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## Establishing Security in Developer Agreements

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**References:** *Municipal Government Act, RSA 2000, c M-26 (the "MGA"); Sections 650 and 655.*

**Cross-reference:** Policy FIN-001-012 Security

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### Policy Statement

The County desires to provide an incentivized and consistent approach to establishing Security amounts in Developer Agreements that includes consideration of Developers' past performance of obligations under Developer Agreements or similar agreements with Similar Municipalities.

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### Purpose

The purpose of this policy is to allow the County to categorize and recategorize Developers into the Developer Category based on their performance of obligations under Developer Agreements or similar agreements with Similar Municipalities, and then to establish the Security amount included in a Developer Agreement based on that Developer Category.

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### Definitions

**Construction Completion Certificate or CCC** - The certificate issued by the County indicating the completion of the construction or installation of certain Municipal Improvements in accordance with a Developer Agreement to the satisfaction of the County.

**County** - The municipal corporation of Strathcona County or the geographic area municipally described as Strathcona County as the context required.

**Developer Agreement** - A written agreement between a Developer and the County related to the construction or installation of Municipal Improvements on lands within the County. For clarity, Developer Agreements include but are not limited to Development Agreements, Subdivision Agreements, and Infrastructure Agreements.

**Developer Category** - The category in which a Developer is categorized or recategorized (as applicable) pursuant to the guidelines set out in this policy.

**Development Agreement** - A Developer Agreement associated with a condition of a development permit in accordance with the MGA.

**Developer** - A person that desires to construct or install Municipal Improvements.

**Engineering Professional** - A professional engineer, professional licensee (engineering), or professional technologist (engineering) in accordance with the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11.

**Final Acceptance Certificate or FAC** - The certificate issued by the County indicating the completion of repairs of known defects and deficiencies and the final acceptance of certain

Municipal Improvements in accordance with a Developer Agreement to the satisfaction of the County.

**Infrastructure Agreement** - A Developer Agreement that is not a Development Agreement or a Subdivision Agreement.

**Major Breach** - Any breach of a Developer Agreement or Other Agreement by a Developer which is determined to be major in nature by the County. Without limiting the generality of the foregoing, where required by a Developer Agreement or Other Agreement, each of the following are a Major Breach:

- commencing construction before approval of engineering drawings or before the agreement is signed (unless otherwise allowed by the County);
- failing to remedy any Minor Breach within the required timeline;
- failing to obtain any required regulatory approvals, permits, or licenses;
- failing to comply with the County's Design and Construction Standards;
- failing to comply with engineering requirements and reporting requirements set out in the approved plans;
- failing to provide appropriate inspection services (which includes supervision by an Engineering Professional) during construction;
- failing to provide the Security amount (both initial and further as applicable);
- failing to renew or replace the Security as applicable (such as when necessary for an irrevocable letter of credit or developer bond);
- failing to obtain or maintain required insurance;
- failing to complete all essential services under the Developer's control within the required timeline for the purpose of obtaining required building permits in advance of the issuance of the CCC; and
- failing to remedy any latent defects for which the Developer is responsible (excluding those under formal dispute until the time such dispute is resolved).

**Minor Breach** - Any breach of a Developer Agreement or Other Agreement by a Developer which is determined to be minor in nature by the County. Without limiting the generality of the foregoing, where required to by a Developer Agreement or Other Agreement, each of the following are a Minor Breach:

- commencing construction before submitting the Security amount or proof of insurance;
- failing to apply for a CCC or FAC within the required timelines;
- failing to submit any fees or payments, including for offsite development levies, within the required timelines;
- failing to produce a Right-of-Way Construction Activity Permit upon request in accordance with the County Traffic Bylaw; and
- failing to maintain erosion and sedimentation control measures, provide dust control, provide weed control, or provide control of construction debris.

**Municipal Improvement** - Any improvement to lands within the County that is intended to be owned and controlled by the County. Without limiting the generality of the foregoing, each of the following are considered a Municipal Improvement:

- sanitary sewer mains and appurtenances;
- drainage systems, including storm sewers, storm sewer connections, provisions for weeping tile flow, storm retention ponds, and associated works;
- water mains, including all fittings, valves, hydrants, and looping;
- concrete curbs, gutters, sidewalks and sub grade, and base and asphaltic pavement;
- traffic signs, street signs, development identification signs, zoning signs, and directional signs;
- major entrance features located within road right-of-way or on private property within an easement;
- berms and noise attenuation devices;

- permanent or temporary uniform fencing (including but not limited to noise attenuation devices or screens);
- landscaping and land improvements; and
- roads including but not limited to temporary turnarounds or a second or temporary access for vehicular traffic.

