



GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

EFFECTIVE APRIL 1, 2020

TABLE OF CONTENTS

1.	SUMMARY	1
2.	ACCEPTABLE FORMS OF SECURITY	1
3.	STEP 1: THE CATEGORY.....	1
4.	STEP 2: THE AMOUNT.....	2
5.	STEP 3: THE DEADLINE.....	3
6.	STEP 4: THE RELEASE	4
7.	RE-CATEGORIZATION	6
8.	DATE EFFECTIVE	7
	APPENDIX A : LETTER OF CREDIT REQUIREMENTS.....	I
	APPENDIX B : DEVELOPMENT BOND REQUIREMENTS.....	i

GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

1. SUMMARY

Subdivision & 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; or
- Development Bond ¹

¹ – Will be part of a 5 year Pilot Program starting in 2020

Note: 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

Category A: 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

GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

Development Agreements in the past five (5) years where all Construction Completion Certificates were issued within the timelines set out in that agreements.	
Category 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.
Category C: 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.
Category D: 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.	

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

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

GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

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. The City reserves the right to use its own cost estimate for the purposes of determining the Security Amount, if the cost estimate provided by the consultant is not acceptable.

Table 2: Security Amounts

Category	Percentage of Construction Costs	Minimum	Additional Security for Delayed Drawing Approval+	Landscape Holdback
*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

* Additional requirement for Categories A & B Developers - they also need to have completed \$100,000 of construction (in all their previous agreements combined **with Subdivision and Development Coordination**).

** \$10,000 minimum exception for agreements further to Development Permits 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
A	<ul style="list-style-type: none">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.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.
B	<ul style="list-style-type: none">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.

GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

	<ul style="list-style-type: none"> 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. 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.
C	<ul style="list-style-type: none"> 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"> 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 Security equalling 100% of the costs to complete the construction must be submitted prior to the registration of the Plan of Subdivision. 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. 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. 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.
D	<ul style="list-style-type: none"> In all cases, developers in this Category must submit the Inspection Fees, Certificate of Insurance, ARA Administration Fee, Security and Assessments prior to the start of construction or prior to the Conditions Precedent Date outlined in the Servicing Agreement, whichever first occurs.

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
A	<ul style="list-style-type: none"> Upon issuance of all Construction Completion Certificates for permanent

GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

	<p>watermain, storm and sanitary sewer, roadway, storm water management facility, liftstation and arterial roadway improvements, and other improvements deemed by the Senior Development Engineer, the Security amount will be reduced to the greater of:</p> <ul style="list-style-type: none"> a) 5% of the original estimated construction costs; or b) the sum of the holdback amounts; or c) \$20,000 <p><i>The reduction of Security from 10% to 5% of the original estimated construction costs will be piloted for a minimum period of 2 years, and will be evaluated upon completion. Subdivision & Development Coordination may cancel the Pilot at any time if Subdivision & Development Coordination determines it is warranted.</i></p> <ul style="list-style-type: none"> • The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts. • Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement. • The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).
B	<ul style="list-style-type: none"> • 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"> a) 15% of the original estimated construction costs; or b) the sum of the holdback amounts; or c) \$20,000 • The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts. • Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement. • The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).
C	<ul style="list-style-type: none"> • 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"> a) 20% of the original estimated construction costs; or b) 100% of the construction costs to complete; or c) the sum of the holdback amounts; or d) \$20,000

GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

	<ul style="list-style-type: none">• The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts.• Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement.• The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).
D	<ul style="list-style-type: none">• The Security amount will be released upon issuance of all Final Acceptance Certificates with the exception of any holdback amounts.• Holdbacks for temporary improvements will be released as per the terms set out in the Servicing Agreement.• The landscaping holdback will be released upon issuance of the Final Acceptance Certificate(s) for the landscaping improvement(s).

7. 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 Subdivision & 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

GUIDELINES FOR ESTABLISHING SECURITY IN SERVICING AGREEMENTS

- 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 Servicing Agreement.

8. DATE EFFECTIVE

These Security Guidelines are effective April 1, 2020 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

LETTER OF CREDIT GUIDELINES:

1. 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 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
2nd Floor, 10111 – 104 Avenue NW
Edmonton AB T5J 0J4
Attention: Angie Neal-Anshelm**

ADDITIONAL INFORMATION:

The amount of the Letter of Credit is determined by the Senior Development Engineer in Urban Form and Corporate Strategic Development who is responsible for the specific Servicing Agreement.

APPENDIX A: LETTER OF CREDIT REQUIREMENTS

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 Security are deducted from the proceeds of the Letter of Credit.

The City of Edmonton is responsible for the security, maintenance and validity of the Letter of Credit.

The contact person at the City of Edmonton, for Letter of Credit related items, is Angie Neal-Anshelm and her contact information is as follows:

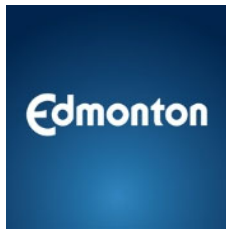
Telephone Number: 780-496-6169

Fax Number: 780-496-6131

Email Address: angie.neal-anshelm@edmonton.ca

DEVELOPMENT BOND GUIDELINES:

2. If a Development Bond is provided as security, there are guidelines that must be followed when the customer's Surety issues the Development Bond:
- a) Must be entered into with a City of Edmonton approved surety
 - b) Must be stated in Canadian dollars (numeric and text)
 - c) Shall be an unconditional, irrevocable, and payable on demand
 - d) The term of the Development Bond must match the term of the applicable Servicing Agreement
 - e) The Surety provider is responsible for the security, maintenance and validity of the Development Bond.
 - f) The Development Bond must be in a form and content acceptable to the City
 - g) Please use the form attached on the following four (4) pages.



