



**STAFF REPORT
ACTION REQUIRED**

Development Charge Credit Agreement – 3700 Midland Avenue

Date:	January 22, 2009
To:	Executive Committee
From:	Acting Deputy City Manager and Chief Financial Officer City Solicitor
Wards:	Ward 41
Reference Number:	P:\2009\Internal Services\SP\ec09002SP (AFS # 8941)

SUMMARY

This report responds to Executive Committee’s direction to staff to submit a draft Development Charge Credit Agreement recognizing Kreadar’s contribution to the construction of Silver Star Boulevard as a fully-serviced collector road.

Based on a detailed review by staff, of the as-built construction costs certified by Kreadar’s engineering consultant, Kreadar can be given \$280,180.84 in development charge credits for works that have been completed in connection with the construction of Silver Star Boulevard. In addition, for works yet to be completed, Kreadar will similarly be given development charge credits, currently estimated at \$74,593.07, as explained in this report. The agreement which details the terms and conditions mutually agreed to by Kreadar and City staff for the provision of the development charge credit is attached to this report. The circumstances surrounding this matter are unique and do not create a policy change nor should these be construed as precedent-setting.

RECOMMENDATIONS

The Acting Deputy City Manager and Chief Financial Officer and the City Solicitor recommend that:

1. Council approve the Development Charge Credit Agreement between Kreadar Enterprises Limited and the City as attached as Appendix 1.

2. Council authorize and direct the appropriate City staff to take necessary action to give effect thereto.

Financial Impact

Adoption of the recommendations contained in this report will result in the City providing a development charge credit to Kreadar, against the roads, water, sanitary sewer and storm water management components of development charges payable, for its construction of a portion of Silver Star Boulevard as a fully-serviced collector road. The credit is comprised of \$280,180.84 for works that have already been completed, and an estimated \$74,593.07 for works yet to be completed, for an estimated total development charge credit of \$354,773.91. Accordingly, the City will have to refund development charges in the amount of \$276,636.33 representing the roads, water, sanitary sewer and storm water management components of development charges already paid, while the balance of the total development charge credit will be provided against the roads, water, sanitary sewer and storm water management components of future development charge payments for development on Kreadar lands.

DECISION HISTORY

On January 3, 2008, Kreadar Enterprises Ltd. (“Kreadar”) filed a complaint, pursuant to section 20 of the *Development Charges Act, 1997*, claiming being entitled to a development charge (DC) credit for the cost of constructing a portion of Silver Star Boulevard and related sanitary sewer works and requesting a DC refund of \$386,986.01.
<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-16317.pdf>

At the complainant’s request, the matter was deferred (on three prior occasions) until the November 10, 2008, meeting of Executive Committee. At that meeting, Executive Committee considered two staff reports in response to the complaint.

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-16316.pdf>

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-17286.pdf>

Both staff reports recommended that the complaint be dismissed and the request for a DC refund be denied.

Following a submission by the complainant at the meeting on November 10, 2008, Executive Committee directed staff to report back to its February 2, 2009, meeting with a draft Development Charge Credit Agreement recognizing Kreadar’s contribution to the construction of Silver Star Boulevard as a fully-serviced Collector Road; and to ensure that any agreement reached does not create a policy change or a negative precedent for the City.

ISSUE BACKGROUND

As a condition of the consent to sever the Kreadar lands, approved by the Committee of Adjustment on November 21, 2001, Kreadar was required to construct a portion of Silver Star Boulevard, including storm, sanitary sewer and watermain extensions, from McNicoll Avenue to the proposed 0.3 metre (one foot) reserve at the north limit of the property. The works were set out in a servicing agreement, dated October 9, 2002, between the City and Kreadar. Neither the consent approval nor the servicing agreement provided that Kreadar would receive a DC credit for the construction of the road and sewer work.

The construction of Silver Star Boulevard is part of the Official Plan and has been included in the City's development charge calculations. It has been Kreadar's position that its construction of a portion of Silver Star Boulevard includes, at the City's request, an extension beyond the road segment that would have been required for its development. Further, since at the time of development approval in 2001 DCs were not applicable to non-residential development, no credit was sought by Kreadar in exchange for the extension. However, now that DCs are applicable to certain non-residential development, Kreadar has requested a DC credit.

