



# **GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS**

**EFFECTIVE APRIL 1, 2015**

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## GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

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### 1. SUMMARY

Development Coordination establishes the Security amount to be included in a Servicing Agreement using the guidelines described in this document. Developers are first categorized based on their past performance, then a percentage of the estimated construction costs, as submitted by the developer's consultant, is used as the Security amount based on the category in which the developer is placed. Any holdback amounts are also determined based on category, as well as timing for submitting fees and assessments.

### 2. ACCEPTABLE FORMS OF SECURITY

The City of Edmonton will accept Security submitted as part of the Servicing Agreement in the form of:

- a Letter of Credit/Guarantee in accordance with the Letter of Credit Requirements outlined in Schedule "A"; or
- Cheque; or
- Bank Draft

Performance bonds, Insurance Bonds and payments by Credit Card will not be accepted.

### 3. STEP 1: THE CATEGORY

Developers are first categorized based on past performance with **any** of the following:

- Servicing Agreements with the City of Edmonton
- Municipal Improvement Agreements with the City of Edmonton
- Development Agreements with other municipalities through the provision of references

Each developer will be placed into one of four categories using the following criteria:

**Table 1: Description of Categories**

<b>*PILOT ONLY*</b>	
<b>Category AA:</b> Describes a developer whose past performance includes ALL of the following criteria:	
a)	Being party to ten (10) or more Servicing Agreements or Municipal Improvement Agreements with the City of Edmonton in the past five (5) years where: <ul style="list-style-type: none"><li>i. a minimum of 80% of Construction Completion Certificates were applied for within the timelines set out in the agreements; and</li><li>ii. all payments and security items required in the agreements were submitted prior to the Conditions Precedent Date; and</li><li>iii. every effort was made to ensure the corresponding engineering drawings were approved without delays</li></ul>

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b)	A minimum of five (5) of the Servicing Agreements must have been for projects that include more than fifty (50) lots.
<b>Category A:</b> Describes a developer whose past performance includes one or a combination of the following criteria:	
a)	Being party to two (2) or more Servicing Agreements or Municipal Improvement Agreements with the City of Edmonton in the past five (5) years where all Construction Completion Certificates were issued within the timelines set out in the agreements; or
b)	References from another municipality certifying the completion of two (2) or more Development Agreements in the past five (5) years where all Construction Completion Certificates were issued within the timelines set out in that agreements.
<b>Category B:</b> Describes a developer whose past performance includes one of the following criteria:	
a)	Being party to one (1) Servicing Agreement or Municipal Improvement Agreement with the City of Edmonton in the past five (5) years where all Construction Completion Certificates were issued within the timelines set out in the agreement; or
b)	References from another municipality certifying the completion of one (1) Development Agreement in the past five (5) years where all Construction Completion Certificates were issued within the timelines set out in that agreement.
<b>Category C:</b> Describes a developer whose past performance includes one of the following criteria:	
a)	No previous Servicing Agreements or Municipal Improvement Agreements with the City of Edmonton in the past five (5) years or previous Development Agreements with other municipalities in the past five (5) years; or
b)	Entered into agreements described above where not all Construction Completion Certificates have been issued in order to qualify as a Category B.
<b>Category D:</b> Describes a developer who has been involved in a major breach of the terms and conditions of previous Servicing Agreements or Municipal Improvement Agreements, or a developer who has frequent minor breaches of the terms and conditions of previous Servicing Agreements, Municipal Improvement Agreements or Development Agreements with other municipalities.	

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### 4. STEP 2: THE AMOUNT

Once a developer has been categorized, the amount of security taken will be based on a percentage of the construction costs, plus fifteen per cent (15%) for Engineering and Testing. The percentage will vary depending on the category in which the developer has been placed. A minimum amount will be taken for all developments and a landscape holdback will be permitted that is based on the estimated landscape costs. Holdbacks for temporary infrastructure will be permitted for all Categories of developers.

All construction costs provided for the purposes of determining any Security amounts must be dated, stamped and signed by a Professional Engineer.

