



## COUNCIL POLICY C-PD01

## Development Agreement Security Requirements

Prepared By:	Planning and Development Services	Council Approval Date:	June 26, 2012
Effective Date:	June 26, 2012	Council Resolution No.:	N/A
References:	Letters of Credit Procedures C-PD01-P1 <i>Municipal Government Act</i>	Previous Revision Date:	March 13, 2007 (Policy PD 001)
Function:	Planning and Development Services	LAS Review Date:	June 3, 2014

### PURPOSE

To ensure compliance with the terms of a Development Agreement, Parkland County requires that a developer provide securities. The County is authorized to require securities by its authority under Section 655(1)(b)(vi) of the *Municipal Government Act*. The security is meant to serve as a performance incentive, enable the County to secure the construction site if needed, and in some cases, secure funds to complete the construction of certain municipal improvements should a Developer not fulfill its obligations. The purpose of this policy is to outline the criteria and method used to determine the minimum amount of security to be submitted by a Developer as part of executing and fulfilling a Development Agreement with the County.

### POLICY STATEMENT

Parkland County will require that a minimum amount of security, as determined under this policy, be submitted by a developer prior to the County ratifying a Development Agreement. Parkland County will further require that a minimum amount of security, as determined under this policy, be submitted by the developer at different stages of the development project.

### DEFINITIONS

1. "Act" means the *Municipal Government Act*, R.S.A., 2000, Chapter M-26.1, and amendments thereto.
2. "Council" refers to the Council for Parkland County.
3. "Development" means development as defined in the Act.
4. "Development Agreement" means an agreement between a developer and the County entered into pursuant to Section 655 of the Act.
5. "Development Permit" means a permit issued under Parkland County's Land Use Bylaw and authorizes a development.
6. "May" means discretionary compliance or a choice in applying policy.
7. "Shall" means mandatory compliance.
8. "Subdivision" means subdivision as defined in the Act.

### SCOPE

This policy applies to all Development Agreements signed between a developer and Parkland County as permitted for under the Act.

## MANAGEMENT RESPONSIBILITIES

The Manager of Planning and Development Services and the Manager of Engineering Services are responsible for the development, implementation, monitoring and evaluation of this policy.

## STANDARDS

### 1. General Security Requirements

- (a) Securities shall be required as part of the Development Agreement process. No construction activity shall be permitted to commence or endorsement issued allowing registration until the appropriate security has been submitted to and accepted by the County.
- (b) Acceptable forms of security are irrevocable letters of credit, cash, certified cheque, or bank draft. Personal cheques, term deposits, land/lots in lieu or guaranteed investment certificates are not representative replacements for securities, and shall not be accepted.
  - (i) Irrevocable letters of credit shall have an automatic renewal clause. All renewals shall be for a minimum of twelve (12) months;
  - (ii) All irrevocable letters of credit requiring renewal should be received by the County thirty (30) days in advance of the expiration. The County reserves the right to call any Letter of Credit not renewed seventy-two (72) hours in advance of expiration. It is the obligation of the developer to ensure they have continual security; and
  - (iii) Irrevocable Letters of Credit shall take the form of and be processed in accordance with Administrative Procedure PD01-P1.
- (c) Securities will be based on a percentage of a certified construction estimate prepared by the developer's engineer. The estimate shall include 10% for engineering and administration costs and GST.
  - (i) At the discretion of the Manager of Engineering Services, certified construction estimates may be subject to third party review to ensure sound engineering judgements are followed and that industry prices and standards are utilized.
  - (ii) Upon written request by the developer's engineer to the Manager of Engineering Services, or designate, certified engineering estimates may be reduced based on actual construction tender prices.
- (d) For multi-phased development, securities will be required for each phase of development. Securities shall not be transferred to the next phase(s) of development until the previous phase has received a Final Acceptance Certificate (FAC) issued by the Manager of Engineering Services.
- (e) Release of securities held by the County back to the developer shall be completed in accordance with Section 5 of this Policy.
- (f) Where a developer is not fulfilling its obligations identified under the Development Agreement and does not act on requests from the County to remedy safety or maintenance concerns, the County will draw on the securities held against the development to address the safety or maintenance concerns to the satisfaction of the County.
- (g) The developer shall forfeit all remaining securities to the County five (5) years from the date a Development Agreement has been executed, if in the sole opinion of the County, the developer has not acted in a reasonable manner to construct incomplete or deficient work. This includes completion of any incomplete work or correction of deficiencies listed by the County on Security and Maintenance Agreements or Construction Completion Certificates (CCC).

