City of St. Albert
CITY COUNCIL POLICY

Letter of Credit / Security

AUTHORITY	APPROVED	Res. No.	mm dd	REVISED	Res. No.	mm dd
City Council		C130-2014	03 17			

Purpose

To provide direction to Administration on the implementation and management of a Letter of Credit / Security policy and to establish when Security is required, acceptable forms of Security, and when Security may be reduced, released or drawn upon.

Policy

The City of St. Albert utilizes a well-defined Letter of Credit / Security policy to ensure adherence to the City's engineering and landscaping standards in a consistent and equitable manner.

Definitions

In this policy,

"City" means the municipal corporation of the City of St. Albert;

"City Engineer" means the professional engineer or individual so designated by the City Manager, or that individual's appointed designate;

"City Standards" means the standards and specifications as set out in the City of St. Albert Municipal Engineering Standards (presently in effect and as may be amended in future from time to time) for design, construction and installation of all Local Improvements as published by the City's Engineering Department from time to time, any additional standards, conditions or requirements imposed upon the Development Area by the City's Development Authority, Subdivision Authority, Subdivision and Development Appeal Board, Development Officer, the Plans, any condition to the approval of Plans imposed by the City Engineer, and all applicable codes, regulations, legislation, design and engineering standards;

"Construction Completion Certificate (CCC)" means a certificate issued by the City to signify that offsite infrastructure has been constructed to City Standards but is still under warranty and may be subject to minor deficiencies corrections. Once any infrastructure (leviable or non-leviable) has received a CCC (notwithstanding any warranty period prior to FAC) the City assumes ownership of that infrastructure;

"Development Agreement (DA)" means an agreement between a developer or property owner and the City that defines the terms and conditions under which a development must be carried out;

"Development Permit (DP)" means the document authorizing a development that is issued by a Development Officer, or by Council in a Direct Control District, under the City's Land Use Bylaw or any previous Land Use Bylaw, and a DP may include any plans or conditions of approval;

"Final Acceptance Certificate (FAC)" means a certificate issued by the City at the completion of a warranty period provided the infrastructure is free of defects and deficiencies at that time;

"Letter of Credit (LOC)" means an irrevocable Letter of Credit issued by a Chartered Bank, Credit Union, or from ATB Financial, or a cash deposit in the form of a certified cheque or bank draft;

"Local Improvements" means and includes all those improvements specified in the Development Permit or Development Agreement whether within or outside the Development Area and such additional improvements as are shown on the Plans, as are requested by the City Engineer, or as specified by the Subdivision Authority, Development Authority, a Development Officer, or the Subdivision and Development Appeal Board;

"Maintenance or Warranty Period" means the period of time established in the City Standards where the Developer is solely responsible for the maintenance of the Local Improvements. This period begins to run from the date on which the City Engineer issues to the Developer a CCC for all, or a portion thereof, of a Local Improvement. During this period the Developer shall be responsible to correct any defects or deficiencies in design, material, and/or installation that are noted during the maintenance or warranty period. This period does not expire until the City has issued a FAC for all, or a portion thereof, of a Local Improvement;

"Security" means a Letter of Credit or a cash deposit held as a security by the City to ensure that the engineering and landscaping components of a development project are completed to City Standards in accordance with accepted civil engineering and landscape design drawings.

Responsibilities

1. Council approves the LOC / Security policy.

2. The implementation of this policy and the development of administrative procedures pursuant to this policy are delegated to the City Manager or his designate.

Standards

1. Security is required when:
   a. a Development Permit is issued for a major development project; or

b. a Developer enters into a Development Agreement for a neighbourhood subdivision development.

2. Security Specifications:
   a. Security for an LOC must be:
      i. in the form of an irrevocable Letter of Credit issued by a Chartered Bank, Credit Union, or from ATB Financial issued in favour of the City; or
      ii. a cash deposit in the form of a certified cheque or bank draft;
   b. No payment of interest will be made on a cash deposit;
   c. Security can be for a limited term or a LOC may have an automatic renewal/extension clause;
      i. With an automatic renewal/extension clause there must be a clause requiring the financial institution to notify the City of St. Albert in writing by registered mail at least 30 days prior to the expiration of the LOC if the LOC will not be renewed.
   d. There must not be any restrictions on the City's ability to demand on the LOC;
   e. Security amounts will be determined as per the values outlined in the Administrative Procedures.

