



Report to: General Committee

Meeting Date: February 5, 2018

---

**SUBJECT:** Amendment to Development Charges Credit Agreement –  
Abidien Inc.

**PREPARED BY:** Kevin Ross, Manager, Development Finance, ext. 2126  
Alain Cachola, Senior Manager, Infrastructure and Capital  
Projects, ext. 2711

---

**RECOMMENDATION:**

- 1) That the report entitled “Amendment to Development Charges Credit Agreement – Abidien Inc.” be received;
- 2) That Council authorize an amendment to the current Development Charge Credit Agreement with Abidien Inc. dated January 23, 2006, to increase the reimbursement available to Abidien Inc. by \$659,073.29, by a combination of development charge credits and reimbursement;
- 3) That the Mayor and Clerk be authorized to execute amendments to the Development Charge Credit Agreement satisfactory to the City Solicitor and the Treasurer, as set out in this Report;
- 4) And that staff be directed to do all things necessary to give effect to this report.

**EXECUTIVE SUMMARY:**

Not applicable.

**PURPOSE:**

The purpose of this report is to seek Council approval to amend a credit agreement executed by the City and Abidien Inc. dated January 23, 2006, to increase the development charge credit/reimbursement available to Abidien Inc. by an additional \$659,073.29, related to the construction of Helen Avenue. The development charge credits will be provided in accordance with the City’s Development Charges Credit and Reimbursement Policy (“Policy”). The additional cost is included in the 2017 Development Charges Background Study.

**BACKGROUND:**

Helen Avenue was constructed in three stages between 2003 and 2009 from Kennedy Road eastwards to Harry Cook Drive (Appendix A) by the City and the local developer, Abidien Inc. The works undertaken included the construction of storm and sanitary sewers, urbanizing the existing road, sidewalks, streetlights and hydro and utility relocation. To compensate the developer for work undertaken on Markham’s behalf, the City executed a credit agreement

with Abidien Inc. in 2006 to allow for reimbursement totalling \$1,566,049 to cover the cost of the works.

The developer was reimbursed via Area Specific Development Charge (“ASDC”) credits as agreed to, but subsequently approached the City advising that the final construction costs had exceeded the estimate in the original agreement. The credit agreement of January 2006 indicated that the credit “may be adjusted pending updates to the ASDC by-law for Helen Avenue”. The increases in the costs are due to construction staging which was not anticipated in the original estimate. There is no change in the scope of work and the City would have incurred similar cost increases if it had undertaken the staged work itself.

In light of this, staff utilized the Council delegated authority to provide four additional credits (the last in March 2015) totalling \$497,019 for the construction of Helen Avenue undertaken by Abidien Inc. in accordance with the procedures and criteria outlined in the Policy. The Policy provides authority to the Treasurer to approve credits for amounts not exceeding \$500,000.

The additional amount of \$497,019 brought the total credits approved and provided to Abidien Inc. for the Helen Avenue construction to \$2,063,068 (see table below).

<b>Development Charge Credits/Reimbursements To-Date to Abidien Inc.</b>		
<i>Payments Under Credit Agreement</i>		
Credits as per Agreement	\$ 1,290,435	
Payment on Agreement	\$ 275,614	
		\$ 1,566,049
<i>Additional Credits</i>		
213 Helen Avenue	\$ 44,001	
65M-4394 19TM-11003, Ph.1	\$ 85,295	
65M-4400 19TM-11003 Ph. 2	\$ 81,158	
Plan 2196, Lot 2 - 176, 178 & 180 Helen Ave	\$ 286,565	
		\$ 497,019
<b>Total Development Charge Credits/Reimbursements</b>		<b>\$ 2,063,068</b>

The developer submitted documentation to support an actual cost incurred of \$2,722,141 for the construction of Helen Avenue, however staff were not able to provide any further credits or reimbursement, as this exceeded the cost of \$2,085,837 included in the 2013 Development Charges Background Study for the specific works constructed by the developer. The cap on the amount that can be reimbursed to a developer is set out in the Policy, which allows for credits and/or reimbursement to be provided based on the lesser of the actual cost, or the cost included in the development charges background study. In this instance, the cost of \$2,085,837 included in the background study was less than the actual cost of \$2,722,141.

