

Bill No. 341
2014

By-law No. A.-_____

A by-law to repeal and replace Council Policy 19(18) entitled "Subdivisions and Development Security" with a new Council Policy 19(18) entitled "Subdivision & Development Agreement Security Policy".

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS the Municipal Council deems it advisable to update Council Policy 19(18) entitled "Subdivisions and Development Security";

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. Council Policy 19(18), as amended, is hereby repealed and replaced with the attached Council Policy 19(18) entitled "Subdivision & Development Agreement Security Policy".
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on July 29, 2014.

J. Baechler
Mayor

Catharine Saunders
City Clerk

First Reading – July 29, 2014
Second Reading – July 29, 2014
Third Reading – July 29, 2014



London
CANADA

SUBDIVISION & DEVELOPMENT AGREEMENT SECURITY POLICY

Corporation of the City of London
P.O. Box 5035
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London ON N6A 4L9

July 2014



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1.0 Introduction & Definitions

The following Chapter of this policy document provides information related to:

- Brief overview of development security process;
- Definitions of terms commonly used related to development security;

1.1 Introduction

This policy document has been developed to assist Developers (herein after referred to as the Owner), City staff, consulting engineers and associated stakeholders understand the processes and procedures associated with security requirements for land development projects in the City of London (herein after referred to as the City). The City requires that security is provided for all development (subdivision, site plans, condominiums...etc.) projects in the City. This is to ensure that the City has sufficient money available to complete any outstanding works required for the development in the event that the Owner does not/cannot complete the works required of them under their respective Agreement(s).

To assist in the security requirement/reduction process, flow charts for both Subdivision and Development Agreement (Site Plans, Condominiums) processes can be found in Appendix “A”.

Information related to the calculation of security for Subdivisions, Consent and Site Alteration Agreements can be found in **Chapter 2**.

Information related to the calculation of security related to Development Agreements can be found in **Chapter 3**.

Information specific to the processes related to the reduction of security, timing of reductions, process to deal with deficient works and release of long-held security by the City can be found in **Chapter 4**.

1.2 Definitions

<p>ACCEPTANCE OF EXTERNAL WORKS (formerly FINAL)</p>	<p>An Owner is eligible to apply for “Acceptance of External Works” once all of the works external to the subdivision are complete. Similar to “assumption”, at this stage the City takes responsibility for maintenance, repair and liability of the accepted works & services.</p>
<p>Important to Note:</p>	<ul style="list-style-type: none"> - Is only applicable to works constructed on streets external to a subdivision which have already been assumed by the City. - A by-law is not required; however the one (1) year warranty on workmanship and materials for the works and services is as documented on the certificate of acceptance of external works (see “end of warranty”). - Security can be reduced upon issuance of the certificate of acceptance of external works.
<p>ASSUMPTION</p>	<p>‘Assumption’ is the point at which City Council passes a by-law to accept responsibility for maintenance, repair and liability of the installed works & services of the plan of subdivision, subject to requirements for ‘end of warranty’.</p>
<p>Assumption is considered when:</p>	<ul style="list-style-type: none"> - All works & services are constructed as per the approved plans and appropriate certification(s) have been provided. - Owner has complied with all requirements of the Subdivision Agreement to the satisfaction of the City. - A minimum of seventy (70%) of the lots and blocks fronting the street to be assumed have been built on or seven (7) years have elapsed from the date of registration of the

	Subdivision Agreement.
CLAIMABLE WORKS	<p>‘Claimable Works’ shall be considered any work &/or services as required by an Agreement which are to be undertaken by an Owner at their entire expense, as a capital cost incurred on behalf of the City and as authorized by the City.</p> <p>Claimable Works shall be any work &/or services as noted above which may be claimable from any fund (i.e. Urban Works Reserve Fund (UWRF), City Services Reserve Fund (CSRF)) or any Capital Project.</p>
CONDITIONAL APPROVAL	<p>‘Conditional Approval’ may be issued when the City is satisfied that a development complies with the applicable legislation (Planning Act...etc.), the requirements for conditional approval of the Subdivision Agreement have been met and when the roads and services are completed and functional within a development.</p> <p>By issuing “Conditional Approval”, the City is confirming that full building permits for new home construction may be issued in a subdivision or a portion thereof.</p>
‘Conditional Approval’ is considered when:	<ul style="list-style-type: none"> - The City has confirmed that underground works (including storm, sanitary and water) and all streets (to a granular level “B”) have been constructed as per the approved servicing drawings and Municipal standards. - All works & services have been constructed as per the approved plans and appropriate certification(s) have been provided. - Owner has complied with all requirements of Conditional Approval as they relate to the Subdivision Agreement to the satisfaction of the City.
CONSTRUCTION LIEN ACT HOLDBACK	<p>The statutory requirement of Part IV of the ‘Construction Lien Act’ (R.S.O. 1990) demands that each payer on a contract or subcontract retain a ‘holdback’ (security) of ten per cent (10%) of the price of the services or materials. This holdback is to be maintained until all liens that may be claimed against the contracted works have expired or have otherwise been satisfied or discharged.</p>
Important to Note:	<ul style="list-style-type: none"> - As per the Act, release of the 10% holdback is available when the contractor has published a copy of the certificate of substantial performance in a construction trade newspaper, provided proof of this advertisement to the City and the mandatory forty-five (45) day notice period has expired.
END OF WARRANTY	<p>The “end of warranty” is a triggering mechanism which signifies the Council mandated one (1) year post-assumption warranty period has lapsed. At this point, all remaining obligations of the relevant Agreement are to have been satisfied and any/all defective works are to have been corrected to the satisfaction of the City.</p>
Key Indicators:	<ul style="list-style-type: none"> - One year warranty period initiation requires the passing of a by-law at Council.
EROSION AND	<p>The “Erosion and Sediment Control Measures” shall be a</p>

