

Performance Securities and Plan Review Fees for Site Plan Approval



Introduction

For development proposals approved under Section 41 of the *Planning Act* (“Site Plan Approval”), the City may require the posting of performance securities to be held against the completion of required site development works. The requirement for posting of securities is outlined in the approval in principle letter. This document provides information on:

- the types of performance securities the City will accept,
- how to calculate the required securities and plan review fees; and,
- how performance securities are released after site works are complete.

Types of Performance Securities

The City of Kitchener shall accept only the following approved securities:

- 1) Letter of Credit (in prescribed form acceptable to the City Solicitor) issued by a Schedule I bank, Schedule II bank, Schedule III bank or Trust Company with a minimum DBRS rating A (low) (or equivalent).
- 2) Letter of Credit (in prescribed form acceptable to the City Solicitor) issued by a Credit Union provided that:
 - The Credit Union is verified as a member of the Central 1 Credit Union
 - The Central 1 Credit Union is rated A (low) (or equivalent) or higher
 - The Credit Union has its Head Office in Ontario
 - The cumulative Letters of Credit do not exceed 1% of the Credit Union’s Tier 1 Capital as per the Credit Union’s most recent audited financial statements.
- 3) A certified cheque payable to City of Kitchener
- 4) Cash

Note that:

- If a Letter of Credit was previously accepted in accordance with the above, and the institution has since been downgraded and no longer meets the minimum requirements, the City may request a new acceptable Letter of Credit.
- The developer should contact Bev Grant-Campbell 519-741-2200 ext-7858 in advance of obtaining their Letter of Credit, in order to have the DBRS rating checked and pre-cleared.
- An example Letter of Credit template is attached for your reference (see Appendix A).

Calculation of Performance Securities & Plan Review Fees

To calculate the amount of performance securities required, an itemized cost estimate must be prepared. The City has an easy-to-use spreadsheet that does the calculation for you – you will simply need to input quantities of site development materials and other information available through www.kitchener.ca/SitePlans.

Performance securities are calculated based on site development works which include such items as:

- 1) Grading (e.g. rough grading, erosion control measures)
- 2) Stormwater Management (e.g. quality, quantity and retention control measures)
- 3) Site Servicing (e.g. storm, sanitary and water) Note that sanitary and water servicing are used to calculate the plan review fees but are excluded from the performance security calculation. The spreadsheet does this calculation for you.
- 4) Surfacing (e.g. paving and subgrade material, curbing, pavement markings)
- 5) Landscaping (e.g. site plantings, ground cover, retaining walls, site furnishings and play structures)
- 6) Site Lighting
- 7) Heritage or environmental protection and monitoring measures
- 8) Consultant Fees

The City's spreadsheet includes the complete list of required information. If you have any questions, please contact us!

Performance Securities Release

With performance securities posted, based 50 percent of the cost of all site development works. A partial release of any securities cannot be applied for until over 50 percent of the site development works have been completed.

Submission of Certifications

To request a full or partial release of the letter of credit, check your Section 41 agreement or Schedule A to a Stamp Plan to determine which of the following consultants are required to complete a **Site Development Works Certification Form** that verify that site development works have been completed in accordance with the approved plans and reports. To access the forms visit www.kitchener.ca/SitePlans

- 1) **Engineering Consultant** who prepared the plans (SWM/Grading) for items #1-5 on the City's spreadsheet sent to engineering@kitchener.ca

The following certifications must be sent to Planning.Applications@kitchener.ca :

- 2) **Landscape Architect/Consultant** who prepared the Landscape Plan for items #6-7 on the City's spreadsheet.
- 3) **Lighting Engineer/Consultant** who prepared the Lighting Plan for the site lighting (item #8) on the City's spreadsheet.
- 4) **Acoustic Engineer/Consultant** who prepared the Noise Study.
- 5) **CPTED Consultant** who prepared the CPTED report (item #9)

6) Other Certifications may be necessary, depending on the project such as heritage, arborist or environmental specialist as outlined in the Section 41 agreement.

City Inspections

Upon receipt of above noted forms, City staff will conduct an inspection to verify that the Site Development Works are installed in accordance with the approved plans. Should we find any discrepancies and/or deficiencies, an inspection report will be issued to the owner and the appropriate consultant(s). Any revisions to the approved plans, require approval from the City's Manager of Development Review prior to installation of the works.