**Table 2: Security Amounts**

Category	Percentage of Construction Costs	Minimum	Additional Security for Delayed Drawing Approval*	Landscape Holdback
AA	10% up to Maximum described in Appendix B	\$20,000	20%**	10%
A	10%	\$20,000	20%**	10%
B	25%	\$20,000	20%**	100%
C	100%	\$20,000	30%**	200%
D	100% - 200%	\$20,000	Not Permitted	200%

\*Delayed drawing approval is only permitted at the discretion of the Senior Development Engineer

\*\*The additional security amount will be based on the construction costs for the portion of work included on the delayed drawings only

### 5. STEP 3: THE DEADLINE

Depending on the category the timing in which the security and related fees are required to be submitted may vary.

**Table 3: Security and Fee Submission Deadline**

Category	Security and Fee Submission Deadline
AA	<ul style="list-style-type: none"><li>In all cases, developers in this Category must submit the Security, Inspection Fees, Certificate of Insurance, ARA Administration Fee and Assessments prior to the Conditions Precedent Date outlined in the Servicing Agreement.</li><li>The Certificate of Insurance and the Inspection Fees must be submitted prior to the start of construction if it occurs in advance of the Conditions Precedent Date.</li></ul>

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	<ul style="list-style-type: none"> <li>Developers in this Category are permitted to have one (1) Security amount in place for multiple projects. See Appendix B: Category AA Aggregate Security Amount.</li> </ul>
<b>A</b>	<ul style="list-style-type: none"> <li>In all cases, developers in this Category must submit the Security, Inspection Fees, Certificate of Insurance, ARA Administration Fee and Assessments prior to the Conditions Precedent Date outlined in the Servicing Agreement.</li> <li>The Certificate of Insurance and the Inspection Fees must be submitted prior to the start of construction if it occurs in advance of the Conditions Precedent Date.</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>In all cases, developers in this Category must submit the Security, Inspection Fees, Certificate of Insurance, ARA Administration Fee and Assessments prior to the Conditions Precedent Date outlined in the Servicing Agreement.</li> <li>The Certificate of Insurance and the Inspection Fees must be submitted prior to the start of construction if it occurs in advance of the Conditions Precedent Date.</li> <li>If the Security is submitted in the form of a Letter of Credit, a portion of the Letter of Credit may be post-dated at the direction and discretion of the Senior Development Engineer.</li> </ul>
<b>C</b>	<ul style="list-style-type: none"> <li>Where a Plan of Subdivision is required and construction is not occurring on existing City property, Developers in this category may submit Security in two stages: <ol style="list-style-type: none"> <li>Security equalling 25% of the estimated costs must be submitted prior to the start of construction <u>or</u> prior to the Conditions Precedent Date outlined in the Servicing Agreement, whichever first occurs; and</li> <li>Security equalling 100% of the costs to complete the construction must be submitted prior to the registration of the Plan of Subdivision.</li> </ol> </li> <li>Where no Plan of Subdivision is required or construction is occurring on existing City property, Developers in this category must submit the full Security amount prior to the start of construction or prior to the Conditions Precedent Date outlined in the Servicing Agreement, whichever first occurs.</li> <li>In all cases, developers in this Category must submit the Inspection Fees, Certificate of Insurance, ARA Administration Fee and Assessments prior to the start of construction or prior to the Conditions Precedent Date outlined in the Servicing Agreement, whichever first occurs.</li> </ul>

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	<ul style="list-style-type: none"> <li>If the Security is submitted in the form of a Letter of Credit, a portion of the Letter of Credit may be post-dated at the direction and discretion of the Senior Development Engineer.</li> </ul>
<b>D</b>	<ul style="list-style-type: none"> <li>In all cases, developers in this Category must submit the Inspection Fees, Certificate of Insurance, ARA Administration Fee and Assessments prior to the start of construction or prior to the Conditions Precedent Date outlined in the Servicing Agreement, whichever first occurs.</li> </ul>

### 6. STEP 4: THE RELEASE

Depending on your category the terms and conditions of the release of your security may vary.