SEDIMENT CONTROL MEASURES	security to be provided as an allowance for use by the City in the event of deficient erosion and sediment control measures and/or a failure of a site's erosion and sediment control measures. The "Erosion and Sediment Control Measures" shall ensure sufficient funds are available to complete remedial work in the event of a breach to the "Erosion and Sediment Control Measures" including any installation and repair of the erosion and sediment control measures, clean-up costs and complete replacement and/or repairs to the erosion and sediment control measures.
MISCELLANEOUS ITEMS	<p>"Miscellaneous Items" are works required to be completed but not covered under the definition of either surface or underground works, including but not limited to;</p> <ul style="list-style-type: none"> - Tree planting; - Tree preservation, turning circle removal, privacy fencing; - Erosion and sediment control measures;
Important to Note:	- All "Miscellaneous Items" have no extra taxes or fees.
URGENT DEFICIENCY	<p>An "Urgent Deficiency" is defined as any defect related to materials or workmanship in the works and services (underground, surface or miscellaneous works) considered an immediate safety, environmental or operational risk, hazard or concern by the City.</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Water service breaks; • Leaning or tilted streetlight pole; • Sediment breach into a natural watercourse;
OTHER DEFICIENCIES	<p>"Other Deficiencies" are defined as any defect in materials or workmanship in the works and services (underground, surface or miscellaneous works) which is not considered an immediate safety or operational risk, hazard or concern by the City.</p> <p>Other Deficiencies shall also be considered as any failure by the Owner to comply with any covenant, term, condition or requirement of the relevant Agreement.</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Installation of fencing within one (1) year of plan registration as per the Subdivision Agreement; • Grading, seeding & servicing of park blocks; • Minor cracks in segments of curbs and/or sidewalks;
SURFACE WORKS	<p>Surface Works consist of all works and services constructed by the Owner under a relevant Agreement where the final locations are at, and/or above finished grade. This includes but is not limited to the following items:</p> <ul style="list-style-type: none"> - Base & surface asphalt, curb and gutter, sidewalk, traffic islands; - Driveway ramps, fences, landscaping, boulevards, asphalt walkways; - Street signs;
UNDERGROUND WORKS	<p>Underground works consist of all works and services constructed by the Owner as required by a relevant Agreement which are located primarily below grade with the exception of any underground utilities including gas, electric services and telecommunications.</p> <p>These works are typically constructed in the initial stages of</p>

	<p>construction, including but not limited to the following items:</p> <ul style="list-style-type: none"> - Sanitary sewers and private drain connections including all appurtenances (manholes...etc.); - Storm sewers and private drain connections including all appurtenances (manholes, catchbasins, catchbasin leads...etc.); - Water mains and services including all appurtenances (valves, hydrants...etc.); - Granular road base including "Granular B".
WORKS & SERVICES	Works & Services consist of all Surface Works and Underground Work constructed or required by the Owner under the relevant Agreement.
Important to Note:	Contingency (5%), engineering (10%) and HST (13%) are applied to all works & services.

2.0 Subdivisions, Site Alteration & Consent Agreements

The following Chapter of this policy document provides information related to:

- How to calculate security;
- What security is required for;
- How security is reduced;
- Applicable holdbacks;

2.1 Security Calculation

2.1.1 General Information

- The Security Calculation provides a determination of the security which is to be provided by the Owner to the City which shall guarantee 100% of the value of work to be completed for all “works & services” and “miscellaneous items” as required under the relevant Agreement.
- It is calculated using the standard form shown in Appendix “B” (Security Calculation).
- The Owner’s Professional Engineer provides cost estimates for all works, services and miscellaneous items as required under the Subdivision Agreement, the approved servicing drawings and City standards and by-laws all to the satisfaction of the City.
- Estimated cost for works & services are to be provided on a street by street basis, based on a fully constructed right-of-way (property line to property line) including all works & services installed there on. (i.e. sanitary and storm sewers, watermains, private drain connections, roads [granulars, asphalt, curbs, sidewalk, boulevards], streetlights, electric services, etc.).
- Works & services also include separate items which are not included in the calculations for streets. (i.e. street tree planting, noise attenuation measures, pumping stations, miscellaneous items, etc.).
- Claimable works are included in the compiled costs for the individual streets (i.e. trunk sewers...etc.).
- Security for “Erosion and Sediment Control Measures” shall be provided to the satisfaction of the City, for all plans of subdivision and site alteration agreements based on the size (in hectares) of the development as follows:
 - Less than 5.0 ha – \$40,000;
 - Greater than or equal to 5.0 ha - \$60,000;
- In the event that Security for “Erosion and Sediment Control Measures” has been previously provided by the Owner under a subsequent phase of a Subdivision, the City may at its option on a case by case basis, consider accepting a reduced security for subsequent phases for the purpose of the “Erosion and Sediment Control Measures” subject to acceptable site specific conditions including, but not limited to, having minimal topography and no adjacent sensitive natural features.
- The City may increase the security required for “Erosion and Sediment Control Measures” when site specific conditions (adjacent to a watercourse, Environmentally Sensitive Area, steep topography...etc.) contribute to an increased possibility of a sediment discharge and/or an increased possibility of an increase to the cost for any necessary remedial works.
- The Security Calculation form breaks down the security by street and individual elements for calculation purposes only. The full security is held in one pool for the performance of all requirements in the subdivision agreement.
- The Security Calculation determines the CASH portion of the required security. The CASH portion is required prior to execution of the agreement. The CASH portion also covers the requirements of the Construction Lien Act (10% Statutory Holdback).
- The Security Calculation also calculates the BALANCE (formerly the BOND) portion. The BALANCE portion provides security against the remaining value of works & services and miscellaneous items.
- Prior to the City issuing any Certificate of Conditional Approval or the first building permit for any of the lots and blocks within a Plan of Subdivision, the Owner shall ensure that both the CASH and BALANCE portion have been supplied to the satisfaction of the City, taking into account the requirements, conditions and procedures as set out in the Subdivision (Site Alteration or Consent) Agreement.

2.1.2 Security Calculation Information

Section 1 - Cost Estimate

- Section 1 of the Security Calculation provides estimated costs to construct the works, services and miscellaneous items for the subdivision.
- Includes allowances for contingency (5%), engineering (10%) and HST (13%) for works & services.
- “HST”, “contingency” and “engineering” are not applied to “Miscellaneous Items” as these are typically items to which allowance and applicable taxes are already included (Erosion and Sediment Control Maintenance, temporary turning circles, etc.).

Section 2 - Security Requirements

- Summarizes total costs of works and services and miscellaneous works as shown in Section 1.
- Provides value for **Total Security Required**. This equals (works & services) + (miscellaneous items).

Section 3 - Security Calculation

- Provides calculations for **CASH Portion** = 15% of “Total Security Required” (as per Section 2).

