	<h2>Municipality of Crowsnest Pass Policy</h2>
<p>Policy No.: Policy Title: Approval Date: Supersedes Policy: Department:</p>	<p>2006-03 Subdivision and Development Agreement Securities Policy May 9, 2023 2006-02 Development, Engineering and Operations</p>

### 1.0 POLICY PURPOSE

Pursuant to Sections 650, 651 and 655 of the *Municipal Government Act*, the Municipality of Crowsnest Pass (the "Municipality") may, as a condition of a development permit or a subdivision approval, require an Applicant to enter into, and comply with the terms and conditions of, a Development Agreement to install, construct and oversize certain Municipal Improvements, and may require that the Applicant provide financial security to ensure completion of the Municipal Improvements to the Municipality's satisfaction.

Council for the Municipality establishes this policy to provide direction regarding the key terms and processes associated with the security requirements under the Municipality's Development Agreement process for development or subdivision projects within the Municipality

### 2.0 DEFINITIONS

"Act" means the *Municipal Government Act*, RSA 2000, Chapter M-26, as amended or replaced from time to time.

"Applicant" means the person applying for development or subdivision approval within the Municipality, also known as "the Developer" or the "private landowner".

"Construction Completion Certificate" means a certificate issued by the Municipality, certifying the completion of all or a portion of the Municipal Improvements to the Municipality's satisfaction.

"Cost of Municipal Improvements" means and includes:

- a) the actual tendered costs to construct the Municipal Improvements to the Municipality's satisfaction, where such tendered costs are available, or
- b) where actual tendered costs are not available, the Applicant's engineering consultant shall prepare cost estimates for the construction of the Municipal Improvements to the Municipality's satisfaction, that shall be submitted to the CAO or designate for approval and, if approved by the CAO or designate, such cost estimates shall be used to determine the Cost of Municipal Improvements. If the CAO or designate is not satisfied with the estimates provided by the Applicant's engineering consultant, the CAO or designate may require an independent evaluation from another professional engineer to confirm accuracy of the estimates, the outcome of which shall be used to determine to Cost of Municipal Improvements, and

- c) in addition to either of the above, contingency (5%), engineering (10%) and federal taxes (5% GST).

**“Development Agreement”** means a legal agreement between the Municipality and the applicant outlining the provisions for construction of Municipal Improvements as contemplated within Section 650, 651 and/or 655 of the Act.

**“Final Acceptance Certificate”** means a certificate issued by the Municipality, certifying the Municipality’s acceptance of the Municipal Improvements, or a portion thereof, upon the expiry of a warranty period and the completion of any repairs for defects or deficiencies.

**“Municipal Improvements”** means any and/or all of those capital improvements and services referenced within Sections 650, 651 and 655 of the Act, which the Municipality requires the Developer to construct and install on Municipally owned or Municipally controlled land to provide publicly owned utilities, infrastructure and services to an area of the Municipality that is the subject of a development permit or subdivision approval, and which improvements and services shall become Municipally owned or Municipally controlled (e.g. a utility easement on private land) upon the registration of a plan of subdivision, a utility right-of-way, or an easement, and the issuance of a Construction Completion Certificate. “Municipal Improvements” includes public roads, public lanes, public water lines, public wastewater lines, public stormwater management facilities, and privately owned franchise utilities (e.g. gas, electricity, and telecommunications provided by third parties) that are located in a Municipally controlled utility easement, a road, a lane, a Public Utility Lot, or on other Municipally owned or Municipally controlled land, including components that require oversizing to accommodate a proposed development or subdivision or future development or subdivision. “Municipal Improvements” excludes private roads, private utilities and other private installations that are located on private land not controlled by the Municipality.

**“Security Deposit” or “Security”** means a financial instrument in the form of an irrevocable letter of security that is automatically renewed annually until not required any longer, that an Applicant deposits with the Municipality at the time of entering into a Development Agreement, to hold for the duration of the construction project and for a two-year warranty period following the issuance of a Construction Completion Certificate, as a guarantee for the completion or repair of Municipal Improvements to the Municipality’s satisfaction. The amount of security shall be a percentage of the “Cost of Municipal Improvements” as defined in and determined pursuant to the provisions of this Policy.

**“Service Connection Agreement”** is a type of Development Agreement that outlines the provisions for the installation by the Municipality of stubbed service connections (for water and/or wastewater) from existing service mains (typically in the street) to the property line of an existing but un-serviced property, or to a proposed new parcel that is to be subdivided from an existing property and the new parcel requires services. The Service Connection Agreement is subject to the property owner agreeing to pay for the Municipality’s cost of installing the stubbed service connections based on an upset fee estimate prepared by the Municipality, after which the landowner is invoiced for the actual installation cost.