**Table 4: Release of the Security**

Category	Conditions of Releasing the Security
<b>AA</b>	<ul style="list-style-type: none"> <li>The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts. In cases where the Maximum amount has been reached, Security will be released in accordance with the procedure outlined in Appendix B: Category AA Aggregate Security Amount.</li> <li>Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement.</li> <li>The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).</li> </ul>
<b>A</b>	<ul style="list-style-type: none"> <li>The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts.</li> <li>Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement.</li> <li>The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).</li> </ul>
<b>B</b>	<ul style="list-style-type: none"> <li>Upon issuance of all Construction Completion Certificates, with the exception of landscaping, the Security amount will be reduced to the greater of:               <ol style="list-style-type: none"> <li><b>15%</b> of the original estimated construction costs; or</li> <li>the sum of the holdback amounts; or</li> <li><b>\$20,000</b></li> </ol> </li> </ul>

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	<ul style="list-style-type: none"><li>• The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts.</li><li>• Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement.</li><li>• The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).</li></ul>
<b>C</b>	<ul style="list-style-type: none"><li>• Upon issuance of all Construction Completion Certificates, with the exception of landscaping, the Security amount will be reduced to the greater of:<ul style="list-style-type: none"><li>a) <b>20%</b> of the original estimated construction costs; or</li><li>b) <b>100%</b> of the construction costs to complete; or</li><li>c) the sum of the holdback amounts; or</li><li>d) <b>\$20,000</b></li></ul></li><li>• The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts.</li><li>• Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement.</li><li>• The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).</li></ul>
<b>D</b>	<ul style="list-style-type: none"><li>• The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts.</li><li>• Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement.</li><li>• The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).</li></ul>

### 7. DISCRETION OF DEVELOPMENT COORDINATION

Developers using multiple company names to sign their agreements may be considered as one developer at the discretion of the Director of Development Coordination. Joint Ventures that fall into different categories under this Guideline will be considered on a case by case basis.



### 8. RE-CATEGORIZATION

The categorization of a developer may be adjusted based on positive performance as follows:

- A developer will be re-categorized from Category C to Category B once the criteria for Category B have been met, as per these guidelines.
- Similarly, a developer will be re-categorized from Category B to Category A once the criteria for Category A have been met, as per these guidelines.
- A developer will be re-categorized from Category D to Category C under the following circumstances:
  - the conditions of the Servicing Agreement(s) for which the developer failed to meet have been met to the satisfaction of the City; and
  - at the discretion of the Director of Development Coordination.

The categorization of a developer may be adjusted based on negative performance as follows:

- A developer will be re-categorized from Category A to Category B or from Category B to Category C for repeated minor breaches of the terms of a Servicing Agreement(s).
- A developer will be re-categorized from Category A, Category B or Category C, directly to Category D for a major breach of the terms of a Servicing Agreement.

The following items are considered a minor breach:

- Failure to submit any of the following prior to the Conditions Precedent Date:
  - Security
  - Inspection Fees
  - ARA Admin Fee
  - Drainage Assessments
  - Arterial Roadway Assessments
  - Insurance
- Commencement of construction prior to the submission of the Conditions Precedent items required as per these guidelines.

The following items are considered a major breach:

- Commencement of construction prior to the approval of the Engineering Drawings or without a signed Servicing Agreement.
- Failure to complete construction within the timelines set out in the Servicing Agreement.
- Failure to apply for Construction Completion Certificates or Final Acceptance Certificates within the timelines set out in the Servicing Agreement.
- Failure to substantially complete an Arterial Roadway such that it is open and operational to traffic within the timeline set out in the Servicing Agreement.
- Failure to renew the Security (if in the form of a Letter of Credit) in accordance with the terms of the Servicing Agreement.
- Failure to renew Insurance coverage in accordance with the terms of the

## **GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS**

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Servicing Agreement.

### **9. DATE EFFECTIVE**

These Security Guidelines are effective April 1, 2015 and will apply to all projects where a Security amount has not yet been provided to the developer. These guidelines will not be applied retroactively to existing Servicing Agreements.

## APPENDIX A: LETTER OF CREDIT REQUIREMENTS

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### APPENDIX A: SECURITY REQUIREMENTS

#### **GUIDELINES:**

If a Letter of Credit/Guarantee is provided as security, there are guidelines that must be followed when the customer's Financial Institution issues the Letter of Credit/Guarantee:

- a) Must be issued by a Canadian financial institution, local credit union or local treasury branch
- b) Must be stated in Canadian dollars (numeric and text)
- c) Shall be an unconditional, irrevocable and payable at sight
- d) The initial term must be no less than one year, but may be more than one year
- e) The expiry date must fall on a weekday, which is not a statutory holiday
- f) Letter of Credit must be in its original form with the original authorized signatures
- g) Letter of Credit must include an automatic renewal clause where the expiry date is extended for a further one year term, without amendment, unless sixty days notice is given by the Bank in writing and delivered by registered mail to the correct Beneficiary's address.
- h) Partial drawings must be allowed.