- Provides calculation for **BALANCE** Portion = 100% of (Total Security Required) **Less** (CASH Portion of security).

2.2 Security Reduction Calculation

2.2.1 General Information

- Typical “Security Reduction Calculation” used for all security reductions.
- Standard form shown in Appendix “C”.
- Security Reductions related to Site Alteration Agreements shall be subject to the requirements of the relevant agreement.

2.2.2 Calculation Information

Section 1 - Cost Estimate - Tracking Summary

- The “Tracking Summary” tracks works & services which have been completed based on estimates provided by the Owner’s professional engineer.
- It includes allowances for contingency (5%), engineering (10%) and HST (13%) for works & services.
- Also tracks miscellaneous items completed; tallied separately based on separate formula (no HST, contingency or engineering applied).
- Items shall be added as necessary (which were not included in the initial security calculation) that have been reasoned to be required only as details of which have become known due to the progress of the work and by sound engineering practice.
- Deficiencies may be added to the Security Reduction Calculation and summary as determined by The City in accordance with the Subdivision Agreement.
- Security for identified deficiencies can be added to the “Security Reduction Calculation” form under Section 1.

Section 2 - Security Requirements

- Summarizes requirements based on the calculated value of work remaining, as shown in Section 1.
- An adjustment for inflation is calculated based on the “Statistics Canada Index” meaning the Statistics Canada Quarterly Construction Price Statistics, catalogue number 62-007, Non-residential building construction price indexes - Toronto, Ontario herein after referred to as “Construction Price Index”.
- This information is available on-line at the following link:
<http://www.statcan.gc.ca>
- Adjustment for inflation is calculated based on the Value of Work Remaining (incl. Contingency, Engineering & HST) multiplied by the difference in change indexation values in the Construction Price Index (Year of Reduction LESS Year of Plan Registration)/100.

Example:

Value of Work Remaining = \$100,000 (Section 2 – Line 1)

Construction Price Index:

Year Plan Registered: 2009 = 142.50¹

Current Year²: 2012 = 151.50¹

= \$100,000 x ((151.50-142.50)/100)

= \$9,000

¹Values as per Annual Averages – “Statistics Canada Index” meaning the Statistics Canada Quarterly Construction Price Statistics, catalogue number 62-007, Non-residential building construction price indexes – Toronto, Ontario.

²The value used for the Current Year index is to be taken from the tables as the closest year available in which security is being calculated.

- The calculated adjustment for inflation is added to the total value of security required as shown in Appendix ‘C’ – Section 2 – Security Requirements – Line 3.

- The City reserves the right to revise the values of work remaining to ensure that sufficient security is being maintained to complete the outstanding works & services.
- Holdbacks are applied to works & services which have been completed including:
 - “Construction Lien Act” Holdback: 10% of value of completed works & services;
 - “Maintenance Holdback”: 5% of value of completed works & services;
 - “End of Warranty Holdback”: 2.5% of value of completed works & services.

Section 3 - Security Reduction Summary

- Summarizes current security held (CASH/BALANCE – i.e. Cash, Letters of Credit, etc.).
- Identifies available reduction(s) based on total security required (calculated in Section 2) and the current security holdings.

2.3 Maintenance Holdback

- Released at “Assumption”, based on the percentage of works & services assumed not until the passing of a by-law to assume works & services within a subdivision.
- The Maintenance Holdback is a guaranteed holdback for material and defects in workmanship equal to 5% of the total value of the works & services completed by the Owner under the Subdivision Agreement (including claimable works).

***N.B.** The 5% maintenance holdback is calculated based on an estimated value to correct deficiencies in the Works & Services prior to Assumption.*

2.4 End of Warranty Holdback

- The End of Warranty Holdback is a guaranteed holdback for material and defects in workmanship equal to 2.5% of the value of the works & services completed by the Owner under the Subdivision Agreement (Including any claimable works).
- Released at End of Warranty based on the percentage of works & services which have satisfied the warranty requirements of the City and an “End of Warranty” certificate has been issued by The City.
- The End of Warranty Holdback will not be released prior to the end of the one (1) year warranty period as mandated in the Council Assumption By-law.

***N.B.** The 2.5% end of warranty holdback is calculated based on an estimated value to correct deficiencies in the Works & Services after Assumption and prior to End of Warranty.*

3.0 Development Agreements

The following Chapter of this policy document provides information related to:

- Security requirements & reductions common for Site Plans & Condominiums;
 - Security requirements & reductions applicable only to Condominiums;
-

3.1 Security Calculation

3.1.1 General Information

- The Security Calculation provides a determination of the security which is to be provided by the Owner to the City which shall guarantee 100% of the value of work to be completed for all “works & services” and “miscellaneous items” for all site plans & condominiums unless otherwise noted herein.
- The Owner’s Professional Engineer shall provide a cost estimate for all works & services and miscellaneous items as required under the Development Agreement, the approved drawings and City standards and by-laws all to the satisfaction of the City.
- For the purposes of development projects considered under this Chapter, the works & services shall generally include, but are not limited to, ‘Surface Works’ and external works (i.e. any works external to the development...etc.), unless otherwise herein provided, all to the satisfaction of the City.
- 100% of the value of works and services required for all Claimable Works shall be included in the Security Calculation (as applicable).
- Security requirements shall be calculated using the standard form shown in Appendix “E”.
- The Owner’s Professional Engineer shall provide cost estimates for all works, services and miscellaneous items as required under the Development Agreement, the approved servicing drawings and City standards and by-laws all to the satisfaction of the City.
- The security calculation breaks the security down into individual elements for calculation purposes only. The full security is to be held in one pool for the performance of all requirements in the Development Agreement.
- The security calculation includes provisions for Contingency, Engineering and HST.
- In the event a site plan or condominium will be developed in phases, the City may, at its discretion, consider requiring only the security for the phase of the development which is currently being constructed. In such situations, separate security shall be provided for each phase of the development, all to the satisfaction of the City.
- The City may consider requiring additional security for commercial developments where the security calculated under procedures outlined in this Chapter is determined to be insufficient due to the size and/or complexity of the proposed development.
- 100% of the required security shall be provided to the City prior to execution of the Development Agreement, unless otherwise herein provided, all to the satisfaction of the City.

