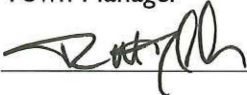


A-PI-053

Development Agreement Security Policy

Authority: Town Manager

Effective Date: October 1, 2021

Signature: 

Future Review Date: 2025

Responsibility: Planning and Infrastructure

References: *Municipal Government Act Part 17*

Replaces: No Prior Policy

- 1.0 Purpose:** This policy establishes a framework for the collection and release of Security related to Development Agreements when required from a Developer to ensure Local Improvements are constructed to Town Standards as part of a subdivision or development.
- 2.0 Scope:** This policy applies to all Development Agreements that require Security.
- 3.0 Definitions:**
- 3.1 “Construction Completion Certificate” or “CCC” means a certificate accepted by the Town confirming that the Local Improvements are complete and operational to the satisfaction of the Town, and that the Warranty Period for the work can commence;
- 3.2 “Development Agreement” means a legal contract between a Developer and the Town that defines the terms and conditions under which a subdivision or development must be carried out, including responsibility to construct Local Improvements and associated financial obligations;
- 3.3 “Developer” means the owner(s) of land being subdivided or developed, including the individuals, corporations, employees, or representatives associated with the owner(s);
- 3.4 “Developer Category” means the category that a Developer falls within based on the criteria as outlined in Schedule A that identifies the specific Security amounts owed by the Developer as outlined in Schedule B;
- 3.5 “Final Acceptance Certificate” (FAC) means a certificate accepted by the Town confirming completion of a Warranty Period;

- 3.6 “Local Improvements” means any infrastructure, feature, or upgrade required to support a proposed subdivision or development, which is the responsibility of the Developer and includes, but is not limited to: deep utilities, shallow utilities, roadways, lanes, trails, sidewalks, street lighting, and landscaping, and is to be owned and operated by the Town;
- 3.7 “Major Breach” means any breach of a Development Agreement, development or subdivision requirement, or related development activity by a Developer as outlined in Schedule C;
- 3.8 “Minor Breach” means any breach of a Development Agreement, development or subdivision requirement, or related development activity by a Developer as outlined in Schedule C;
- 3.9 “Security” means a financial commitment provided to the Town by a Developer as part of a Development Agreement;
- 3.10 “Town” means the Town of Stony Plain;
- 3.11 “Town Standards” means the procedures, standards, and specifications in the Municipal Development Standards; and
- 3.12 “Warranty Period” means a minimum two-year period following issuance of a Construction Completion Certificate where the Developer is solely responsible for the maintenance of Local Improvements related to a subdivision or development and concludes upon issuance of a Final Acceptance Certificate.
- 4.0 Statement:** The Town utilizes a well-defined, incentivized, and consistent approach for the collection and release of Development Agreement Security to ensure the Town balances its financial risks associated with land development, while encouraging community growth and responsible development.
- 5.0 Standards:**
- 5.1 General Provisions
- 5.1.1 The Town will collect Security as part of a Development Agreement where a subdivision or development requires Local Improvements.
- 5.1.2 When a Development Agreement has been executed prior to the date of approval of this policy, the terms and conditions of the Development Agreement will prevail where a conflict exists between this policy and a Development Agreement.
- 5.2 Security Types and Requirements

- 5.2.1 The Town will only accept Security submitted in the form of one or more of the following:
 - 5.2.1.1 Certified cheque;
 - 5.2.1.2 Bank draft;
 - 5.2.1.3 Letter of credit, or
 - 5.2.1.4 Development Bond.
- 5.2.2 All monies will be held in a zero-interest account.
- 5.2.3 Security submitted as a letter of credit or as a development bond must be in a form and content acceptable to the Town and be unconditional, irrevocable, and payable upon demand.
- 5.2.4 The Town will not accept Security in the form of:
 - 5.2.4.1 An insurance bond, or
 - 5.2.4.2 Payment made by credit card.
- 5.2.5 The amount of Security required from a Developer for a Development Agreement is determined by the Developer Category they are placed in and the construction costs for the Local Improvements related to the Development Agreement.
- 5.2.6 The Town will not accept Security in the form of a Development Bond from a Category C or D Developer.
- 5.2.7 The amount of Security may be increased or reduced depending on:
 - 5.2.7.1 Circumstances of the subdivision or development;
 - 5.2.7.2 Completion of the Local Improvements;
 - 5.2.7.3 The Developer being placed within a different Developer Category;
 - 5.2.7.4 New or updated construction costs estimates or actual or tendered costs for the Local Improvements; and
 - 5.2.7.5 Revisions to the percentage of the construction costs as listed in Schedule B based on the Developer Category and the minimum amount of Security.
- 5.3 Determine Developer Category
 - 5.3.1 The Town places a Developer into a Developer Category based on past development performance within Stony Plain and other municipalities based on the criteria listed in Schedule A.
 - 5.3.2 A Developer using multiple legal company names to enter into more than one Development Agreement will be considered on a case-by-case basis as one Developer that falls within the same category at the discretion of the Town.

- 5.3.3 The Town will place a Developer into a different Developer Category at any time based on updated development performance in consideration of the criteria listed in Schedule A and the breach information in Schedule C.

