



**APPENDIX G: FINANCE AGREEMENT TEMPLATE**  
**PARKLAND DEVELOPMENT / OPEN SPACE AND TRAIL FINANCE**  
**AGREEMENT**

**PARKLAND DEVELOPMENT FINANCING AGREEMENT**

**THIS AGREEMENT** made in quadruplicate on the xx day of xx month, xx year  
**BETWEEN:**

**XX Developer**

(hereinafter called the "Developer")

-and-

**CITY OF HAMILTON**

(hereinafter called the "City")

**WHEREAS** the Developer is the registered owner of the lands more particularly described in Schedule "A" hereto, which lands are hereinafter referred to as the "Lands";

**AND WHEREAS** the City has approved a draft plan of subdivision for the Lands subject to certain terms and conditions;

**AND WHEREAS** as a condition of the said draft plan approval, the Developer is required to construct certain works, more particularly described in Schedule "B" attached hereto and forming part of this Agreement, which works are hereinafter referred to as the "Works";

**AND WHEREAS** the Works have been identified in the City's Development Charges By-law 04-145, which by-law applies to the Lands and charges thereunder are payable by the Developer in accordance with the *Development Charges Act* 1997, S.O. 1997, c 27;

**AND WHEREAS** the City has agreed to reimburse the Developer for the value of the growth related portion of the said Works, as determined by the City's Development Charge By-Law, the cost of which is hereinafter referred to as the "City Share", to the extent and in a manner hereinafter set out;

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**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT**, in consideration of the Lands, and of the said draft plan approval, and of the mutual covenants and agreements herein contained, the receipt and sufficiency of which is acknowledged, the Parties hereto mutually covenant and agree as follows, namely:

1. The Developer hereby covenants and agrees to undertake and complete the construction of the Works to the satisfaction of the City in accordance with this agreement entered into between the Parties respecting the same.
2. The City hereby covenants and agrees to reimburse the Developer for the City Share.
3. The City Share shall be set out in Schedule “B” attached to and forming part of this Agreement
4. The Parties mutually covenant and agree that the said reimbursement of the City Share shall be by way of Development Charge credits or by payment schedule in the total amount of the City Share relating to the said Works as set out in Schedule ”B”. A credit will be applied against the Development Charge otherwise payable prior to the issuance of a building permit for each lot finally approved on the Lands. The amount of the said credit shall be equivalent to the Soft Services Component of the City’s Development Charge in effect at the time of the application for the said building permit.
5. At such time as the total amount of the credits applied as aforesaid equals the nominal amount of the City Share set out in Schedule “B” for the works, the Developer agrees that no further credits shall be applicable and that the full amount of the Development Charge shall be payable for any additional building permit issued in respect of the Lands.
6. The Developer covenants and agrees that it has not, and will not file a complaint under the Development Charges Act with respect to the calculation and application of the City’s Development Charge to the Lands, including the quantum of the said charge and the quantum of the Soft Services Component thereof.
7. The Developer acknowledges having obtained independent legal advice with respect to the terms of this Agreement prior to its execution, and further acknowledges and agrees that it understands the said terms and its further obligations and liabilities hereunder.
8. This Agreement contains the entire and only understanding between the Parties relating to the subject matter hereof and supersedes all prior agreements, arrangements, promises, representations, or other understandings, whether written or oral, between them in relation thereto. This Agreement shall not be amended in any way except in writing of equal formality, including all necessary prior approvals, as this Agreement.
9. This Agreement shall ensure the benefit of, and be binding upon, the Parties hereto and their respective successors, assigns and trustees.

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10. The Developer shall design, develop and construct Park Blocks \_\_\_\_, in accordance with the Landscape/Construction Drawings prepared by a qualified Landscape Architect, who is a full member with seal in good standing of the Ontario Association of Landscape Architects hereinafter called the “the Developer’s Landscape Architect”, and the drawings of which are to be approved by the City. These Works constitute projects incorporated in the City’s Development Charges Bylaw.
11. The Developer acknowledges that the City share herein identified and quantified is less than 100% of the total actual cost of the works. Reimbursement of any additional amount by the City to the Developer is subject to further Council approval. The execution of this agreement by the City does not constitute a guarantee or commitment by the City that any additional funding for the subject works will be available. The Developer further acknowledges and agrees that it is undertaking the works pursuant to this agreement at its sole risk with respect to the unfunded balance of the actual costs thereof.
12. General Parkland Requirements
- 12.1 Where the City of Hamilton is responsible for the payment of items that include a “City Share” of the cost, the Contract Drawings, Form of Tender, Standards, and Specifications shall be approved by the City prior to being released by the Developer for the purpose of obtaining competitive prices and the following tendering procedure shall be used:
- 12.1.1 Any Works where the City’s share of the cost is in excess of \$50,000 + GST shall be tendered by an open tender (i.e. public notice in the Hamilton Spectator, the Hamilton Construction Association, etc.)
- 12.1.2 The tenders shall close at the office of either the Developer or the Developer’s Landscape Architect.
- 12.1.3 A City representative will be present at the opening of the tenders to witness the bids received and shall be immediately provided with copies of the Schedule of Quantities of the three (3) low bidders.
- 12.1.4 The Developer may select the Contractor of his choice for the Works, but the City shall pay for its share of the Works only on the basis of the overall low bidder (unless there is a justified reason to choose another bid, i.e. tender disqualification, poor performance of contractor, etc.)
- 12.1.5 The Developer shall not enter into any general contract or subcontract to do the City’s Work or any portion thereof pursuant to the release of approved Tender Documents until the City has approved the said contract.