3.1.2 Security Calculation Information

Section 1 - Cost Estimate

- Section 1 of the Security Calculation provides estimated costs to construct the works & services (including claimable works) and miscellaneous items for the development.
- Includes allowances for contingency (5%), engineering (10%) and HST (13%) for works & services.
- “HST”, “contingency” and “engineering” are not applied to “Miscellaneous Items” which are therefore calculated separately.

Section 2 - Security Requirements

- Summarizes total costs of works and services and miscellaneous works as shown in Section 1.
 - Provides value for **Total Security Required**. This equals (works & services) + (miscellaneous items).
-

3.2 Security Reduction Calculation

3.2.1 General Information

- Typical “Security Reduction Calculation” used for all security reductions.
- Standard form shown in Appendix “F”.

3.2.2 Calculation Information

Section 1 - Cost Estimate - Tracking Summary

- The “Tracking Summary” tracks works & services which have been completed based on estimates provided by the Owner’s professional engineer.
- It includes allowances for contingency (5%), engineering (10%) and HST (13%) for works & services.
- Also tracks miscellaneous items completed; totaled separately based on separate formula (no HST, contingency or engineering applied).
- Deficiencies may be added to the Security Reduction and summary as determined by The City in accordance with the Development Agreement.

Section 2 - Security Requirements

- Summarizes requirements based on the calculated value of work remaining, as shown in Section 1.
- An adjustment for inflation is calculated based on the “Statistics Canada Index” meaning the Statistics Canada Quarterly Construction Price Statistics, catalogue number 62-007, Non-residential building construction price indexes - Toronto, Ontario herein after referred to as “Construction Price Index”.
- This information is available on-line at the following link:
<http://www.statcan.gc.ca>
- Adjustment for inflation is calculated based on the Value of Work Remaining (incl. Contingency, Engineering & HST) multiplied by the difference in change indexation values in the Construction Price Index (Year of Reduction LESS Year of Plan Registration)/100.

Example:

Works & Services - Value of Work Remaining = \$100,000 (Section 2 – Line 1)

Construction Price Index:

Year Plan Registered: 2009 = 142.50¹

Current Year²: 2012 = 151.50¹

= \$100,000 x ((151.50-142.50)/100)

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¹Values as per Annual Averages – “Statistics Canada Index” meaning the Statistics Canada Quarterly Construction Price Statistics, catalogue number 62-007, Non-residential building construction price indexes – Toronto, Ontario.

²The value used for the Current Year index is to be taken from the tables as the closest year available in which security is being calculated.

- The calculated adjustment for inflation is added to the total value of security required as shown in Appendix ‘F’ – Section 2 – Security Requirements – Line 3.

Section 3 - Security Reduction Summary

- Summarizes current security held and identifies available reduction(s) based on total security required (calculated in Section 2) and the current security holdings.

3.3 Condominiums

- The Security Calculation for Condominiums (Vacant Land Condominiums and Standard (Phased) Condominiums) represents 100% of the value of work to be completed for all common elements associated with the accepted drawings for the plan of condominium.
- Common elements will generally include (but not limited to) the following items:
 - Surface Works;
 - Underground Works;
 - Illumination;
 - Stormwater Management ;
 - Tree Planting;
 - Community Amenities (gazebos...etc.)
 - External Works;
 - Other – (As required on a case specific basis);
- Security for any vacant land condominium town house development shall be provided as follows:
 - 15% of Total Security Required at execution of the Development Agreement;

- The Developer shall provide to the City, all outstanding security, as calculated from time to time, prior to the registration of the Condominium Declaration;
 - A maintenance holdback (5% of the value of common elements completed) will be held until such time as 100% of the units in the vacant land condominium have been developed; a certificate of completion of the works and a final lot grading certificate have been received from the Owner's Professional Engineer and accepted by the City, to the satisfaction of the City.
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4.0 Logistics

The following Chapter of this policy document is applicable to subdivision, site alteration, consent and development agreements unless otherwise noted herein. This Chapter provides information related to:

- Acceptable forms of security;
 - Process for security reductions;
 - When security may be reduced;
 - Process to deal with deficient works;
 - Process to release long-held security;
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4.1 Acceptable Forms of Security

4.1.1 Cash or Certified Cheque (the following conditions apply to Cash or Certified Cheque as security):

- Acceptable for use under the CASH and/or BALANCE portion.

4.1.2 Letter of Credit (the following condition applies to letters of credit used as security):

- Acceptable for use under the CASH and/or BALANCE portion.
- Letters of Credit are to be irrevocable and unconditional and shall conform to the example shown in Appendix "D" all to the satisfaction of the City.

4.1.3 Land (the following conditions apply to land as security):

- "Land" will be considered as an acceptable form of security for Subdivisions only.
- Property must be transferred to and registered in the name of the City of London.
- Land must be free and clear of any encumbrance, condition, restriction, easement or right-of-way except those acceptable to the City.
- Value of Land shall be equal to 150% of the amount being secured by such land.
- Land is only accepted for use as the BALANCE portion of security.
- Value of "land" shall be calculated as per the appraised value of the property under consideration as determined by the City.
- An appraisal of the Land held as security will be completed by the City every two (s) years from the date of the previous appraisal.

4.1.4 Combinations (the following conditions apply when combining forms of security):

- The total security requirements may be comprised of a combination of acceptable forms of security as outlined in Section 4.1.1 to 4.1.3.
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4.2 Security Reduction

4.2.1 General

- Security may be reduced, at the discretion of the City, from time to time based on an estimated value of the works and services completed as certified by the Owner's Professional Engineer in the form as shown in Appendix "C" & "F" respectively, to the satisfaction of the City.
- The City reserves the right to reject or modify any security reduction request to ensure that sufficient security has been retained.
- The City reserves the right to add items at any time to the security reduction calculation related to items of non-compliance.
- The final release of security shall be subject to the submission of all certifications, as-constructed drawings and the fulfilment of all requirements of an Agreement between the Owner and the City, to the satisfaction of the City.