#### **IMPORTANT:**

1. Reference must be made to the Servicing Agreement Number and the Development Area as per page one of the Servicing Agreement and stated as follows:

**"Servicing Agreement XXXX for Name of Subdivision, Neighbourhood Name, Stage XX"**

2. The Applicant's name stated on the Letter of Credit must be the name of the party that entered into the Servicing Agreement with the City of Edmonton.

#### **BENEFICIARY:**

The Beneficiary's name and address must be stated on the Letter of Credit as follows:

The City of Edmonton  
**Sustainable Development Department**  
**5th Floor, 10250 - 101 Street NW**  
Edmonton AB T5J 3P4  
**Attention: Cheryl Prokop**

#### **ADDITIONAL INFORMATION:**

The amount of the Letter of Credit is determined by the Engineer in Sustainable Development who is responsible for the specific Servicing Agreement.

## **APPENDIX A: LETTER OF CREDIT REQUIREMENTS**

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The Law Branch will review the content and form of the Letter of Credit and will ultimately determine if the Letter of Credit is acceptable.

Drawings upon a Letter of Credit are made in the event that the party to the Agreement defaults on its obligations set forth under the Servicing Agreement and/or on its obligation to renew the Letter of Credit.

All expenses incurred in drawing upon a Letter of Credit are deducted from the proceeds of the Letter of Credit.

The Financial Services Department is responsible for the security, maintenance and validity of the Letter of Credit after it has been submitted to Sustainable Development.

The contact person in the Financial Services Department is **Cheryl Prokop** and her contact information follows:

**Telephone Number: 780-496-6169**

**Fax Number: 780-496-6131**

**Email Address: [cheryl.prokop@edmonton.ca](mailto:cheryl.prokop@edmonton.ca)**

## APPENDIX B: PILOT FOR CATEGORY AA AGGREGATE SECURITY AMOUNT

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### APPENDIX B: PILOT FOR CATEGORY AA AGGREGATE SECURITY AMOUNT

Category AA developers will be permitted to maintain **One (1)** Security amount, (the “Aggregate Security”), per calendar year for multiple projects that meet the following criteria:

- The Servicing Agreement for all projects covered by the Aggregate Security must be signed within the same calendar year; and
- The Servicing Agreements must all be signed by the same legal Owner(s)

### PROCEDURE

1. The security amount taken for each project will be in accordance with Table 2: Security Amounts.
2. For the first project of a calendar year, the Owner will be required to provide Security for that project in accordance with these Guidelines.
3. For subsequent projects, the Owner may provide individual Security for each project, or, if in the form of a Letter of Credit, provide an amendment or replacement to the Letter of Credit reflecting the new amount and additional project information.
4. Once the sum of the Security amounts has reached \$ 2,000,000, excluding additional amounts taken for delayed drawing approval, the Owners may provide an Aggregate Security, and no further security will be taken for subsequent projects within the same calendar year.
5. The construction value of the projects included in the Aggregate Security must not exceed \$50,000,000. Once this value is exceeded, Security for additional projects will be based on the Category A criteria.
6. The Aggregate Security, if in the form of a Letter of Credit, must be in accordance with the requirements outlined in Appendix A: Letter of Credit Requirements.
7. When releasing security for a project, the amount of Security held must never be less than the lesser of:
  - a. 10% of the estimated costs for all remaining projects within that calendar year;
  - or
  - b. \$2,000,000.

This may mean that once a project has been completed, the security may not be eligible for release.

8. Once the Aggregate Security amount becomes less than \$2,000,000, security will then be released in accordance with Table 4: Conditions of Releasing Security.

## APPENDIX B: PILOT FOR CATEGORY AA AGGREGATE SECURITY AMOUNT

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### EXAMPLE: SUNSHINE DEVELOPMENTS LTD.

#### THE AMOUNT

Sunshine Developments Ltd. is party to five (5) agreements during the 2015 calendar year. A cost estimate is provided for each project.