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- 12.1.6 The Developer's Landscape Architect shall certify on the Statements of City's Share of the Works that the City's share is based on the prices submitted by the low bidder that has been accepted by the City and shall provide supporting documentation where necessary.
- 12.2 The Security for Performance Deposit required by this Agreement of 100% of the total Contract Costs as outlined in Schedule B, shall be issued by a financial institution in the form of an irrevocable letter of credit put forward by the Developer of the parkland development to ensure that conditions of the Parkland Development Financial Agreement are met. In the event that the Developer does not fulfill the required obligations, the City's Public Works Manager, Construction Services, Capital Planning and Implementation, will use the securities to complete the works.
- 12.3 If the Developer should neglect to perform the City's Work properly or otherwise fails to comply with the requirements of this Section to a substantial degree, the City's Public Works Manager, Construction Services, Capital Planning and Implementation without prejudice to any other right or remedy it may have including without limitation, the right to proceed without notice contained in this Section, may notify the Developer in writing that it is in default of its contractual obligations and instruct it to correct the default in fifteen (15) working days immediately following the receipt of such notice.
- 12.4 If the City and the Developer cannot agree on an acceptable timetable for correction the City may terminate the Developer's right to continue with the City's Work in whole or in part and charge to the securities posted for any costs which the City would not have been responsible for.
- 12.5 When a change in the City's Work is proposed or required the Developer shall present to the City for approval its claim for a change and the price with appropriate documentation.
- 12.6 The Security for Performance may be reduced in amounts from time to time at the discretion of the City following receipt of a Progress Certificate from the Developer's Landscape Architect and proof of payment to the Contractor in respect of the Works covered by the said security. In no case shall the amount of security be reduced to less than an amount equivalent to the cost of the uncompleted Works as estimated by the Developer's Landscape Architect, plus ten percent (10%) of the estimated cost of Works or \$10,000, whichever amount is greater. This 10% or \$10,000, whichever amount is greater, is the warranty component of the Security for Performance. At Substantial Performance the Developer may request in writing for the release of the Security for Performance excluding the warranty component.

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- 12.7 The City shall pay the Developer the amount invoiced as per the Payment Schedule less a 10% Statutory holdback. The 10% holdback is subject to the provisions of the Construction Lien Act.
- 12.8 The Developer shall remain responsible for any and all warranties for the Works for a period of twenty-four (24) months from the date of the approval of Substantial Performance of the Works.
- 12.9 The City shall become responsible for the maintenance of the Park Block on the date of the approval of Substantial Performance of the Works. The release of the 10% holdback shall take place 45 days after the date of Substantial Performance in accordance with the Construction Lien Act.
- 12.10 The 10% warranty component of the Security for Performance shall be released provided:
- 12.10.1 A period of twenty-four months (24) from the date of the approval of Substantial Performance of the Works has elapsed and,
- 12.10.2 All Works have been completed and inspected to the satisfaction of the City's Public Works Manager, Construction Services, Capital Planning and Implementation.
- 12.11 The Developer shall agree to place a sign on the parkland block indicating the facilities to be placed on the parkland to the satisfaction of the City's Public Works Manager, Construction Services, Capital Planning and Implementation, and that this sign be in place prior to the abutting properties being offered for sale.



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**IN WITNESS WHEREOF** the Parties hereto have duly executed this Agreement.

SIGNED, SEALED & DELIVERED) **CITY OF HAMILTON**

In the presence of	)	
	)	
Approved	)	_____ (c/s)
as to Form	)	Fred Eisenberger, Mayor
	)	
	)	_____
Legal Services	)	Kevin Christenson, City Clerk
( )	)	
	)	
_____	)	
Peter Barkwell, City Solicitor	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	_____ (c/s)
	)	
	)	_____
	)	
	)	I/We have authority to bind the
	)	corporation



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**SCHEDULE "A"**

to the Agreement made on the xx day of xx month, xx year.

**Legal Description of Land**

**SCHEDULE "B"**

to the Agreement made on the xx day of xx month, xx year.

The Developer shall construct and pay the Total Cost of Works listed on this schedule and the City shall reimburse the Developer for the total amount of the City Share in accordance with the terms and conditions of the attached Agreement.

**ESTIMATE OF COSTS OF WORKS TO BE CARRIED OUT BY THE DEVELOPER**

**ESTIMATE OF COSTS OF WORKS TO BE CARRIED OUT BY THE CITY**