4.2.2 Order of Release

- Instruments of security will be reduced (and released) in the following order:
 - 1) Land
 - 2) Letter of Credit
 - 3) Cash

- Security is reduced (and released) in the following order (Subdivisions, Site Alterations & Consents only):
 - 1) "BALANCE" Portion
 - 2) "CASH" Portion

4.2.3 Requirements

The following will be required prior to any consideration for the reduction or release of securities:

- A completed Appendix "C" or "F" (depending on the type of agreement) Security Reduction form completed by the Owners Professional Engineer;
- A determination by the City that the Owner has to date, complied with all provisions of the relevant Agreement;

4.3 Reduction Milestones & Timing (Subdivisions only)

The following highlights the expectations and requirements for the reduction of security at the various milestones of the subdivision development process:

4.3.1 Conditional Approval

- The Owner is permitted to apply for a reduction in security otherwise required as per Schedule "E" of the Subdivision Agreement prior to Conditional Approval as a significant value of the works and services (underground works) have been completed subject to the satisfaction of the City.
- Applicable holdbacks are applied to all works and services completed by the Owner (Construction Lien Act, Maintenance Holdback, End of Warranty Holdback).
- Release of the Construction Lien Act Holdback for applicable completed works may be considered upon submission of proof of advertising and expiration of the mandatory holdback period all in accordance with the Construction Lien Act.

4.3.2 Interim Reduction(s) in Security

- An interim reduction in security will be considered as any reduction in securities occurring in the period after Conditional Approval and prior to Assumption based on the progress of the work completed.
- Interim reductions in security will be considered once per calendar year at the request of the Owner (and their Professional Engineer), except as agreed to by the City.
- Interim reductions will only be processed after the City has confirmed compliance with the relevant Agreement, including any timed requirements.
- Reductions estimated to be less than \$25,000 will not be processed, except as agreed to by the City.
- Release of the Construction Lien Act Holdback may be considered upon submission of proof of advertising and expiration of the mandatory holdback period in accordance with the Construction Lien Act.

4.3.3 Assumption

- A security reduction at "Assumption" will only be processed after an assumption by-law has been passed by City Council.
- In the event that a subdivision is assumed in stages, a percentage of the works & services assumed will be calculated based on the value of the works and services to be assumed and the total value of works and services.
- The reduction of securities at "Assumption" may include:
 - Release of the Construction Lien Act Holdback;
 - Release of the "Maintenance Holdback";
 - Release of the "Erosion and Sediment Control Measures" security;

4.3.4 End of Warranty

- A security reduction at “End of warranty” will only be processed after all outstanding deficiencies have been corrected and all requirements of the Subdivision Agreement have been met and upon receipt of an “End of Warranty” certificate.
- In the event that portions of a subdivision achieve end of warranty in stages, a percentage of the works & services which have cleared end of warranty will be calculated based on the value of the works and services which have cleared end of warranty and the total value of works and services.
- The reduction of securities at End of Warranty may include:
 - Release of Tree Planting security;
 - Release of the End of Warranty Holdback;

4.4 Work on behalf of the Owner – Subdivisions & Site Alterations

The City may, at its option, undertake any work and/or service including maintenance or remedy any defective work on behalf of an Owner when the Owner has failed to complete such work as required as part of a Subdivision or Site Alteration Agreement. The City at its option may use the security provided under a Subdivision or Site Alteration Agreement to recover any and all costs incurred by the City in relation to the completion of the work. The value of security to be used by the City will be determined based on the total costs incurred by the City in relation to the completion of work on behalf of the Owner. The total costs will include all labour and materials costs (City and contracted forces), taxes, permitting fees and administrative costs as applicable.

The undertaking of work by City forces and the recovery of costs through the use of an Owner's securities in accordance with this policy shall not be considered by the City as a final default as defined within the Subdivision Agreement. However, the City reserves its right to deem any breach of any covenant, term, condition or requirement of the Subdivision Agreement as a default of said agreement as defined therein.

If the Owner's security is used by the City as noted herein, the Owner may be required to provide the City with additional security if deemed necessary by the City.

4.4.1 Urgent Deficiency

The following is the process the City shall use to have any works completed in the event that the Owner has not taken measures to correct, repair or complete works considered as an "Urgent Deficiency" (as described in Chapter 1):

- 1) An "urgent deficiency" is brought to the attention of the City;
- 2) The City will provide immediate notification via telephone, fax or email to the Owner requesting to have the works and services completed or repaired.
- 3) The Owner will be required to provide a response, within 24 hours of notification, identifying when the works and services shall be completed or repaired;
- 4) If a response has not been received by the City from the Owner with an anticipated schedule to complete the work within 24 hours and the work has not been completed in an acceptable timeframe thereafter, the City will immediately schedule the work to be completed by the City with no further notice to the Owner;
- 5) Upon completion of the work by the City, the Owner will be invoiced for the total cost incurred by the City to complete the work;
- 6) If payment by the Owner remains outstanding for a period greater than 30 days, the City will draw upon the security provided in relation to the Subdivision Agreement with no further notice to the Owner;

4.4.2 Other Deficiencies

The following is the process the City shall use to have any works completed in the event that the Owner has not taken measures to correct, repair or complete works considered as "Other Deficiencies" (as described in Chapter 1):

- 1) A deficiency which does not fit the definition provided for an "urgent deficiency" is brought to the attention of the City;
- 2) The City will provide notification via telephone, fax, email or registered mail to the Owner requesting to have the works and services completed or repaired. The letter shall request that the Owner complete the work to the satisfaction of the City within a timeframe as specified by the City;
- 3) If the work has not been completed in the specified timeframe, the City will immediately schedule the work to be completed by the City with no further notice to the Owner;

- 4) Upon completion of the work by the City, the Owner will be invoiced for the total costs incurred by the City to complete the work;
 - 5) If payment by the Owner remains outstanding for a period greater than 30 days, the City will draw upon the security provided in relation to the Subdivision Agreement with no further notice to the Owner to recover costs associated with this work;
-

4.5 Work on behalf of the Owner - Development Agreements (Site Plans, Condominiums, Consents)

The City may, at its option, undertake any work and/or service including maintenance or remedy any defective work on behalf of an Owner when the Owner has failed to complete such work as required as part of a Development Agreement, Condominium Agreement or Consent Agreement and shall follow the process to undertake this work as outlined in the Development Agreement, Condominium Agreement or Consent Agreement.