3. Security may be reduced by the following amounts when:
   a. Construction is complete for a Development Permit (DP);
      i. The Security may be reduced by 100% of the full value for Engineering items completed under a DP; and
      ii. The Security may be reduced by 50% for the full value of the Landscaping items completed under a DP.
   b. A Construction Completion Certificate (CCC) has been issued for the work completed as defined in a Development Agreement (DA).
      i. The Security may be reduced by 50% of the full value for Engineering items completed under a DA; and
      ii. The Security may be reduced by 50% for the full value of the Landscaping items completed under a DA.
   c. Reductions in Security can be applied for at any time. However the tendency is for reductions to occur at the end of the construction season.

4. Security may be fully released when:
   a. Under a DP:
      i. Construction is complete;
      ii. All landscaping has passed applicable warranty period (typically two years);
      iii. All Engineering and Landscaping As-Built & Record Drawing packages have been submitted and accepted by the City Engineer;
      iv. There are no further deficiencies on the work and a Final Acceptance Certificate (FAC) has been issued.
   b. Under a DA:
      i. Construction is complete;
      ii. All Engineering and Landscaping infrastructure has passed the applicable warranty period (typically one to two years);

iii. All Engineering and Landscaping As-Built & Record Drawing packages have been submitted and accepted by the City Engineer;
iv. There are no further deficiencies on the work and a FAC has been issued.

5. Security Forfeiture:
   a. Security may be forfeit, and a LOC may be drawn upon under the following circumstances as determined by the City Engineer:
      i. a non-performance or failure to complete work to City Standards;
      ii. a failure to comply with an order to repair deficiencies;
      iii. substantial project delays;
         I. Where completion of work issued under a Development Permit exceeds 4 years.
         II. Where completion of work issued under a Development Agreement exceeds 5 years.
      iv. where restoration of the site to its pre-development condition is required and there is a failure to do so in a timely manner;
      v. any other default.

Cross References: Bylaw 9/2005, Land Use Bylaw; City of St. Albert Municipal Engineering Standards- April 2013

City of St. Albert
ADMINISTRATIVE PROCEDURES

Letter of Credit / Security

AUTHORITY	SIGNATURE		dd mm yyyy
City Manager		APPROVED:	20 03 2014
		REVISED:	

Definitions

"As-Built Drawing" means upon completion of construction, the submission of a set of drawings with red line markups reflecting how the development was actually constructed;

"City" means the municipal corporation of the City of St. Albert;

"City Engineer" means the professional engineer or individual so designated by the City Manager, or that individual's appointed designate;

"City Standards" means the standards and specifications as set out in the City of St. Albert Municipal Engineering Standards (presently in effect and as may be amended in future from time to time) for design, construction and installation of all Local Improvements as published by the City's Engineering Department from time to time, any additional standards, conditions or requirements imposed upon the Development Area by the City's Development Authority, Subdivision Authority, Subdivision and Development Appeal Board, Development Officer, the Plans, any condition to the approval of Plans imposed by the City Engineer, and all applicable codes, regulations, legislation, design and engineering standards;

"Construction Completion Certificate (CCC)" means a certificate issued by the City to signify that offsite infrastructure has been constructed to City Standards but is still under warranty and may be subject to minor deficiencies corrections. Once any infrastructure (leviable or non-leviable) has received a CCC (notwithstanding any warranty period prior to FAC) the City assumes ownership of that infrastructure;

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

"Development Agreement" means an agreement between a developer or property owner and the City that defines the terms and conditions under which a development must be carried out;

"Development Area" means the lands or site on which a development exists or occurs for which an approved Development Permit or Development Agreement has been issued or executed;

"Development Permit (DP)" means the document authorizing a development that is issued by a Development Officer, or by Council in a Direct Control District, under the City's Land Use Bylaw or any previous Land Use Bylaw, and a DP may include any plans or conditions of approval;

"Final Acceptance Certificate (FAC)" means a certificate issued by the City at the completion of a warranty period provided the infrastructure is free of defects and deficiencies at that time;

"Letter of Credit (LOC)" means an irrevocable Letter of Credit issued by a Chartered Bank, Credit Union, or from ATB Financial, or a cash deposit in the form of a certified cheque or bank draft;

"Local Improvements" means and includes all those improvements specified in the Development Permit or Development Agreement whether within or outside the Development Area and such additional improvements as are shown on the Plans, as are requested by the City Engineer, or as specified by the Subdivision Authority, Development Authority, a Development Officer, or the Subdivision and Development Appeal Board;

