letter of Road and/or Walkway Completion.

Definitions

C 1. In this schedule:

- a. Development Permit means a document which authorizes development on the Property pursuant to Land Use Bylaw 6300 and which may include plans, drawings, specifications, or other documents and attached as Appendix 1 to this Schedule.
- b. Development Authority means the Municipal Planning Commission or an employee of the City designated by City Council as a Development Officer.
- c. Complete or Completion means a state of landscaping installation and maintenance satisfactory to the Development Authority that is in accordance with, in the opinion of the Development Authority, the Development Permit and the Landscape Plan and as evidenced by a Letter of Landscaping Completion.
- d. Landscape Firm means a landscaping company holding a valid City of Lethbridge Business License.
- e. Landscape Plan means a plan, approved by the Development Authority, showing Landscaping arranged on the Property and attached as Appendix 2 to this schedule.
- f. Landscaping means the site preparation and installation and subsequent maintenance of irrigation systems, plants, organic and inorganic materials, hardscaping, fences, garden structures and other built elements, as well as pedestrian pathways and geographic features such as ponds and berms.
- g. Landscaping Estimate means the cost of installing the Landscaping in accordance with the Landscape Plan and Development Permit.
- h. Landscaping Installation Assessment means a document prepared by a landscape firm and submitted to the Development Authority indicating to what degree the installed landscaping complies with the Landscape Plan and Development Permit.
- i. Landscaping Survival Assessment means a document prepared by a landscape firm and submitted to the Development Authority indicating to what degree the installed landscaping has survived in compliance with the Landscape Plan and Development Permit during the period specified by this agreement.
- j. Letter of Landscaping Completion means a document issued by the Development Authority indicating that the Landscaping required by this agreement has been satisfactorily installed and maintained for the period specified in and by this agreement.
- k. Maintenance means activities and actions intended to:
 - ensure plant health, survival and appearance,
 - sustain the tidiness and fullness of groundcovers and planting beds,
 - keep pedestrian pathways in good repair and safe for use, and

- ensure irrigation systems and other built elements remain intact, functional and attractive.
- I. Security means an unconditional and irrevocable Letter of Credit in favour of the City drawn on a Canadian chartered bank or other financial institution satisfactory to the City or certified cheque or cash.

Landscaping Estimate

- C 2. The Landscaping Estimate shall be determined by the Development Authority based on three written estimates prepared by three different landscape firms which shall all be submitted to the Development Authority by the time specified in the Development Permit.

The Security

- C 3. A Letter of Credit shall be automatically renewable and shall allow for partial draws and amendment to a reduced amount.
- C 4. A cash or cheque deposit shall be held in an account with the City. No interest will be paid on the deposit.
- C 5. The Security shall be calculated at 150% of the Landscaping Estimate.
- C 6. The Owner shall pay the City upon execution of this Agreement any applicable fee and a Security in the amount of \$ xx,xxx.
- C 7. 50% of the Security shall be released upon the Development Authority's approval of the Landscaping Installation Assessment.
- C 8. The remaining 50% of the Security shall be released upon the Development Authority's approval of the Landscaping Survival Assessment and issuance of a Letter of Landscaping Completion.

Landscaping Installation and Landscaping Survival Assessments

- C 9. The Landscaping Installation Assessment shall be prepared and submitted by the xx day of xx, 20xx. The Owner or his designate or agent shall rectify any deficiencies noted in the Landscaping Installation Assessment and shall submit a revised assessment, repeatedly if necessary, for approval by the Development Authority.
- C 10. The Landscaping Survival Assessment shall be prepared during the first growing season (ending Aug 31st) after 2 years have elapsed from the date of the approved Landscaping Installation Assessment. The Owner or his designate or agent shall rectify any deficiencies noted and shall submit a revised assessment, repeatedly if necessary, for approval by the Development Authority.

Non-Compliance and Remedial Action

- C 11. If the landscaping is not installed in accordance with the Development Permit and Landscape Plan by the date specified in this Agreement or the installed landscaping has not been, in the opinion of the Development Authority, sufficiently maintained, the Owner is deemed to be in default and the City may issue a demand letter and draw upon the Letter of Credit or may use the cash security to carry out whatever remedial actions it deems necessary.
- C 12. Within 30 days of the completion of the remedial action whatever Security remains shall be released to the Owner. Should the Security prove insufficient to the cost of the remedial action the City may charge the Owner for the shortfall.
- C 13. All expenses incurred by the City to draw upon the security may be charged to the Owner or may be reimbursed through the proceeds of the Security.

Non-Compliance due to Failure to Commence or Complete Development

- C 14. If the Owner fails to commence the development during the period of validity of the Development Permit and does not make a development application for an extension of the development commencement deadline, the Owner may apply in writing for release of the Security and the City shall release the Security within 30 days of receipt of the written application.
- C 15. If the Owner commences the development but fails to complete it to occupancy stage, the City may use any or all of the Security to install whatever amount of landscaping it deems appropriate and maintain it for 2 years thereafter, and, within 30 days of completion of this action, shall release whatever remains of the Security to the Owner.

Changes

- C 16. The Development Authority may approve minor changes to the Landscaping Plan, such as species substitution and small changes to the configuration of landscape areas and plant numbers. If, in the opinion of the Development Authority, the changes are extensive he may require a revised plan be submitted for Development Approval and an amendment made to this Agreement.
- C 17. Any change to the deadline for Landscaping installation requires an application for a Development Permit and an amendment to this Agreement.

Development Authority's Discretion

- C 18. Wherever the Development Authority's approval is required or some act or thing must be done to the satisfaction of the Development Authority such approval or satisfaction is at the sole discretion of the Development Authority and shall not be deemed to have been given or fulfilled unless indicated in writing by the Development Authority.

The Owner

C 19. The Owner shall:

- a. Not engage any contractor with respect to the Landscaping of the Property unless that contractor holds a valid City of Lethbridge Business License.
- b. Allow the Development Authority or any agent or representative of the City to enter the Property for the purpose of inspecting the Landscaping or for the purposes of remedying non-compliance with this Agreement and to permit such remedies and actions to be carried out without interference.
- c. Release and indemnify and save the City harmless from and against:
 - All costs and expenses arising, directly or indirectly, from the installation and maintenance of the Landscaping or other actions required by this Agreement.
 - All costs and expenses incurred by reasons of liens for nonpayment of labour or material, worker's compensation assessments, unemployment insurance or provincial or federal taxes in relation to the installation and maintenance of the Landscaping or other actions required by this Agreement.

The City

C 20. The City shall discharge any Caveat brought under this agreement within six months of the issuance of a Letter of Landscaping Completion.