COMMENTS

City staff and representatives of Kreadar have jointly determined the DC credit-eligible amount of the construction costs of Silver Star Boulevard. This determination is based on a detailed analysis by staff of the as-built construction costs certified by Kreadar's engineering consultant. The construction costs have been apportioned between the length of the road and services that Kreadar would have been required to construct for the servicing of their lands and the extension of the road and related servicing that Kreadar installed at the City's request as detailed in Schedule "B" to Appendix 1. In determining the construction costs to be apportioned, staff has excluded the costs of service connections, as these are a direct developer responsibility, but provided for 15% as engineering design and supervision costs. Kreadar and staff believe this to be an approach that is fair and equitable to both parties

The total credit is comprised of credits for works that have already been completed and those that remain to be completed. The basis for apportioning the costs and determining of the credit in both cases is identical. With regard to the credit for works yet to be completed, the final amount will be arrived at following a review by staff of the as-built construction costs certified by Kreadar's engineering consultant.

Development Charge Credit Agreement

As directed by Committee, the City has negotiated a Development Charge Credit Agreement with Kreadar which will give to Kreadar a credit against DCs paid to date, as

well as DCs to be paid in future with respect to development on the Kreadar lands. In basic terms, the Agreement provides as follows:

- a) Kreadar will be entitled to a DC credit in the amount of \$280,180.84 for work completed to date, and a further credit in the approximate amount of \$74,600.00 for work to be completed, which constitutes that portion of the construction cost of Silver Star Boulevard over and above the developer's share of this project. This amount is made up of the road, sanitary sewer, storm sewer and water components which Kreadar has already constructed, or has committed to complete.
- b) Kreadar will be granted a credit against DCs payable with respect to development on the Kreadar lands, for that part of the DC comprised of the road, sanitary sewer, storm sewer and water components. Upon execution of the agreement, Kreadar will be entitled to a refund of \$276,636.33, which represents the roads, water, sanitary sewer and storm water management components of the DC payment made under protest in 2008, and which is the subject matter of the current s.20 complaint.
- c) Concurrently with the delivery of such refund, Kreadar will deliver its written withdrawal of the s. 20 Complaint dated January 3, 2008.
- d) Kreadar will be entitled to apply the remainder of the DC credit against any future DC payments for development on the Kreadar lands, until such time as the credit is used up; as above, the credit will be limited to the road, sanitary sewer, storm sewer and water components of the DC in effect at the time of issuance of building permits in future.
- e) If the Kreadar lands are transferred to a new owner, Kreadar will be entitled to transfer or assign any remaining DC credit to the new owner.
- f) The DC credit agreement will be registered on title to the Kreadar land at the owner's expense.
- g) The preamble to the agreement describes the unusual and unique circumstances of the development of the Kreadar lands, and provides that the credit agreement does not create a policy change on the City's part, and is not to be construed as establishing a precedent for other developments within Toronto.

Conclusion

The construction of Silver Star Boulevard is part of the City's Official Plan and has been included in past DC calculations. Kreadar has constructed a portion of the road from McNicoll Avenue to the northern limit of its lands, a segment of which was at the City's request. City staff and Kreadar's representatives have jointly determined that Kreadar can

be given DC credits of \$280,180.84 for the segment constructed at the City's request, for the works that have been completed. In addition, Kreadar will be given additional DC credits, currently estimated at \$74,593.07, for works that remain to be completed.

CONTACT

Joe Farag, Director, Special Projects Division
Tel: 416-392-8108; Email: jfarag@toronto.ca

Robert A. Robinson, Solicitor, Legal Services Division
Tel: 416-392-8367; Email: rrobins2@toronto.ca

SIGNATURE

Cam Weldon
Acting Deputy City Manager &
Chief Financial Officer

Anna Kinastowski
City Solicitor

ATTACHMENTS

Appendix 1: Development Charge Credit Agreement