4.6 Long-Held Security

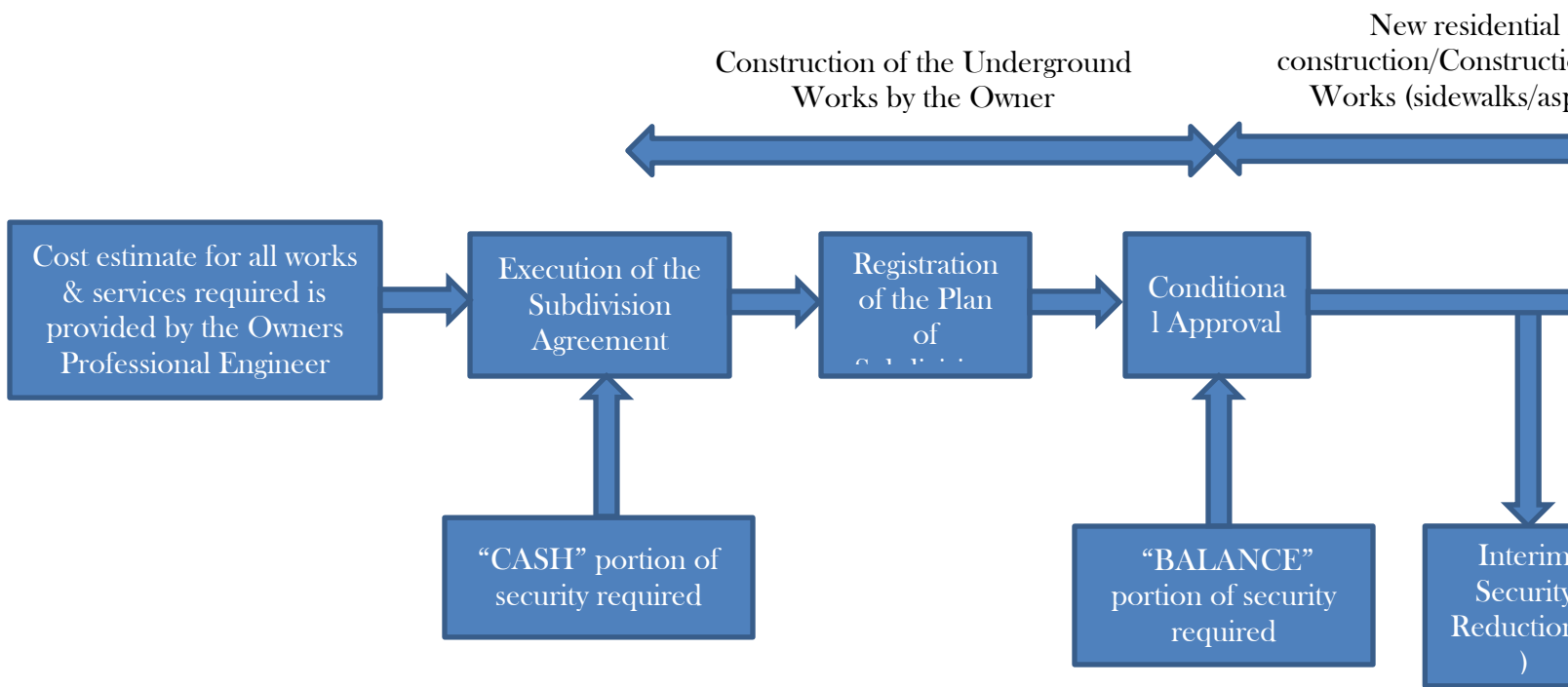
In the event an Owner has deposited security with the City and the security is still available to the City after seven (7) years of receipt of such security, with no activity (correspondence...etc.) related to the development within the preceding two (2) years, the City may at its option, follow the below procedure for clearing such security:

- 1) The City will review the applicable agreement to determine the need to retain the security in question;
- 2) The City shall provide notification to the Owner advising that the City is still holding security related to a development and advising the Owner of the requirements which would be required to be satisfied prior to release of securities. The letter shall request that the Owner provide acknowledgement within 60 days of said notification;
- 3) If the Owner acknowledges the letter in (4.6(2)) and provides sufficient information indicating steps to be taken by the Owner to satisfy the remaining requirements of the relevant agreement, then no further action will be taken;
- 4) If no acknowledgement is received within the 60 days specified, the City will provide notice in a local weekly newspaper (i.e. "The Londoner") identifying that security is still being held with respect to the development and indicating for parties with an interest in such security to contact the City as appropriate to arrange for the release of security subject to the completion of any outstanding obligations of the relevant agreement, to the satisfaction of the City. A date will be provided in the advertisement by which to contact the City.
- 5) If left unclaimed, the security will be drawn and deposited into a designated City account and the Owner shall be deemed to forfeit any further right to release of such security.