### 3.0 POLICY STATEMENT

#### 3.1 Security Requirements

- a) What Triggers a Development Agreement and Security Requirement?

- i. A development agreement and associated security **are required** for Municipal Improvements that are to be installed or constructed on Municipal-owned or Municipally controlled land (e.g. roads, lanes, public utility lots, public utility easements, Municipal Reserve), or on land that will be dedicated to Municipal ownership or control upon registration of a plan of subdivision or completion of a development project.
- ii. A development agreement and security are required for Municipal Improvements only, which means up to a property boundary between the Municipal Land / Municipally controlled easement and private property. Services, utilities, and infrastructure beyond the public / private property boundary are private components, which are the responsibility of the private landowner.
- iii. A development agreement and security **are not required** for the following:
  - (a) the private portions of a development or subdivision project [e.g. the driveway, yard, and water, wastewater and stormwater infrastructure on a single-family residential parcel, or the driveways, parking areas, green spaces, and water, wastewater and stormwater infrastructure of an apartment building (rental or condominium), or the roads, open spaces, and water, wastewater and stormwater infrastructure in a bare land condominium subdivision], or
  - (b) when a development project (e.g. a commercial development) does not involve Municipal Improvements, or
  - (c) when the Municipal Improvements in a subdivision or development project are restricted to providing stubbed service connections for water and/or wastewater from existing service mains in the street to the private property line, and the installation of such stubbed service connections are covered or will be covered under a "Service Connection Agreement" between the landowner(s) and the Municipality.

b) Sufficient Security Amount

- i. The Municipality requires adequate security for the Municipal Improvements in a development or subdivision project within the Municipality, as described in section 3.1(a).
- ii. Security is required to ensure that the Municipality has sufficient money available to complete any outstanding Municipal Improvements required for the development or subdivision and/or to repair Municipal Improvements during a warranty period, in the event that the Applicant fails to meet its obligations under its Development Agreement, or
- iii. A sufficient security amount shall be determined as follows:
  - (a) From the date of execution of a development agreement up to the date of issuance of a Construction Completion Certificate, the security required under a Development Agreement shall be a

minimum of One Hundred percent (100%) of the Cost of Municipal Improvements as defined in this Policy [but see 3.1(b)(iii)(c)].

(b) A proposed security amount that is less than the stated minimums above shall not be approved without the adoption of a Council resolution.

(c) Notwithstanding 3.1(b)(iii)(a), for reasons stated in 3.2(b) of this Policy, the Municipality may increase the security requirement beyond the stated minimum percentage of the Cost of Municipal Improvements.

c) Reduction of Securities at the Issuance of a Construction Completion Certificate

i. Upon receiving a written request for reduced security from the Applicant, the CAO or designate will consider the following factors when accessing the request:

(a) incomplete and/or deficient work in relation to the Development Agreement obligations,

(b) maintenance of the Municipal Improvements during the warranty period,

(c) risk or potential of Municipal Improvements not meeting the issued approvals for reasons beyond the Municipality's control,

(d) level of workmanship observed during the installation of the Municipal Improvements, and

(e) risk or potential of Municipal Improvements failing during the warranty period.

ii. The amount of security held by the Municipality may, in the sole and absolute discretion of the CAO or designate, be reduced upon the issuance of a Construction Completion Certificate for the Municipal Improvements, or any portion of them.

iii. Although reduced security may be authorized by the CAO or designate for Municipal Improvements that were issued a Construction Compliance Certificate, security maintained by the Municipality for incomplete or deficient Municipal Improvements and for the warranty period of completed Municipal Improvements shall never be less than:

(a) Twenty-Five percent (25%) of the Cost of Municipal Improvements that have been issued a Construction Completion Certificate without deficiencies;

(b) One Hundred percent (100%) of the Cost of Municipal Improvements that have yet to be completed or for which a Construction Completion Certificate has not been issued; and

(c) At the sole discretion of the CAO or designate, a percentage between Twenty-Five percent (25%) and One Hundred percent (100%) of the Cost of Municipal Improvements for which a Construction Completion Certificate with deficiencies has been issued.