Staff updated the cost in the 2017 Development Charges Background Study to reflect the actual cost incurred, and recommend an amendment to the current credit agreement, in recognition that the developer incurred increased costs as a result of construction staging,

which was necessary given the phasing of development along Helen Avenue. If the City had undertaken the construction, additional costs of a similar nature would also have been incurred.

**OPTIONS/DISCUSSION:**

The actual cost for the section of Helen Avenue constructed by Abidien was verified by the Engineering Department as \$2,722,141, and includes design, construction and contract administration costs. This cost has been included in the 2017 development charges by-law, for ASDC number 42A-1 (Helen Avenue), to allow for recovery of the actual costs from future development.

As per the City’s Policy, credits and/or reimbursements over \$500,000 require the approval of Council. The City is authorized to enter into credit/reimbursement agreements by Section 38(1) of the *Development Charges Act, 1997* which provides as follows:

*“If a municipality agrees to allow a person to perform work that relates to a service to which a development charge by-law relates, the municipality shall give the person a credit towards the development charge in accordance with the agreement.”*

Reimbursement of Costs

Staff recommend that Abidien Inc. be provided additional development charge credits/reimbursement in the amount of \$659,073.29, for the additional cost incurred as a result of the staging of the works undertaken along Helen Avenue. The reimbursement will be in two components: in the form of reimbursement in the amount of \$315,700 which represents the amount in the ASDC reserves for 42A-1 (Helen Avenue) as at December 31, 2017, with the remainder of \$343,373 to be provided by way of ASDC credits for future development by Abidien and/or reimbursement from future development undertaken by others.

<b>Development Charge Credits/Reimbursements - Abidien Inc.</b>	
Actual Cost of Helen Avenue Works	\$ 2,722,141
Credits Provided To-Date	\$ (2,063,068)
<b>Remaining Credits/Reimbursement</b>	<b>\$ 659,073</b>
<u>Method of Reimbursement</u>	
Reimbursement from ASDC Reserve	\$ 315,700
Future ASDC Credits/Reimbursement	\$ 343,373
<b>Total Credits/Reimbursement</b>	<b>\$ 659,073</b>

**FINANCIAL CONSIDERATIONS:**

There is no net financial impact to the City. Development charge credits/reimbursements are provided to the developer in exchange for the construction of works included in the City’s Development Charges Background Study, in compliance with the Policy.

The Engineering Department has reviewed and confirmed the scope and actual cost of the works provided by Abidien Inc. and these are in alignment with the City's expectations.

Consistent with the City's Policy, Abidien Inc. will be required to pay an administration fee for the Engineering, Legal and Finance Department's costs incurred relating to the review, preparation and administration of the development charges credit and reimbursement. The fee is structured in the following manner:

- An application fee of \$1,000 plus HST to review the development charge reimbursement request; plus
- A fee equivalent to 1.0% of the value of the credit and reimbursement request to a maximum of \$10,000 which amounts to \$6,590.73 plus HST payable upon credit and reimbursement of the approved amounts.

**HUMAN RESOURCES CONSIDERATIONS:**

Not applicable

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

This is consistent with the City's goal of efficient service delivery.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

The Legal Services Department has reviewed this report.

**RECOMMENDED BY:**

2018-01-30

X 

Joel Lustig  
Treasurer  
Signed by: cxa

2018-01-30

X 

Brian Lee  
Director, Engineering  
Signed by: cxa

2018-01-30

X 

Trinela Cane  
Commissioner, Corporate Services  
Signed by: cxa

2018-01-30

X 

Biju Karumanchery  
Acting Commissioner, Development Services  
Signed by: cxa

**ATTACHMENT:**

[Appendix A – Helen Avenue Road Works](#)