**Other Agreement** - A written agreement between a Developer and the County that is related to the development of lands within the County, but that is not a Developer Agreement.

**Security** - A financial commitment provided to the County to ensure full compliance by the Developer with the Developer's obligations contained within a Developer Agreement.

**Similar Municipality** - A municipality within the Edmonton metropolitan region or any other municipality as specified by the County.

**Subdivision Agreement** - A Developer Agreement associated with a condition of a subdivision approval in accordance with the MGA.

## **Guidelines**

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### **Types and Forms of Security**

1. The type and form of Security that will be accepted by the County for a Developer Agreement will be determined by the County. The types of Security that may be accepted include:
  - a. an irrevocable and unconditional letter of credit issued by a chartered bank or treasury branch;
  - b. a cash deposit, which could also be in the form of an electronic funds transfer, certified cheque or bank draft issued by a chartered bank or treasury branch; or
  - c. a developer bond issued by a qualified surety company licensed to issue surety bonds in Alberta.

Note: all Security received by the County shall be processed in accordance with Financial Policy FIN-001-012.

### **Developer Categorization**

2. Subject to any other requirements, conditions or limitations set out in this policy, a Developer will be categorized at the discretion of the County in one of three categories as follows:

**Category A:** A Developer will be categorized in Category A if the Developer:

- a. has paid all applicable offsite development levies associated with any Subdivision Agreement the Developer has entered into by the required date for payment as determined in accordance with in section 8 of this policy;
- b. has not committed any Major Breach in the past five years; and
- c. has either:
  - i. completed at least two Developer Agreements in the past five years; or
  - ii. provided a reference from a Similar Municipality certifying that the Developer:
    1. has completed at least two agreements similar to a Developer Agreement in the past five years; and
    2. has not committed any breach that is major in nature of any agreements similar to a Developer Agreement that the Developer has entered into or competed in the past five years.

**Category B:** A Developer will be categorized in Category B if the Developer does not meet the criteria for categorization in Category A in accordance with this policy, and has:

- a. *[Developer Without Experience]* never entered into or completed a Developer Agreement or an agreement similar to a Developer Agreement with a Similar Municipality;
- b. *[Developer Without Experience In The Past Five Years]* has not committed any Major Breach, and has either:
  - i. completed at least one Developer Agreement; or
  - ii. provided a reference from a Similar Municipality certifying that the Developer:
    1. has completed at least one agreement similar to a Developer Agreement; and
    2. has not committed any breach that is major in nature of any agreements similar to a Developer Agreement that the Developer has entered into or completed; or
- c. *[Developer With Experience In The Past Five Years]* has not committed any Major Breach in the past five years, and has either:
  - i. completed at least one Developer Agreement in the past five years; or
  - ii. provided a reference from a Similar Municipality certifying that the Developer:
    1. has completed at least one agreement similar to a Developer Agreement in the past five years; and
    2. has not committed any breach that is major in nature of any agreements similar to a Developer Agreement that the Developer has entered into or completed in the past five years.

**Category C:** A Developer will be categorized into Category C if the Developer does not meet the criteria for categorization in Category A or Category B in accordance with this policy.

3. At the discretion of the County, two or more Developers that the County considers related or connected may be considered as one Developer for the purpose of categorization and recategorization (if applicable) pursuant to this policy. The County will consider the categorization of Developers that are in a joint venture relationship on a case by case basis for each joint venture relationship and may use discretion to categorize into the category the County determines is most appropriate.

### **Developer Recategorization**

4. At any time and at the discretion of the County a Developer may be recategorized from Category C to Category B or Category A or from Category B to Category A based on positive performance provided:
  - a. the Developer meets the criteria for categorization in Category A or Category B (as applicable); and
  - b. the Developer has not been recategorized to Category B or Category C within the past five years based on negative performance.
5. At any time and at the discretion of the County a Developer may be recategorized based on negative performance as follows:
  - a. a Developer may be recategorized from Category A to Category B if after the Developer was categorized or recategorized into Category A, the Developer fails to pay any applicable offsite development levies associated with any

- Subdivision Agreement the Developer has entered into by the required date for payment as determined in accordance with in section 8 of this policy;
- b. a Developer may be recategorized from Category A to Category B or from Category B to Category C for multiple or repeated Minor Breaches (regardless of whether such Minor Breaches are remedied to the satisfaction of the County in accordance with the terms of the Developer Agreement); or
- c. a Developer may be recategorized from Category A to Category C or from Category B to Category C for one Major Breach.