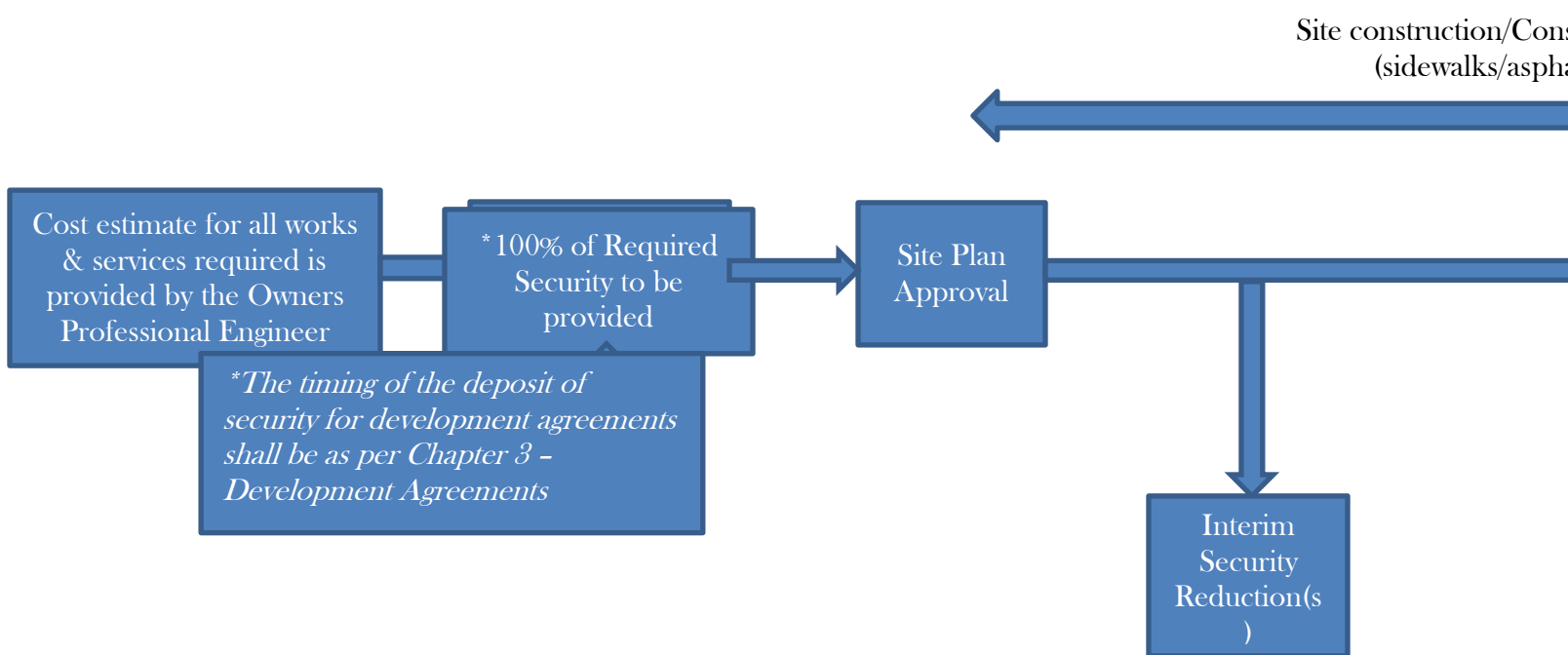


APPENDIX - A

Subdivision and Development Agreement Process Flow Charts



SUBDIVISION SECURITY
PROCESS FLOW CHART



DEVELOPMENT AGREEMENT
SECURITY PROCESS FLOW
CHART



APPENDIX - B

Subdivision Security Calculation



SUBDIVISION SECURITY CALCULATION

Subdivision Name:
33M#:
Developer:
No. of Lots:

Date of Plan Registration:
Date:

No. of Blocks:

SECTION 1		COST ESTIMATE	
ITEM #	ITEM	TOTAL COST OF WORK	NOTES
Works & Services			
1	Street "A"	\$0	
2	Street "B"	\$0	
3	Street "C"	\$0	
4	Street "D"	\$0	
5	Parkland & Open Space	\$0	
6	Noise Attenuation	\$0	
7	External Road Works	\$0	
8	Other:	\$0	
9	Other:	\$0	
10	Other:	\$0	
11	SUBTOTAL - Works & Services	\$0	
12	Contingency (5%)	\$0	
13	Engineering (10%)	\$0	
14	HST (13%) on Lines 11-13	\$0	
15	TOTAL-Works & Services	\$0	
Miscellaneous Items			
16	Tree Planting	\$0	
17	Temporary Turning Circle Removal	\$0	
18	SWM Maintenance & Monitoring	\$0	
19	Erosion and Sediment Control Measures	\$0	
20	Other:	\$0	
21	TOTAL - Miscellaneous Items	\$0	

SECTION 2		SECURITY REQUIREMENTS
1	Works & Services	\$0
2	Miscellaneous Items	\$0
3	TOTAL SECURITY REQUIRED:	\$0

SECTION 3		SECURITY CALCULATION
CASH Calculation:		
<i>(Provided prior to execution of the subdivision agreement)</i>		
15% of Total SECURITY REQUIRED:		\$0
TOTAL CASH:		\$0
BALANCE Calculation:		
<i>(Provided prior to issuance by the City of a "Certificate of Conditional Approval")</i>		
100% of Total Security Required:		\$0
(Less) CASH Portion:		\$0
TOTAL BALANCE:		\$0



APPENDIX - C

Subdivision Security Reduction Calculation



London
CANADA

SUBDIVISION SECURITY REDUCTION CALCULATION

Subdivision Name:
33M#:
Developer:
No. of Lots:

Date of Plan Registration:
Date:
Reduction #:
No. of Blocks:

SECTION 1 COST ESTIMATE - TRACKING SUMMARY						
ITEM #	ITEM	TOTAL COST OF WORK	VALUE OF WORK COMPLETED TO DATE	VALUE OF WORK REMAINING	PERCENTAGE COMPLETED TO DATE	NOTES
Works & Services						
1	Street "A"	\$0	\$0	\$0	0%	
2	Street "B"	\$0	\$0	\$0	0%	
3	Street "C"	\$0	\$0	\$0	0%	
4	Street "D"	\$0	\$0	\$0	0%	
5	Parkland	\$0	\$0	\$0	0%	
6	Noise Attenuation	\$0	\$0	\$0	0%	
7	External Road Works	\$0	\$0	\$0	0%	
8	Other:	\$0	\$0	\$0	0%	
9	Other:	\$0	\$0	\$0	0%	
10	Other:	\$0	\$0	\$0	0%	
11	SUBTOTAL - Works & Services	\$0	\$0	\$0	0%	
12	Contingency (5%)	\$0	\$0	\$0	0%	
13	Engineering (10%)	\$0	\$0	\$0	0%	
14	HST (13%) on Lines 11-13	\$0	\$0	\$0	0%	
15	TOTAL-Works & Services	\$0	\$0	\$0	0%	
Miscellaneous Items						
16	Tree Planting	\$0	\$0	\$0	0%	
17	Temporary Turning Circle Removal	\$0	\$0	\$0	0%	
18	SWM Maintenance & Monitoring	\$0	\$0	\$0	0%	
19	Erosion and Sediment Control Measures	\$0	\$0	\$0	0%	
20	Other:	\$0	\$0	\$0	0%	
21	TOTAL - Miscellaneous Items	\$0	\$0	\$0	0%	

SECTION 2 SECURITY REQUIREMENTS			
1	Works & Services	(Value of Work Remaining - Section 1 - Line 15)	\$0
2	Miscellaneous Items	(Value of Work Remaining - Section 1 - Line 21)	\$0
3	Adjustment for Inflation		\$0
4	Construction Lien Act Holdback	<i>Advertised:</i>	\$0
		<i>Un-Advertised:</i>	\$0
5	Maintenance Holdback (5% of Works & Services completed to date)	<i>Percentage of Work Assumed:</i>	0%
6	End of Warranty Holdback (2.5% of Works & Services completed to date)	<i>Percentage of Work Out of Warranty:</i>	0%
7	TOTAL SECURITY REQUIRED:		\$0

