



Development Charge Credit and Reimbursement Policy

Purpose

The development charge credit policy establishes guidelines for applications for and administration and issuance of development charge credits **and/or reimbursement** to developer(s), to be implemented through formal agreements with the Town.

In order for a new residential or industrial subdivision **or site plan** to be developed, it is often a requirement that certain public works, internal or external, to the Plan of Subdivision **or Site Plan**, have to be constructed in order to allow the development to proceed. The public works may include construction of roads, intersections, traffic control signals, watermains, sanitary sewers, stormwater management facilities, etc. included in the Town's Development Charges Background Study and by-law but shall not include "local services" as defined in the *Development Charges Act, 1997*.

The design of the public works is normally carried out by Town staff and its consultant and then tendered for construction, in accordance with the Town's capital expenditure plan, subject to approval of the Town's capital budget that year. Funding for capital projects is obtained, in accordance with the Town of Markham's Development Charge By-laws, from development charges reserves for the growth component and non-development charge sources (e.g. tax levy) for the non-growth component.

In some cases, a developer may wish to carry out the work in order to advance the construction of the public works necessary for private development to proceed. In these cases, a Credit **and/or Reimbursement** Agreement is necessary in order to establish the mechanism for the developer to recover all or part of their costs (i.e. including land, design and contract administration costs) and to establish the developer's obligations for construction. Council approval to the construction and the development charge credit **and/or reimbursement** must be obtained prior to the commencement of construction. This is particularly important when the developer is constructing public works and the contract award process may not be as public or transparent as the Town's tendering process.

The following policy has been designed for efficient administration of the Credit **and Reimbursement** Agreement process. The procedures for administration of Credit **and Reimbursement** Agreement applications are contained in Appendix B. The procedures outlined in Appendix B will be subject to best practices in the industry and minor amendments to this policy and procedures can be implemented by the Treasurer without Council approval.

The Town will consider granting development charge credits **and/or reimbursement** for the construction of public works where the following criteria are met:

Eligibility Requirements

Public works, as described above, may be eligible for Development Charge Credits **and/or Reimbursement**, including projects for which the detailed design has commenced and even been approved, provided that:

- The costs for the public works must be included in the Development Charge Background Study that led to the most current Town of Markham Development Charge By-law(s);
- Council approval if required must be obtained in advance of commencement of construction, for the developer to construct and obtain development charge credits **and/or reimbursement**. If a developer proceeds with construction in advance of receiving development charge credit **and/or reimbursement** approval from Council, such works shall be constructed at their own financial risk and expense; and
- The policies outlined in this document are applicable to all projects being commenced from and after July 1, 2008. Any project undertaken or request made prior to July 1, 2008 will be dealt with on a case by case basis.

Approval

- Council authority, if required, for a fixed development charge credit **and/or reimbursement** amount shall be obtained prior to the commencement of construction of the public works. **In circumstances where it is necessary to commence the works prior to Council approval, the recommendation of the CAO and Treasurer will be required for a credit and/or reimbursement agreement, in principle, prior to the start of construction.**
- The amount of the available development charge credit **and/or reimbursement** will be limited to the project component of the Town's development charge by-law (i.e. credits **and/or reimbursement** for a road's construction will be limited to the amount of the development charge capital cost that is attributable to that road in the Development Charges Background Study). Credits and/or reimbursement will be the lesser of the project's cost component in the by-law(s) or the actual cost of the works.
- Credits **and/or reimbursement** will not be extended to other development charge by-laws (i.e. ASDC to TWH or TWS) unless that portion of the project's capital cost is included in the background study attributable to that by-law.
- Any development charge credit **and/or reimbursement** request that exceeds the amount of development charges payable by that developer in respect of its development will be subject to a negotiated long term credit **and/or reimbursement** arrangement **recommended by the Treasurer and** approved by Council.

