

CITY OF AIRDRIE
Subdivision Servicing Agreement Security Policy

Effective Date: March 17, 2003

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Approved By: City Council

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PURPOSE:

The City of Airdrie requires performance securities to be posted in relation to a Subdivision Servicing Agreement (hereinafter referred to as the Agreement). The performance securities are posted as an assurance that the developer intends to complete their contractual obligations and to offer some financial protection to the City in the event of a default. As well, the performance securities provide a readily accessible form of funding to deal with emergency issues or deficiencies that may arise.

Overall, between performance securities and a variety of other mechanisms including rights afforded under the Agreement and the appropriate caveats registered on title, the intent is to absolutely minimize the financial risk to the City in the event that a developer defaults on his obligations.

This policy is premised on the City's past development experience. It has been demonstrated that the highest incidence of non-performance of contractual obligations, and therefore the greatest financial risk to the City, has come from developers with little or no previous development experience in the City. Conversely, there has been a very low incidence of non-performance of contractual obligations from developers with long-standing development experience in the City.

SCOPE:

This policy document is intended to provide an overview and additional explanation of the City's requirements relative to development performance security. Anything contained within this policy is intended to supplement and not supercede any specific provision contained within the Agreement.

The Agreement contains specific definitions of the relevant words and phrases utilized within this policy.

POLICY:

1. Basic Performance Security

The basic performance security is:

- a) \$2,500 per residential lot and,
- b) \$5,100 for every acre or portion thereof of any other lots in the development area that are zoned for multi-family, commercial, industrial, public utilities, municipal reserves, school reserves, environmental reserves or other uses.

Notwithstanding the above, the minimum security to be posted relative to the Agreement is \$100,000.

2. Form Of Security

The only form of security acceptable to the City is an irrevocable letter of credit in an appropriate format, in accordance with the Agreement provisions. The letter of credit is to contain automatic renewal provisions. This form of security is relatively readily accessible from the City's perspective.

Prior to a financial institution issuing a letter of credit on behalf of a developer, the developer is first required to demonstrate his financial capabilities to that financial institution. Generally, in accepting only letters of credit, the City indirectly receives a benefit in that there is implied additional reference check relative to the financial capabilities of the developer.

Securities are to be submitted to the City prior to the execution of the Agreement.

3. Securities Against Outstanding Levies/Acreage Assessments

Currently, developers pay 20% of the overall off-site levies/acreage assessments upon entering into an Agreement. Another 40% is due prior to the release of Construction Completion Certificates (CCC's) or one year from the date of signing the Agreement (whichever is sooner). The final 40% is due prior to the release of the Final Acceptance Certificates (FAC's) or two years from the date of signing the Agreement (whichever is sooner).

This payment structure acknowledges that the off-site services are not utilized immediately by the development but rather, as build out of the subdivision occurs.

The amounts associated with outstanding off-site levies/acreage assessments can be quite substantial. Because the construction of off-site improvements is necessary in order to accommodate growth, it is necessary to consider an appropriate security against the outstanding off-site levies/acreage assessments.

Additional securities will be taken for outstanding levies/acreage assessments, based on the developer's previously demonstrated performance (or lack thereof). The developer will be required to post security against outstanding offsite levies/acreage assessments as follows:

- a) If the developer has not successfully completed two consecutive subdivision servicing agreements with the City, then security is required for 100% of the outstanding off-site levies/acreage assessments.
- b) If the developer has successfully completed between two and five consecutive subdivision servicing agreements with the City, then security is required for 50% of the outstanding offsite levies/acreage assessments.
- c) If the developer has successfully completed more than five subdivision servicing agreements consecutively, no additional security is required for the outstanding off-site levy/acreage assessments.

The City defines "successfully completed" as meaning that all CCC's have been submitted and accepted by the City on time, off-site levies/acreage assessments payments are received by the City as per the Agreement schedule and all FAC's are submitted and accepted by the City following the allotted maintenance period.

Should the developer be inactive within the City for a period of five years or longer from the date of the last subdivision servicing agreement, the security required relative to off-site levies/acreage assessments would revert back to 100% for the subsequent Agreement.