5.4 Security Collection

- 5.4.1 Prior to commencing construction of the Local Improvements, a Developer must provide the required amount of Security to the Town as determined in Section 5.2.5.
- 5.4.2 Prior to a Developer requesting a subdivision be endorsed, a Developer may need to provide additional security in accordance with Schedule B.

5.5 Security Reduction and Release

- 5.5.1 Upon request from a Developer, the Town will reduce the amount of Security when:
 - 5.5.1.1 The Developer receives executed Construction Completion Certificates for both the surface and underground Local Improvements;
 - 5.5.1.2 The Developer receives executed Final Acceptance Certificates for both the surface and underground Local Improvements and a Construction Completion Certificate for the Landscaping Local Improvements; or
 - 5.5.1.3 Where a Development Agreement allows for or only requires a single Construction Completion Certificate, when the Developer receives an executed Construction Completion Certificate for all relevant Local Improvements.
- 5.5.2 Upon request from a Developer and upon acceptance of the Final Acceptance Certificates, the Town will fully release the amount of the Security.
- 5.5.3 Prior to the issuance of all executed Final Acceptance Certificates, the minimum amount of Security must be in accordance with Schedule B.

5.6 Drawing on Securities

- 5.6.1 If a developer does not fulfill the obligations of their Development Agreement or does not act on requests from the Town to remedy maintenance or safety concerns related to the construction of Local Improvements, the Town may draw on and use the Security collected from the Developer to complete any outstanding obligations or maintenance, or address safety concerns related to the work covered by the Development Agreement to the satisfaction of the Town.

- 6.0 **Policy Review:** This policy shall be reviewed by Administration within four years of being implemented, with any changes being submitted to the Town Manager for approval.

Schedule A – Developer Category Criteria

Category	Determining Criteria
A	<ul style="list-style-type: none">• Two or more Town Development Agreements completed or substantially completed* in the last 5 years; and• No Major Breaches or Minor Breaches in the past 2 years.
B	<ul style="list-style-type: none">• One or more Town Development Agreements completed or substantially completed* in the last 5 years, or positive references from other Alberta municipalities for at least two Development Agreements completed or substantially completed* in the last 5 years; and• No Major Breaches and no more than two Minor Breaches in the past 2 years.
C	<ul style="list-style-type: none">• No Town Development Agreements completed or substantially completed* in the last 5 years, or less than three other municipal Development Agreements completed or substantially completed* in the last 5 years; or• No Major Breaches and more than two Minor Breaches in the past 2 years.
D	<ul style="list-style-type: none">• One or more resolved Major Breaches in the past 2 years; or• One or more unresolved Major Breaches.

*All Local Improvements have been issued an executed CCC

Schedule B – Security Amounts

Developer Category	Initial Security	Security Reduction		Security Increase
	Percentage of Construction Costs prior to Commencement of Construction	Holdback for Certified Local Improvements*	Holdback for Uncertified Local Improvements and Landscaping**	Percentage of Construction Costs prior to Subdivision Endorsement without underground and surface CCCs***
A	10%	5%	20%	25%
B	25%	10%	50%	75%
C	40%	20%	75%	100%
D	100%	50%	100%	125%

*Includes all non-landscaping Local Improvements that are covered by an issued executed Construction Completion Certificate, excluding any Local Improvements considered as outstanding deficiencies

**Includes all landscaping Local Improvements and any non-landscaping Local Improvements not covered by an issued executed Construction Completion Certificate or considered as outstanding deficiencies

***Only applies to Local Improvements not covered by an issued executed Construction Completion Certificate or considered as outstanding deficiencies

Minimum Security payments for all Developer Categories will not be less than:

- \$150,000 when related to a major Development Agreement;
- \$50,000 when related to a minor Development Agreement involving water, sanitary or both types of Local Improvements; and
- \$20,000 when related to a minor Development Agreement not involving either water, sanitary or both types of Local Improvements.

Schedule C – Past Performance Expectation Breaches

Major Breaches	Minor Breaches
The Town considers each instance of the following as a Major Breach:	The Town considers each instance of the following as a Minor Breach:
<ul style="list-style-type: none"> a) Commencing construction of Local Improvement prior to an executed Development Agreement; b) Failing to obtain any required non-municipal approvals, permits, or licenses; c) Failing to comply with the Town Standards, including appropriate Professional Engineer supervision during construction; d) Failing to provide and maintain Security or obtain and maintain insurance; e) Failing to complete all essential services prior to building construction; f) Failing to remedy any Minor Breach within the timeline set by the Town; and g) Failing to comply with a Town order. 	<ul style="list-style-type: none"> a) Commencing development or construction prior to obtaining the necessary municipal approvals or providing required Security or proof of insurance (including hauling operations); b) Failing to apply for a CCC or FAC within the required timelines; c) Failing to submit fees or make development charge payments, including off-site levies, within the required timelines; d) Failing to maintain erosion and sedimentation control measures, provide dust control, provide weed control, or provide control of construction debris; e) Failing to correct deficiencies or requiring concessions for acceptance of work; and f) Being issued an order by the Town.