"Maintenance or Warranty Period" means the period of time established in the City Standards where the Developer is solely responsible for the maintenance of the Local Improvements. This period begins to run from the date on which the City Engineer issues to the Developer a CCC for all, or a portion thereof, of a Local Improvement. During this period the Developer shall be responsible to correct any defects or deficiencies in design, material, and/or installation that are noted during the maintenance or warranty period. This period does not expire until the City has issued a FAC for all, or a portion thereof, of a Local Improvement;

"Off-site" means a location other than the site which is the subject of a development, which is Public Lands;

"On-site" means a location on the site which is the subject of a development, which is private property;

"Plans" means plans and specifications prepared by the Consulting Engineer at the Developer's expense covering the design, construction and installation of the Local Improvements pursuant to the terms of the Development Permit or Development Agreement, the Landscaping and Fencing Plans and such additional plans, and specifications (and amendments thereto) as may be subsequently approved by the City Engineer all of which shall become Plans and form part of the Development Permit or Development Agreement once they have been approved by the City Engineer;

"Public Lands" means roads, municipal easements, public parks, public utility lots, municipal reserves, environmental reserves, school reserves and other properties in the Development Area owned or administered by any municipal or school authority, or which are to be dedicated by the Developer to any municipal or school authority;

"Record Drawing" means the finalized submission of the development drawings that has incorporated the red line mark ups from the As-Built Drawings;

"Security" means a Letter of Credit or a cash deposit held as a security by the City to ensure that the engineering and landscaping components of a development project are completed to City Standards in accordance with accepted civil engineering and landscape design drawings.

Responsibilities

1. City Manager:
   a. shall ensure the policy is followed;
   b. hereby designates the City Engineer as the administrator of this policy.

2. City Engineer:
   a. shall be authorized to revise the standard CCC and FAC documents referred to in this policy as may be required, from time to time;
   b. shall receive, review, and respond to all applications for CCC and FAC approvals;
   c. shall receive, review, and respond to all written applications for partial reductions in Security;
   d. shall receive, review, and respond to all written applications for project extensions such that Security is preserved;
   e. shall maintain a Security register which records the development project security held by the City;
   f. shall review the progress of individual development projects annually and offer a reduction in the Security where appropriate;
   g. shall contact developers that have a Security older than five years or with a Security under $20,000 and detail what items are outstanding and what actions developers must take to close out their project;
   h. shall send a year end Security reconciliation to the Finance Department for the Year End Audit;
   i. may delegate his or her responsibilities hereunder as he or she deems appropriate.

3. Legal Services:
   a. shall provide legal advice, as required, for instances when the City is considering drawing on the Security;
   b. shall assist, as required, with cashing a LOC.

4. Developer:
   a. shall submit detailed construction cost calculations with the first submission of the detailed civil engineering drawings or with the development agreement application;
   b. shall submit Security in the correct amount upon execution of a development agreement or prior to the commencement of any development project approved with a valid development permit;
   c. shall submit applications for CCC and FAC approvals;
   d. shall submit written requests for partial reductions in Security and project extensions such that Security is preserved.

Standards

Administration will use the following Standards, in addition to those Standards detailed in Council Policy, C-P&E-03, to implement this Council Policy:

1. Security Specifications:
   a. Security may be posted by way of LOC or a cash deposit in the form of a certified cheque or bank draft;
   b. Performance Bonds will not be accepted;
   c. A Letter of Credit must contain a reference to the project in which the LOC applies and must be as follows for a:
      i. Development Agreement-
      "Covering all obligations, terms, and conditions under the Development Agreement as amended, extended, or renewed for _____."
      ii. Development Permit-
      "This Letter of Credit is to cover all obligations, terms, and conditions under the Development Permit as amended, extended, or renewed for Development Permit No. _____."
      iii. Subdivision or Bareland Condominium Approval-
      "This Letter of Credit is to cover all conditions under the Subdivision/Bareland Condominium Approval for _____."
      Iv. Owner/Permit/Customer Link (used where the recipient of the development permit and entity providing the letter of credit are not the same)-
      "This Letter of Credit is to cover all obligations, terms, and conditions under the Development Permit as amended, extended, or renewed for Development Permit No._____ issued to _____ on land owned by _____."