- In certain cases, a public works project may have a non-growth component, which cannot be funded through Development Charges. In such instances, the non-growth component is funded through the tax rate or other non-DC sources. If a developer opts to construct public works in advance of the Town's capital expenditure plan in order to develop their site prior to the Town's expected timelines, it is important that taxpayers are not burdened by this unanticipated, accelerated cost. Therefore, in order to reduce the burden on the taxpayer by accelerating the payment of the Town's non-growth component of the cost of the public works, the developer may be required to make a contribution toward the non-growth component cost, when the work is being constructed in advance of the Town's capital program. **The value of the non-growth component will be determined based on the non-growth cost breakdown identified in the Development Charges Background Study for the specific works.** Recovery, if any, of the non-growth component by the developer **shall be the lesser of the amount included in the Development Charge Background Study or the prorated actual cost based on the percentage breakdown in the Development Charge Background Study;** this will be subject to a negotiated long term payment arrangement **recommended by the Treasurer and** approved by Council.
- The Council approved credit **and/or reimbursement** for public works may be set out in the Town's subdivision or site plan agreements where a single developer is undertaking to complete the work.
- A separate credit **and/or reimbursement** agreement will be executed for public works where more than one developer or a developer group is undertaking to complete the work.
- **In order to qualify for reimbursement at least one of the following criteria must be met:**
 - **The development charges payable by the developer do not provide sufficient credits to cover the cost of the public works**
 - **The developer constructed public works that are included in the Background Study for two or more by-laws and may have received compensation in the form of credits and/or reimbursement from the by-law related to the development area. The developer can qualify for reimbursement from the adjoining by-laws, on a proportionate basis, as and when DC's are collected from the other by-laws towards the constructed public works**
 - **The developer undertaking the public works has already made contributions towards the works to be constructed (on a proportionate basis) through prior Area Specific Development Charge payments**
 - **The developer has constructed the public works, with the recommendation of staff, and has no DC credits available as there are no current or future DC payments anticipated.**

Reimbursements can be combined with DC Credits and may generally be considered when there are no more credits available. Notwithstanding the

above, reimbursements falling outside of the above criteria may be available if recommended by the Treasurer and approved by Council.

Any recommendation for reimbursement will be subject to the availability of funds in the Town's Development Charge Reserves and may be subject to a long term agreement. Reimbursements from funds collected through development charges will be limited to the amount collected specifically for the public works. Any amount recommended for reimbursement in excess of reserve funds available may be subject to discounting, for early payment, to the satisfaction of the Treasurer.

- The Treasurer will have approval authority where the following criteria are met:
 - The Town will not be asking for the developer to fund the non-growth share
 - The capital project is being proposed in conjunction with a subdivision or site plan agreement
 - The credit **and/or reimbursement** request is equal to (or less than) the indexed cost of the component set forth in the background study
 - The credit **and/or reimbursement** request is less than \$500,000.

Termination or Amendment

The Treasurer will have authority to approve the termination of, or amendments to, existing Credit and Reimbursement Agreements, in a form satisfactory to the Commissioner, Corporate Services, to be executed by the Mayor and Clerk where:

- The Development Charge by-law on which the credits/reimbursement are based have been repealed or,
- The developer agrees to forego any further credits or,
- The terms on which the credits and/or reimbursement is to be disbursed has changed.

Security/Financial Obligation:

- Where the developer is undertaking to complete the construction of the public works, the estimated cost of the public works shall be secured by the developer providing a Letter of Credit in an amount equal to 115% of the estimated cost of the public works, in a form satisfactory to the Town Treasurer. The Letter of Credit will also secure payment of the development charge component under consideration for credit **and/or reimbursement**. The Letter of Credit will be held until such time as the public works are constructed to the satisfaction of the Town. The Letter of Credit may be reduced for a maintenance period in accordance with the subdivision, **site plan** or other construction or development agreement.
- Where the developer is financing (in whole or in part) the capital work to expedite its completion, the estimated cost of the public works shall be secured by the developer

providing a Letter of Credit in an amount equal to 115% of the estimated cost of the public works in a form satisfactory to the Town Treasurer. The Letter of Credit will be drawn upon, at the Town's discretion, throughout the construction of the work.