- d) Drawing on Security
  - i. Where an Applicant fails to fulfill its obligations identified under the Development Agreement and does not act on requests from the Municipality to remedy any defaults or safety or maintenance concerns, the Municipality may draw on the securities held in relation to the subdivision or development project to address the outstanding obligations, maintenance, or safety concerns to the satisfaction of the Municipality.
- e) Release of Security at the Issuance of a Final Acceptance Certificate
  - i. Upon expiration of the warranty period for each Municipal Improvement and after issuance of the Final Acceptance Certificate for all the Municipal Improvements, the Municipality will release all remaining securities.
- f) Form of Security
  - i. The only acceptable forms of security provided under a Development Agreement shall be cash, a certified cheque, a money order, a bank draft, or an irrevocable, unconditional, and automatically renewable letter of credit.
- g) Letter Of Credit Requirements
  - i. A letter of credit shall be in the form acceptable to the CAO or designate and issued by a chartered bank, credit union or an Alberta Treasury Branch. The issuing institution must have a branch in a nearby location where the letter of credit can be drawn upon when required.
  - ii. A letter of credit provided as security by the Applicant shall contain terms that provide for the following:
    - (a) a covenant by the issuer that if the issuer has not received a release from the Municipality Thirty (30) days **prior to the expiry date** of the security, then the security shall automatically be renewed, upon the same terms and conditions, for a further period of ONE (1) year; and
    - (b) a right on the part of the Municipality to draw upon the full amount of the irrevocable letter of credit, or any portion thereof, in the event that the Municipality has not received a replacement letter, or confirmation of an extension or renewal of the existing letter, at least thirty (30) days prior to the expiry of the security; and
    - (c) that the letter of credit is unconditional and irrevocable.
- h) Cash, Certified Cheque, Money Order or Bank Draft Requirements
  - i. A certified cheque, money order or bank draft must be issued by a chartered bank, credit union or an Alberta Treasury Branch. Such security will be cashed and held by the Municipality upon receipt.
  - ii. Security paid with cash, a certified cheque, money order, or bank draft shall be partially refunded (reduced) or released directly to the Applicant in accordance with the provisions in sections 3.1(c) Reduction of Securities and 3.1(e) Release of Security of this Policy. Payment will be made via a standard cheque or electronic funds transfer.



iii. The release or partial refund of cash security shall not be payable to a third party to address claims against the Applicant, except as provided for in section 3.1(i) of this Policy.

i) **Change in Ownership**

i. If the Applicant intends to transfer ownership of its lands that are the subject of a Development Agreement to a third party prior to completing its obligations under the Development Agreement, then the security provided by the Applicant in relation to such lands will not be reduced or released unless and until:

(a) the proposed assignee enters into a further agreement with the Municipality whereby such assignee undertakes to assume and perform all of the obligations and responsibilities of the Applicant as set forth within the applicable Development Agreement; and

(b) the proposed assignee has deposited with the Municipality all insurance and security as required by the terms of the applicable Development Agreement and this Policy.

ii. Security paid with cash, a certified cheque, a money order, or a bank draft may be transferred to the credit of the assignee with written permission and acknowledgement from the Applicant.

**3.2 Variances to Policy Requirements**

a) **Request by Applicant**

i. A request by an Applicant to vary a requirement of this Policy shall require the approval of Council.

ii. A variance request by an Applicant shall be initiated in writing to the Municipality's Chief Administrative Officer (CAO).

iii. The CAO, through Council, will advise the Applicant in writing of Council's decision regarding the application to vary a requirement of this Policy.

b) **Request by Municipality**

i. The CAO or designate may request that Council approve an increase in the security required pursuant to this Policy:

(a) where an Applicant has:

- defaulted on previous Development Agreements with the Municipality;
- failed to comply with the construction timetable approved in accordance with its current Development Agreement; or
- been issued a notice of default under its current Development Agreement; or

(b) during times of high inflation rates, and/or

(c) for any other reason that the CAO or designate considers necessary.

### 3.3 Municipal Government Act

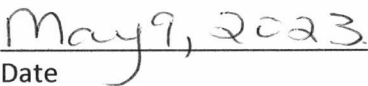
- a) All matters related to this Policy shall meet the following requirements of the Municipal Government Act:
  - i. Municipal Government Act, Part 17, Division 6 – Development Levies and Conditions – Sections 650 to 651 – Conditions of Issuing Development Permit and Agreement re. Oversize Improvements.
  - ii. Municipal Government Act, Part 17, Division 7 – Subdivision of Land – Section 655 – Conditions of Subdivision Approval (including s. 651 – re. Oversize Improvements).

### 3.4 Responsibilities

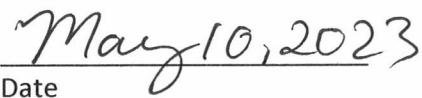
- a) Municipal Council to:
  - i. Approve by resolution this policy and any amendments.
  - ii. Consider the allocation of resources for successful implementation of this policy in the annual budget process.
- b) Chief Administrative Officer to:
  - i. Implement this policy.
  - ii. Monitor to ensure implementation and review of this policy.
- c) Development Engineering and Operations is the Responsible Department, and shall:
  - i. Ensure implementation of this policy.
  - ii. Ensure that this policy is reviewed every three years.
  - iii. Make recommendations to the Chief Administrative Officer of necessary policy amendments.

### MUNICIPALITY OF CROWSNEST PASS

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chief Administrative Officer

  
\_\_\_\_\_  
Date