<b>Name of Development</b>	<b>Construction Cost Estimate</b>
Sunshine Stage 1	\$ 5,000,000
Sunshine Stage 2	\$ 7,000,000
Sunshine Stage 3	\$ 3,000,000
Sunshine Stage 4	\$ 12,000,000
Sunshine Stage 5	\$ 4,000,000

The Security amount taken for each project will be in accordance with Table 2: Security Amounts.

<b>Name of Development</b>	<b>Construction Cost Estimate</b>	<b>Individual Security Amount (10%)</b>
Sunshine Stage 1	\$ 5,000,000	\$ 500,000
Sunshine Stage 2	\$ 7,000,000	\$ 700,000
Sunshine Stage 3	\$ 3,000,000	\$ 300,000
Sunshine Stage 4	\$ 12,000,000	\$ 1,200,000
Sunshine Stage 5	\$ 4,000,000	\$ 400,000

Once the sum of the Security amounts has reached \$ 2,000,000 the Owners may provide an Aggregate Security, and no further security will be taken for subsequent projects within the same calendar year. In this example, the sum of the Security amounts reaches \$ 2,000,000 with Sunshine Stage 4. No further Security is taken for Sunshine Stage 5.

<b>Name of Development</b>	<b>Construction Cost Estimate</b>	<b>Individual Security Amount (10%)</b>	<b>Actual Security Taken</b>	<b>Aggregate Security Amount</b>
Sunshine Stage 1	\$ 5,000,000	\$ 500,000	\$ 500,000	\$ 500,000
Sunshine Stage 2	\$ 7,000,000	\$ 700,000	\$ 700,000	\$ 1,200,000
Sunshine Stage 3	\$ 3,000,000	\$ 300,000	\$ 300,000	\$ 1,500,000
Sunshine Stage 4	\$ 12,000,000	\$ 1,200,000	\$ 500,000	<b>\$ 2,000,000</b>
Sunshine Stage 5	\$ 4,000,000	\$ 400,000	<b>\$ 0</b>	<b>\$ 2,000,000</b>
<b>Totals</b>	<b>\$31,000,000</b>	<b>\$3,100,000</b>	<b>\$2,000,000</b>	

## APPENDIX B: PILOT FOR CATEGORY AA AGGREGATE SECURITY AMOUNT

### THE RELEASE

For this example, we will assume projects are completed in the same order as they are signed.

Upon completion of Sunshine Stage 1, the amount of Security must never be less than the lesser of:

- a. \$2,600,000, which is equal to 10% of the remaining projects within that calendar year (Stages 2 to 5); or
- b. \$2,000,000.

In this case, the amount of Security released will be \$0 as the Aggregate Security is already at the minimum of \$ 2,000,000.

Name of Development	Individual Security Amount (10%)	Sum of Individual Security Amounts Remaining	Release Amount	Aggregate Security
Sunshine Stage 1	\$ 500,000	\$ 2,600,000	\$ 0	\$ 2,000,000

Upon completion of Sunshine Stage 2, the amount of Security must never be less than the lesser of:

- a. \$1,900,000, which is equal to 10% of Stages 3 to 5; or
- b. \$2,000,000.

In this case, the amount of Security released will be \$ 100,000.

Name of Development	Individual Security Amount (10%)	Sum of Individual Security Amounts Remaining	Release Amount	Aggregate Security
Sunshine Stage 1	\$ 500,000	\$ 2,600,000	\$ 0	\$ 2,000,000
Sunshine Stage 2	\$ 700,000	\$ 1,900,000	\$ 100,000	\$ 1,900,000

Once the Aggregate Security amount becomes less than \$2,000,000, security will then be released in accordance with Table 4: Conditions of Releasing Security.

Name of Development	Individual Security Amount (10%)	Sum of Individual Security Amounts Remaining	Release Amount	Aggregate Security
Sunshine Stage 1	\$ 500,000	\$ 2,600,000	\$ 0	\$ 2,000,000
Sunshine Stage 2	\$ 700,000	\$ 1,900,000	\$ 100,000	\$ 1,900,000
Sunshine Stage 3	\$ 300,000	\$ 1,600,000	\$ 300,000	\$ 1,600,000
Sunshine Stage 4	\$ 1,200,000	\$ 400,000	\$ 1,200,000	\$ 400,000
Sunshine Stage 5	\$ 400,000	\$ 0	\$ 400,000	\$ 0