Post-Construction Follow Up

- The letter of credit filed to secure the construction of the public works and the payment of development charges, shall not be reduced or returned unless and until the developer satisfies the Town Treasurer that the actual cost to construct the public works is equal to or exceeds the amount of the development charge credit **and/or reimbursement** claimed. In the event that the actual cost of the public works is less than the amount of the development charge credits **and/or reimbursement** claimed, the developer shall be required to pay development charges equal to the difference between the credit **and/or reimbursement** claimed and the actual cost to construct the works. If the developer fails to pay the said difference, the Town may draw upon the letter of credit to pay the difference in the development charges owing.

Fees:

- A cost recovery fee applicable to each credit **and/or reimbursement** request will be charged for the Engineering, Legal and Finance Departments costs incurred relating to the preparation and administration of the development charge credit **and/or reimbursement** agreement. The fee is structured in the following manner:
 - A minimum fee of \$1,500 shall be required to review a development charge credit **and/or reimbursement** request
 - A fee equivalent to 1.0% of the value of the public works, to a maximum of \$10,000 shall be applicable
 - In instances where the Town's costs to prepare and administer a credit **and/or reimbursement** agreement exceed the fee structure set out above, such fees shall be separately quantified and invoiced to the developer.

Procedures

Application

- For projects included in the Town's Capital program, the developer shall forward a letter of application to the Director of Engineering **and Treasurer** to consider construction of public works in advance of the Town's capital expenditure plan and the provision of development charge credits **and/or reimbursement**, a minimum of six (6) months prior to expected date for commencement of construction of the public works. A copy of the application should be forwarded to the Manager of Development Finance.
- A complete application package shall include the following:
 - Overview of proposed public works
 - Rational why the project should be advanced
 - Financial summary
- Council Approval – subject to receipt of the application package, including any additional materials requested by staff. Staff will submit a report to Council, if required, seeking approval or refusal of the development charge credit **and/or reimbursement** request.

Internal Processes

See Appendix C for Flowchart of Internal Processes.

Agreement Stage

Engineering:

- Review each complete application/submission package within 8 weeks of receipt.
- Notify Development Finance and Legal of receipt of application.
- Compare credit **and/or reimbursement** request amount against awarded Town contracts, **in conjunction with the Purchasing Manager**, in order to verify the reasonability of pricing. The developer will be required to provide the Town with a tender form in the Town's format for comparison with recent Town tenders.

Development Finance:

- Ensure the cost of the public works to be considered for development charge credits **and/or reimbursement** is included in the Town of Markham Development Charge By-law(s).
- Determine the fixed or maximum amount of development charge credit **and/or reimbursement** for recommendation to Council.
- Determine the credit **and/or reimbursement** arrangement for recommendation to Council including provisions for long term credits in the event that the developer's credit claim exceeds the development charges payable in respect of its plan of subdivision or in the event that multiple developers or a landowners group are involved.

- In conjunction with Engineering and Legal, prepare a report to General Committee seeking Council authorization, or to the delegated approval authority (if applicable), to approve or reject the development charge credit **and/or reimbursement** request.

Legal Services:

- Preparation of the credit **and/or reimbursement** agreement or necessary clauses within the subdivision **or site plan** agreement.
- A schedule shall be included in the credit **and/or reimbursement** agreement detailing either:
 - The name of the developers who are entitled to the credit **and/or reimbursement**, and the proportionate share of the total that each is entitled to receive; or
 - The name of the Trustee to whom all payments will be made, for distribution to those developers beneficially entitled.
- Ensure the work is adequately secured in a form satisfactory to the Town Treasurer.

Public Works Construction Stage

Engineering:

- Advise Development Finance of any required action (demand and/or release) on the Letters of Credit.
- Ensure that the work is completed in a manner satisfactory to the Town of Markham.
- Verify the actual cost to construct the public works.

Development Finance:

- Administer and maintain the Letter of Credit(s).

Credit Redemption Stage

Development Finance:

- Administer the credit **and/or reimbursement** agreement in accordance with the Development Charges Act.
- Determine credits **and/or reimbursement** to be disbursed in future agreements or funds to be released to the Trustee.