If the City formally advises a developer that they are in default of the Agreement provisions, the security required relative to off-site levies/acreage assessments would revert back to 100% for the subsequent Agreement.

4. Securities For Off-site Improvements And Critical On-Site Improvements

Up to 100% security for any off-site improvements or critical on-site improvements may be required. An off-site improvement is any improvement that occurs outside of the immediate development area (typically on City land). An example would be intersection and roadway improvements occurring on an existing arterial roadway in order to provide access to a new development. This type of off-site improvement directly affects public safety and safe access to the subdivision.

The term "critical on-site improvements" does not refer to standard water, sewer and roadway construction. Rather this refers mainly to instances where the original developer subdivides large blocks of land out of the original parcel but remains responsible for the both the land and improvements upon which these other subdivided land parcels rely on for servicing (such as storm ponds or key trunk lines).

The exact amount of securities taken in respect to these improvements would be dependent on a number of factors including developer's previously demonstrated performance (or lack thereof), the risk posed to public safety and, in the case of critical on-site improvements, the impact to the City and adjacent development should the necessary improvements not be completed.

5. Non-Monetary Assurances Of Performance

In addition to the performance security posted at the time of execution of the Agreement, the City retains the following forms of non-monetary security:

- a) Costs associated with completing or rectifying the development can be collected in the same manner as taxes. While this is legally possible, the collection of costs would be from the current landowner as opposed to the developer (who may have already sold the property). Generally, this form of collection of outstanding costs would be avoided wherever possible.
- b) The Agreement is caveated against the subdivision lands as notice to prospective purchasers. The City would not consider removing the caveat if the developer was not in good standing with respect to their Agreement obligations.
- c) Legally, the City retains the right to recover the costs of any action taken by the City as a result of non-performance by the developer in variety of methods permitted under contract law and/or pursuant to the Municipal Government Act. This would potentially result in litigation against the developer.
- d) While not directly a subdivision servicing requirement, the City does not release Building Permits until such time as fire hydrant coverage and all-weather access is available to the boundary of the appropriate lot. In doing so, this not only provides infrastructure for emergencies but also has the effect of making the construction of some infrastructure mandatory prior to the occupancy of the subdivision lands, thereby minimizing the impact of non-performance by the developer.

6. Additional Securities For Extraordinary Risks

In instances where the City has concerns with respect to the financial ability of a developer to complete a proposed development, the City retains the right to request financial information and references from the developer. In this instance, the onus is on the developer to provide information in sufficient detail and appropriate format such that the City may form an informed and substantiated opinion as to the capability of the developer to successfully complete a pending Agreement.

If after reviewing such information, the City, acting reasonably, considers there to be extraordinary risk to the City, additional securities over and above those stipulated elsewhere within this policy may be required.

If additional securities were taken under this situation, that determination would be made prior to the City entering into the Agreement.

7. Release Of Performance Securities

Standard performance securities will be reduced/released in the manner prescribed in the Agreement.

Performance securities associated with off-site/critical on-site improvements and those taken as a result of extraordinary risks will be reduced/released subject to the appropriate engineering certification(s) that the work has been completed in accordance with the specifications. Any remaining security holdbacks (for maintenance considerations or incomplete work) can be combined with the standard performance securities.

Performance securities associated with outstanding off-site levies/acreage assessments can be released proportionately as the off-site levies/acreage assessment invoices are paid provided that the developer is in compliance with all obligations within the Agreement.

8. Changes In Developer Ownership/Entities

There may be instances in which a developer establishes a history of compliance within the City and undergoes a change with respect to ownership (by entering or amending a joint venture partnership for instance) or the creation of a new (but possibly related) corporate entity. In general, the City will consider this to be a new developer for the purposes of determining development security requirements.

If the developer ownership or entity change is not substantive in nature, the City may consider the original developer's history of compliance in determining development security requirements. In this instance, the onus is on the developer to provide the relevant financial information and references to the City in order for this determination to be made.

"Dan Oneil"

Mayor

"Sharon Pollyck"

City Clerk