Partial Release

The City will not reduce the Letter of Credit below 25% of the cost of all site development works (50% of the value of the original letter of credit) or \$250,000 whichever is the lesser, until the City has received all required Site Development Works Certification Forms, giving complete certification of the site, and the City is in complete agreement with the certification.

Maintenance and health of plant material

All site development works are to be maintained and all plant material is to be in a healthy vigorous state for approval. A landscape contractor's plant material guarantee is not acceptable to receive release related to dead or poor condition plant material.

Final Release

Upon completion of the items outlined in the inspection report, the applicant shall notify City staff for inspection to obtain a final release of the security including updated certification forms.

Final acceptance of the site development works by the City occurs between May 1st and October 31st only. Due to environmental conditions, final inspection and/or acceptance of the installation of plant material, sodding and/or seeding may not be possible between November 1st and April 30th. Consequently, between these months, it may not be possible to reduce the portion of the Letter of Credit held to ensure satisfactory completion of the installation of plant material, sodding and/or seeding. The reduction to the Letter of Credit will be based on the amount of site and landscape works that City staff is able to assess at the time of the site inspection. A reduction to the Letter of Credit does not necessarily constitute full acceptance of any of the site development works.

Inspection Fees

If more than one inspection is necessary due to deficiencies or discrepancies, an additional inspection fee may be required.

Public Agencies

Performance securities shall not apply to the City or any local board thereof, the Regional Municipality of Waterloo or any local board thereof, Kitchener-Wilmot Hydro Inc., Waterloo Region District School Board, Waterloo Catholic District School Board, Conseil Scolaire de District Catholique Centre-Sud, Conseil Scolaire Viamonde , or the Federal or Provincial Government or any crown agency thereof, or hospitals as defined in the Public Hospitals Act, R.S. O. 1990.

Please note that the cost estimate and plan review fees are required. Additionally, the applicable inspections and certifications would be necessary to deem the site complete in accordance with the approved plans after site construction is complete.

Appendix A. Bank Example of Irrevocable Letter of Credit

Note that must be provided on bank or credit union letterhead (name of Kitchener-Waterloo branch).

LETTER OF CREDIT Number: [add number here] DATE: [add date here]

TO: THE CORPORATION OF THE CITY OF KITCHENER

UNCONDITIONAL IRREVOCABLE LETTER OF CREDIT

We hereby authorize you to draw on the **NAME OF BANK, KITCHENER-WATERLOO BRANCH** for account of **NAME OF CLIENT** an aggregate amount of **AMOUNT WRITTEN OUT IN FULL (\$AMOUNT) DOLLARS** of lawful money of Canada available by drafts at sight. Pursuant to the request of our customer **NAME**, we hereby establish and give to you an irrevocable letter of credit in your favour pursuant to an Agreement between the Corporation of the City of Kitchener and **NAME ON SECTION 41 AGREEMENT** dated the **DAY** of **MONTH, YEAR**, with respect to **ADDRESS OF SITE** in the total amount of **AMOUNT WRITTEN IN FULL (\$AMOUNT) DOLLARS**, which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our said customer, to make such demand and without recognizing any claim of our said customer.

This letter of credit will continue in full force and effect for one year from the date hereof and thereafter from year to year unless we notify you in writing by registered mail not less than 30 days prior to the expiration of each year's term that this letter of credit will not be renewed. Upon receipt by you of such notice you may draw hereunder.

Partial drawings are permitted. Drafts must be drawn at any time not later than the close of business at our counters on the date upon which this letter of credit will expire.

Drafts shall state on their face that they are drawn under the **NAME OF BANK, KITCHENER-WATERLOO BRANCH** Letter of Credit No. _____ dated the _____ day of _____, 20____. The amount of this letter of credit may be reduced from time to time as you advise us by notice in writing.

We hereby agree with the drawers, endorsers and bona fide holders of the bills drawn in compliance with the terms of this letter of credit that the bills shall be duly honored upon presentation to us.

[Assistant Manager signs here]

ASSISTANT MANAGER

[Manager signs here]

MANAGER