2. Security Valuation:
   a. The assigned value of Security is directly proportional to the construction costs of the components of each development project;
   b. If cost estimates are not provided, the City assigns values to the construction work;
   c. The value of Security is calculated based on the following:

      i. Development Permit Project:

Development Component	Security value – calculated based on percentage of construction cost
On-site Landscaping	100%
Off-site Landscaping	100%
On-site Water Service	20%
On-site Sanitary Service	20%
On-site Storm Service	20%
Off-site Water, Sanitary and Storm Services	100%
On-site Surface Construction (such as asphalt & concrete)	20%
Off-site Surface Construction	100%

Development Component	Security value – calculated based on percentage of construction cost
Landscaping as-built & record drawing package	$5,000 (fixed cost)
Engineering as-built & record drawing package	$5,000 (fixed cost)
Permit Deposit (SSP & OSCP)	$5,000 (fixed cost)

ii. Development Agreement:

Development Component	Security value – calculated based on percentage of construction cost
On-site Landscaping	100%
Off-site Landscaping	100%
Fencing & Signage	100%
Site Grading	20%
On-site Water, Sanitary and Storm Services, Roads & Local Improvements	20%
Off-site Water, Sanitary and Storm Services, Roads & Local Improvements	20%
On-site Surface Construction (such as asphalt & concrete)	20%
Landscaping as-built & record drawing package	$10,000 (fixed cost)
Engineering as-built & record drawing package	$10,000 (fixed cost)
Permit Deposit (SSP & OSCP)	$5,000 (fixed cost)
Service Connection Inspection	$5,000 (fixed cost)
Operation & Maintenance Manual	$10,000 per manual (as required)

Procedures

1. Accepting Security:
   a. The City Engineer will review submitted detailed construction cost calculations to ensure they are appropriate for the proposed Local Improvements;
   b. The City Engineer will either accept the construction costs submitted by the Developer to calculate the Security or it will assign costs to the construction work to calculate the Security;
   c. The City Engineer will provide a Security checklist and a current sample of an acceptable format for the LOC to the Developer to ensure their Security meets the criteria of the City;
   d. The City Engineer will review each submitted Security instrument to ensure it meets the criteria of the City;
   e. The City Engineer will assign a unique file number to the Security and enter it into the Security register.

2. Reducing Security:
   a. The City Engineer will review the Security after executing a CCC or FAC for that Development project;
   b. If warranted, the City Engineer will authorize reducing the existing Security by a specific sum related to the Local Improvements for which the CCC or FAC was executed;
   c. In the case of a LOC, the City Engineer will issue a letter to the LOC issuer/developer offering a reduction in the Security being held and requesting that the issuer/developer provide the City with a renewed irrevocable LOC in the approved format or an amendment to the existing guarantee in the new Security amount. The letter will also inform the issuer/developer of outstanding project requirements;
   d. Once the City receives a renewed irrevocable LOC in the approved format or an amendment to their existing guarantee in the new Security amount, the Engineering Financial Officer will return the original LOC to the LOC issuer.

3. Releasing Security:
   a. Once it has been determined that there are no outstanding project requirements, the City Engineer will authorize the release of the Security;
   b. The City Engineer will issue a letter to the Security issuer informing them that the project has now been closed and the Security is being released;
   c. The City Engineer will then remove the Security from the active listings in the Security register and add it to the closed Security files.

4. Reviewing the Security register for Older or Stagnant Files:
   a. On an annual basis the City Engineer will review all active Securities in the Security register;
   b. Any development project older than five years or with Security under $20,000.00 will be classified as an Older or Stagnant File;
      i. By March 31 of each year, those Developers will receive a letter listing outstanding project requirements and what actions Developers must take to close out their project.
      ii. Developers will be given until October 15 of that same year to address those outstanding project requirements or the City may take actions to draw upon the Security.
      iii. Developers may apply in writing to the City Engineer for an extension to complete their project. The City Engineer will review each proposed work plan and approve these requests on a case by case basis.

5. Drawing upon Security:
   a. The City Engineer will determine whether circumstances are appropriate for Security to be drawn upon;
   b. Legal Services will be consulted to ensure that drawing on the Security is an appropriate action;
   c. Once it has been determined that Security is to be drawn upon, a notice will be sent through registered mail to the Developer informing them that the City is taking that action;
   d. In extreme cases in response to an immediate danger or hazard, the City Engineer may take any action that is required to rectify the situation without notifying the Developer that the City is drawing upon the Security to recover the costs associated with resolving the situation.