SUBDIVISION AND DEVELOPMENT COORDINATION
DEVELOPMENT SERVICES
URBAN FORM & CORPORATE STRATEGIC DEVELOPMENT
2nd FLOOR, EDMONTON TOWER
10111 – 104 AVENUE NW

Development Bond

Bond No. (the "Bond") _____ Bond Amount \$ _____

The parties hereto agree that:

(the "Principal")

AND

(the "Surety")

a corporation created and existing under the laws of Canada, and duly authorized to transact the business of suretyship in the Province of Alberta as Surety, are held and firmly bound unto the City of Edmonton, a municipal corporation, as Obligee (the "Obligee"), in the amount of

_____ dollars (\$ _____).

Canadian funds (hereinafter called "Bond Amount"), for payment of which sum, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally in accordance with this Bond.

WHEREAS, the Principal has or will be entering into a servicing agreement with the Obligee as a condition of their subdivision approval or issuance of a development permit, being SA _____ including the submitted engineering drawings, hereinafter referred to as "the Agreement".

NOW, THE CONDITION OF THIS BOND IS SUCH THAT, if the Principal shall, in the sole and absolute determination of the Obligee, promptly and faithfully performs all its obligations under the Agreement, then this Bond is null and void; but otherwise shall remain in force and effect in accordance with the terms thereof.

On determination by the Obligee, in its sole and absolute discretion, that the Principal is in default of its obligations under the Agreement, the Surety and Principal agree that the Surety will make payment(s) to the Obligee for amounts demanded by the Obligee, up to an aggregate of the Bond Amount, within seven (7) business days after the Surety's receipt of a demand for payment from the Obligee, delivered by hand or courier to the Surety's address noted herein and substantially in the form of the Notice of Default demand for payment, attached to this Bond as Schedule "A" (the "Payment Demand").

The Surety and the Principal expressly waive any defence that the Principal is not in default of its obligations under the Agreement Notice of Default.

The Notice of Default Payment Demand delivered to the Surety shall be accepted by the Surety and Principal as conclusive evidence that the amount demanded within the Notice of Default Payment Demand is payable to the Obligee. All payments made by the Surety to the Obligee under this Bond shall be made free and clear without deduction, set-off, or withholding, unless and to the extent required by law.

In the event the total amount of all payments made by the Surety under this Bond exceeds the amount required to indemnify the Obligee to remedy the default of the Principal under the Agreement, the Obligee shall return all excess payments to the Surety.

The Obligee may make multiple Payment Demands under this Bond.

The Surety shall not be liable for a greater sum than the Bond Amount. Any amounts paid by the Surety to the Obligee under this Bond shall reduce the Bond Amount by the amount of each such payment. In no event shall the liability of the Surety under this Bond exceed the Bond Amount. The Bond Amount is not and shall not be deemed to be cumulative from year to year.

If the Surety at any time delivers at least sixty (60) days prior written notice to the Obligee and to the Principal of its intention to terminate this obligation, the Principal shall deliver to the Obligee, not less than thirty (30) days prior to termination of this Bond, financial security in the amount of this Bond in a form acceptable to the Obligee to replace this Bond. If the replacement financial security is not so provided by the Principal or is not accepted by the Obligee, this Bond shall remain in effect.

This Bond shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable thereto and shall be treated, in all respects, as a contract entered into in the Province of Alberta without regard to conflict of laws principles. The Principal and Surety hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Alberta.

It is a condition of this Bond that any demand, suit or action under this Bond must be commenced by the expiration of two (2) years from the date of the last Final Acceptance Certificate required under the Agreement is acknowledged by the Obligee.

Upon the performance of all of the Principal's obligations to the Obligee under the Agreement, as determined by the Obligee, the Obligee shall return this Bond to the Surety for termination or advise the Surety in writing that this Bond is terminated.

Any notice hereunder is to be given:

In the case of the Obligee, to:
General Supervisor, Development Servicing Agreements
Urban Form and Corporate Strategic Development
2nd Floor, 10111 – 104 Avenue NW
Edmonton, AB T5J 0J4

in the case of the Principal, to:

(name and address)

in the case of the Surety, to:

(name and address)

IN WITNESS WHEREOF, this Bond is duly signed, sealed and delivered this _____ day of _____,
20____.

The Principal:

Name of Person signing

Signature (Affix Seal)

The Surety:

Name of Person Signing

Signature (Affix Seal)

Schedule "A"

Notice of Default

Date: _____

Surety: _____

Address: _____

Attention: _____

Re: Servicing Agreement Bond No.: _____ (the "Bond")

Principal: _____ ("The Principal")

Obligee: _____ ("The Obligee")

Servicing Agreement: _____ ("The Servicing Agreement")

Dear Sir:

Pursuant to the above referenced Bond, The City of Edmonton hereby certifies that:

(a) the Principal is in default under the Agreement; and

(b) the City of Edmonton is entitled under the Agreement to be paid the amount hereby demanded.

We hereby demand that the Surety make payment to the City of Edmonton pursuant to the Bond in the amount of

_____ dollars (\$_____).

Canadian funds, within seven (7) business days and deliver the payment to:

_____ (insert delivery instructions here).

Yours truly,

THE CITY OF EDMONTON

By: _____

Name: _____ (Authorized Name – Obligee)

Title: _____ (Authorized Title – Obligee)