## 2. Subdivisions

### Prior to Signing a Development Agreement

- (a) Subdivisions requiring a Development Agreement shall submit upfront security prior to the County signing the agreement. Parkland County shall be at liberty, but not obligated, to use the upfront security to cover any costs associated with bringing the development into compliance with the Development Agreement. The amount of upfront security shall be in accordance with the following:

#### Performance Security

- (i) \$25,000.00 to be held until issuance of a Final Acceptance Certificate (FAC); and

*Note: The Manager of Planning and Development Services has the discretion to reduce (i) for minor projects outside of industrial or multi-lot residential subdivisions, or increase (i) for significant projects where the gross estimated construction costs are in excess of two million dollars.*

#### Infrastructure Security

- (ii) Twenty-five percent (25%) of the estimated cost of all external local improvements as to be approved by the Manger of Engineering Services, if applicable, and held until issuance of a Security and Maintenance Agreement. No security is required for internal local improvements prior to the County signing the Agreement.

### Prior to Issuing Endorsement

- (b) To obtain endorsement of a subdivision plan, the developer shall have been issued all Interim Completion Certificates (ICC) and/or a Construction Completion Certificate (CCC) from the Manager of Engineering Services, and shall have entered into a Security and Maintenance Agreement. The Security and Maintenance Agreement shall outline any allowable incomplete work or deficiencies and any maintenance responsibilities by the developer after endorsement and registration of the subdivision plan. The amount of security shall be in accordance with the following:

- (i) One hundred and fifty percent (150%) of the estimated cost of all allowable incomplete local improvements (both external and internal) and deficiencies. This security shall replace the upfront infrastructure security identified in 2(a)(ii) above.
- (ii) The total amount of securities held by the County under a Development Agreement shall be reviewed annually to ensure that the County is accurately maintaining one hundred and fifty percent (150%) of the estimated cost of all the incomplete local improvements and deficiencies. If the estimated cost to complete the local improvements and deficiencies has increased, the County shall require additional security from the developer.

### Prior to Issuing a Construction Completion Certificate (CCC)

- (c) Upon completion of the local improvements (both external and internal) with no deficiencies, the County shall require security in the amount of five percent (5%) of the local improvements (both external and internal) prior to issuance of the Construction Completion Certificate (CCC) by the Manager of Engineering Services to cover any deficiencies that may arise during the warranty period ending upon the issuance of the Final Acceptance Certificate (FAC). This warranty security shall replace any infrastructure securities previous held by the County under a Security & Maintenance Agreement.

### Upon Issuing a Final Acceptance Certificate (FAC)

- (d) Upon a subdivision having been issued a Final Acceptance Certificate (FAC) by the Manager of Engineering Services, the County shall release all previously held performance and infrastructure securities to the Developer.

### 3. Bareland Condominiums

#### Prior to Signing a Development Agreement

- (a) Bareland condominiums requiring a Development Agreement shall submit upfront security prior to the County signing the agreement. Parkland County shall be at liberty, but not obligated, to use the upfront security to cover any costs associated with bringing the development into compliance with the Development Agreement. The amount of upfront security shall be in accordance with the following:

#### Performance Security

- (i) \$25,000.00 to be held until:
- (1) issuance of a Final Acceptance Certificate (FAC) for external local improvements that are to be transferred to the County, if applicable; and
  - (2) the completion of all internal condominium improvements to a stage similar to the issuance of a Final Completion Certificate (FAC) even though no Final Acceptance Certificate (FAC) would be issued for the internal condominium improvements.

*Note: The Manager of Planning and Development Services has the discretion to reduce (i) for minor projects outside of industrial or multi-lot residential subdivisions, or increase (i) for significant projects where the gross estimated construction costs are in excess of two million dollars.*

#### Infrastructure Security

- (ii) Twenty-five percent (25%) of the estimated cost of all external local improvements that are to be transferred to the municipality, as to be approved by the Manager of Engineering Services, if applicable. No security is required for the internal condominium improvements prior to the County signing the agreement.

#### Prior to Issuing Endorsement

- (b) To obtain endorsement of a bareland condominium plan, the developer shall regarding:
- (i) External local improvements: have been issued all Interim Completion Certificates (ICC) and/or a Construction Completion Certificate (CCC) from the Manager of Engineering Services, and shall have entered into a Security and Maintenance Agreement. The Security and Maintenance Agreement shall outline any allowable incomplete work or deficiencies and any maintenance responsibilities by the developer regarding the external local improvements after endorsement and registration of the condominium plan. The amount of security shall be at the discretion of the Manager of Engineering Services, or designate, in accordance with the following:
- (1) One hundred and fifty percent (150%) of the estimated cost of all allowable incomplete external local improvements and deficiencies. This security shall replace the upfront infrastructure security identified in 3(a)(ii) above.
  - (2) The total amount of securities held by the County under a Development Agreement will be reviewed annually to ensure that the County is accurately maintaining one hundred and fifty percent (150%) of the estimated cost of all the incomplete external local improvements and deficiencies. If the estimated cost to complete the external local improvements and deficiencies has increased, the County shall require additional security from the developer.
  - (3) Upon completion of the external improvements with no deficiencies, the County shall require security in the amount of five percent (5%) of the external prior to issuance of the Construction Completion Certificate (CCC) by the Manager of Engineering Services to cover any deficiencies that may arise during the warranty period ending upon the issuance of the Final Acceptance Certificate (FAC). This warranty security shall replace any infrastructure securities previous held by the County under a Security & Maintenance Agreement for the external improvements.