SECTION 3 SECURITY REDUCTION SUMMARY		
1	CASH :	(insert financial information here i.e. CASH, Letter of Credit#...etc)
2		\$0
3	BALANCE :	(insert financial information here i.e. CASH, Letter of Credit#...etc)
		\$0
		TOTAL SECURITY HELD:
		\$0
		TOTAL SECURITY REQUIRED:
		\$0
		TOTAL REDUCTION:
		\$0



London
CANADA

Example Letter of Credit

IRREVOCABLE AND UNCONDITIONAL LETTER OF CREDIT

TO: The Corporation of the City of London (DATE)
P.O. Box 5035
London, ON N6A 4L9

Pursuant to the request of our customer (**name of Subdivider/Developer**) we the undersigned (**name of Financial Institution**) hereby establish unconditionally an irrevocable line of credit in your favour in the total amount of (**amount of Security**) which may be drawn on by you to the extent required in connection with every term and condition of the (**type of Agreement: Subdivision/Development**) Agreement with you dated (**Date**) and registered (**Date**) as Number (**Registration Number**) pertaining to [**For Subdivision Insert: Registered Plan (Plan Number)**], otherwise called (**Subdivision Name**)/(for Development insert type and municipal address of Development).

The amount of this credit may be reduced from time to time as advised by notice in writing given by you to the undersigned. It is understood that this obligation is between (**Name of Financial Institution**) and the Corporation of the City of London and any such notice shall not be used for any other purpose than set forth herein.

Drawings under this letter of credit shall be in the form of a written demand for payment made by the Corporation of the City of London. We shall pay to you the amount stated in the said demand, to be payable to you by way of our draft, without enquiring whether you have a right to such amount as between yourself and our customer, provided that such amount, together with other amounts paid to you under this letter of credit, if any, does not exceed in the aggregate that total amount of this letter of credit, reduced if at all in accordance with your written notice referred to above.

This letter of credit shall continue up to (**Expiry Date**) and will expire on that date and you may call for payment of the full amount outstanding under this letter of credit at any time prior to that date. This letter of credit and every extension thereof shall be deemed to be automatically extended without amendment to such expiry date or any future expiration date, unless at least 60 days prior to any expiration date that we notify you in writing by registered mail that we elect not to extend this Irrevocable and Unconditional Letter of Credit or any extension thereof after it expires. Upon receipt by you of such notice, you may draw hereunder by means of your demand accompanied by your written certification that the amounts drawn will be retained and used by you to meet obligations incurred or to be incurred in connection with the matter referred to in the first paragraph above; further, that you will release any amount not required by you.

Except so far as otherwise expressly stated, this credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication No. 500.

FOR: (FINANCIAL INSTITUTION)

(Authorized Signatures)



APPENDIX - E

Development Agreement Security Calculation



DEVELOPMENT AGREEMENT SECURITY CALCULATION

Development Address:

Date:

Agreement No.:

Developer:

SECTION 1		COST ESTIMATE - TRACKING SUMMARY	
ITEM #	ITEM	TOTAL COST OF WORK	NOTES
Works & Services			
1	Curbs	\$0	
2	Surface Asphalt	\$0	
3	Base Asphalt	\$0	
4	Sidewalks	\$0	
5	Topsoil & Sod	\$0	
6	Illumination	\$0	
7	Signage	\$0	
8	Landscaping	\$0	
9	External Road Works	\$0	
10	Other:	\$0	
11	SUBTOTAL - Works & Services	\$0	
12	Contingency (5%)	\$0	
13	Engineering (10%)	\$0	
14	HST (13%) on Lines 11-13	\$0	
15	TOTAL-Works & Services	\$0	
Miscellaneous Items			
16	Tree Preservation	\$0	
17	Other:	\$0	
18	TOTAL - Miscellaneous Items	\$0	

SECTION 2		SECURITY REQUIREMENTS
1	Works & Services	\$0
2	Miscellaneous Items	\$0
3	TOTAL SECURITY REQUIRED:	\$0



APPENDIX - F

Development Agreement Security Reduction Calculation



DEVELOPMENT AGREEMENT SECURITY REDUCTION CALCULATION

Development Address:
Agreement No.:
Developer:

Date:
Reduction No.:

SECTION 1 COST ESTIMATE - TRACKING SUMMARY						
ITEM #	ITEM	TOTAL COST OF WORK	VALUE OF WORK COMPLETED TO DATE	VALUE OF WORK REMAINING	PERCENTAGE COMPLETED TO DATE	NOTES
Works & Services						
1	Curbs	\$0	\$0	\$0	0%	
2	Surface Asphalt	\$0	\$0	\$0	0%	
3	Base Asphalt	\$0	\$0	\$0	0%	
4	Sidewalks	\$0	\$0	\$0	0%	
5	Topsoil & Sod	\$0	\$0	\$0	0%	
6	Illumination	\$0	\$0	\$0	0%	
7	Signage	\$0	\$0	\$0	0%	
8	Landscaping	\$0	\$0	\$0	0%	
9	External Road Works	\$0	\$0	\$0	0%	
10	Other:	\$0	\$0	\$0	0%	
11	SUBTOTAL - Works & Services	\$0	\$0	\$0	0%	
12	Contingency (5%)	\$0	\$0	\$0	0%	
13	Engineering (10%)	\$0	\$0	\$0	0%	
14	HST (13%) on Lines 7-9	\$0	\$0	\$0	0%	
15	TOTAL-Works & Services	\$0	\$0	\$0	0%	
Miscellaneous Items						
16	Tree Preservation	\$0	\$0	\$0	0%	
17	Other:	\$0	\$0	\$0	0%	
18	TOTAL - Miscellaneous Items	\$0	\$0	\$0	0%	

SECTION 2 SECURITY REQUIREMENTS			
1	Works & Services	<i>(Value of Work Remaining - Section 1 - Line 15)</i>	\$0
2	Miscellaneous Items	<i>(Value of Work Remaining - Section 1 - Line 19)</i>	\$0
3	Adjustment for Inflation		\$0
4	TOTAL SECURITY REQUIRED:		\$0

SECTION 3 SECURITY REDUCTION SUMMARY		
1		\$0
2	<i>(insert financial information here i.e. CASH, Letter of Credit#...etc)</i>	
3		
		TOTAL SECURITY HELD:
		\$0
		TOTAL SECURITY REQUIRED:
		\$0
		TOTAL REDUCTION:
		\$0