### **Security Amounts**

- 6. The Security amount included in a Developer Agreement will be based on a percentage of the estimated cost of the completion of the construction or installation of the Municipal Improvements that are the subject of the Developer Agreement. Such estimated cost must be stamped or sealed by an Engineering Professional to the satisfaction of the County. Such percentage of the estimated cost will vary depending on the type of Developer Agreement and the Developer Category.
- 7. Notwithstanding anything else in this policy, the Security amount included in an Infrastructure Agreement may, at the discretion of the County, be based on a percentage of the estimated cost of the removal of the Municipal Improvements (including removal and restoration of the associated area) that are the subject of the Infrastructure Agreement. For clarity, such percentage of the estimated cost will vary depending on the Developer Category.
- 8. Notwithstanding anything else in this policy, if the Security amount included in a Subdivision Agreement is based on Category A being the Developer Category then that Subdivision Agreement must include the requirement for the Developer to pay all applicable offsite development levies associated with that Subdivision Agreement in accordance with the following:
  - a. if the associated subdivision is within a new growth area, then immediately upon entering into that Subdivision Agreement; or
  - b. if the associated subdivision is not within a new growth area, then prior to the endorsement of the associated plan of subdivision or other instrument that effects the subdivision.
- 9. Initial Security Amount.
  - a. The Security amount included in:
    - i. a Subdivision Agreement where the associated plan of subdivision or other instrument that effects the subdivision has not been submitted for endorsement, is the amount set out in the below chart based on the Developer Category:

<b>CATEGORY</b>	<b>INITIAL SECURITY AMOUNT</b>
A	10% of the estimated cost of the construction or installation of the Municipal Improvements
B	10% of the estimated cost of the construction or installation of the Municipal Improvements
C	115% of the estimated cost of the construction or installation of the Municipal Improvements

- ii. a Developer Agreement that is not a Subdivision Agreement, is the amount set out in the below chart based on the Developer Category:

<b>CATEGORY</b>	<b>INITIAL SECURITY AMOUNT</b>
A	50% of the estimated cost of the construction or installation of the Municipal Improvements
B	115% of the estimated cost of the construction or installation of the Municipal Improvements
C	115% of the estimated cost of the construction or installation of the Municipal Improvements

- b. For clarity, in accordance with the Developer Agreement the initial Security is to be provided prior to commencement of construction or installation of any Municipal Improvements that are the subject of the Developer Agreement.

10. Further Security Amount.

- a. Subject to section 10.c., the Security amount included in a Subdivision Agreement where the associated plan of subdivision or other instrument that effects the subdivision has been submitted for endorsement, is the amount set out in the below chart based on the Developer Category:

<b>CATEGORY</b>	<b>FURTHER SECURITY AMOUNT</b>
A	50% of the estimated cost of the construction or installation of the Municipal Improvements
B	115% of the estimated cost of the construction or installation of the Municipal Improvements
C	115% of the estimated cost of the construction or installation of the Municipal Improvements

- b. For clarity, in accordance with the Developer Agreement the further Security is to be provided prior to the endorsement of the associated plan of subdivision or other instrument that effects the subdivision.
- c. In the event that the CCC for a Municipal Improvement has been issued, the Further Security amount for that Municipal Improvement may be adjusted to reflect the Security amount as set out in section 11.

**Releasing Security**

11. Subject to the terms of the Developer Agreement, upon the issuance of the CCC for a Municipal Improvement the Security amount may be reduced to the amount set out in the below chart:

<b>CATEGORY</b>	<b>AMOUNT</b>
A	The greater of: (1) 10% of the estimated cost of the construction or installation of all Municipal Improvements; or (2) 50% of the estimated cost to complete the construction or installation of only the Municipal Improvements for which a CCC has not been issued.
B	The total of: (1) 10% of the estimated cost of the construction or installation of the Municipal Improvements for which a CCC has been issued; plus (2) 115% of the estimated cost to complete the construction or installation of the Municipal Improvements for which a CCC has not been issued.

C	<p>The total of:</p> <ul style="list-style-type: none"> <li>(1) 10% of the estimated cost of the construction or installation of the Municipal Improvements; plus</li> <li>(2) 115% of the estimated cost to complete the construction or installation of the Municipal Improvements for which a CCC has not been issued; plus</li> <li>(3) 50% of the estimated cost of the construction or installation of the Municipal Improvements that are landscaping improvements for which an FAC has not been issued.</li> </ul>
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12. Subject to the terms of the Developer Agreement, upon the issuance of the FAC for a Municipal Improvement the Security amount attributed to that Municipal Improvement may be released.

Effective Date

13. The determination of the Security amount included in a Developer Agreement and the reduction in the Security amount upon the issuance of the CCC in accordance with this policy will not be applied to Developer Agreements in effect at the date of approval by Council of this policy.

## **Policy Record**

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