- (ii) Internal condominium improvements: have completed all internal condominium improvements to a stage similar to the issuance of a Construction Completion Certificate (CCC) even though no Construction Completion Certificate (CCC) would be issued for the internal condominium improvements.
- (1) However, in the instance that a developer wishes to receive endorsement of a bareland condominium plan prior to fully completing the construction of the internal condominium improvements to a stage similar to the issuance of a Construction Completion Certificate (CCC), the developer may provide security in the amount of one hundred percent (100%) of the certified estimated construction cost of the incomplete internal condominium improvements. Construction costs shall include, but are not limited to:
- clearing, stripping and grading;
  - approach construction, culverts and fill;
  - subgrade, ditches and drainage;
  - base and paving of roads and approaches;
  - placement of all black dirt and seeding;
  - all utilities, deep and shallow, including water wells, cisterns or private sewage systems where applicable;
  - cost of engineering including design drawings, construction inspection, quality control testing and as-builts;
  - signage;
  - contingency fund for snow removal, weed control, grass cutting and culvert clean out; and
  - quality assurance testing by the County at its sole discretion.

#### Release of Security for Bareland Condominiums

- (c) Release of securities collected under Section 3(a)(i)(2) and Section 3(b)(ii) of this Policy regarding the completion of internal condominium improvements shall be at the sole discretion of the Manager of Engineering Services. In general, the County will only consider this option upon request from a developer if all internal condominium improvements have been completed to a similar stage as a Final Acceptance Certificate, even though no Final Acceptance Certificate will be issued.

#### **4. Development Permits**

- (a) Security for Development Permits that require a Development Agreement as a condition of approval shall be submitted prior to the County signing the Development Agreement. The amount of security required will be calculated in accordance with paragraph 2(a), above.
- (b) In the instance where a developer intends to begin the operations that are the subject of the Development Permit prior to the internal and external improvements having received a Final Acceptance Certificate (FAC), the developer must have received an Interim/Construction Completion Certificate (ICC or CCC) and, have entered into a Security and Maintenance Agreement with the County and provide securities in accordance with paragraph 2(b), above.
- (c) In the instance where a Development Agreement is not required, but the County still requires securities in order to ensure that all permit conditions are carried out. The Development Authority shall require security in accordance with the County's Land Use Bylaw or the amount established under the Fees and Charges Schedule approved by Council each year as part of the Capital and Operating Budget, as applicable. *(Examples may include but are not limited to developments involving Soil Remediation, Stripping, Filling, Excavation and Grading, Demolition, Landscaping, Moved-on Buildings, Approach Construction, etc).* The security shall meet the following criteria:
- (i) A sufficient amount of security to cover any potential cost to the County to bring the development into compliance;
- (ii) A sufficient amount of security to ensure that the applicant/developer is motivated to carry out all of the development permits conditions within the prescribed time period; and

- (iii) The amount of security shall be outlined as a condition of approval within the issued development permit.

**5. Partial Release of Security**

- (a) A partial reduction or release of security held by the County shall only be approved by the Manager of Engineering Services upon the execution of a Security and Maintenance Agreement or revised Security and Maintenance Agreement in connection with the final placement of asphalt, the issuance of the Construction Completion Certificate (CCC), or upon the issuance of the Final Completion Certificate. No partial security releases will be permitted by the County at any other times.

**6. Request to Vary a Standard**

- (a) Any request by a developer or a developer's engineer to vary a standard within this policy will require the approval of Council. Any such request shall be initiated through written contact with Parkland County's Chief Administrative Officer (CAO). The developer shall acquire approval from the County's Engineering Services Department for any cost estimates required to be submitted prior to making formal application to the CAO. The CAO, through Council, will advise the Developer, the Manager of Engineering Services and the Manager of Planning and Development Services in writing regarding any decision to vary a standard under this policy.
- (b) The Manager of Engineering Services, or designate, shall remain the authority on approving certified construction cost estimates on behalf of Parkland County.