Report to: General Committee Meeting Date: December 3, 2024

SUBJECT: Pay-on-Demand Surety Bonds Policy

PREPARED BY: Kevin Ross
Manager, Development Finance & Payroll

REVIEWED BY: Mark Visser
Senior Manager, Financial Strategy & Investments

RECOMMENDATION:

1) THAT the report entitled, "Pay-on-Demand Surety Bonds Policy" be received;

2) THAT the attached Pay-on-Demand Surety Bonds Policy be approved;

3) THAT the Treasurer be authorized to make any necessary amendments to the Policy to be consistent with the final Provincial Regulation, should there be changes prior to its adoption and enactment; and

4) THAT staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report seeks Council approval for the adoption of a Pay-on-Demand Surety Bonds Policy to permit infrastructure works required through development agreements (subdivision and site plans) to be secured by Pay-On-Demand Surety Bonds, as an alternative or in addition to the customary Letter of Credit.

BACKGROUND:

Landowners obtaining development approvals with the City, usually secure their obligations for engineering works, urban design, planning, waste and fire with Letters of Credit (LCs). LCs have traditionally been used by many municipalities to secure developers' obligations, and in circumstances when funds have been required to rectify a delinquency, have proven to be dependable security instruments that the City can expeditiously rely on. The City is able to, on demand, draw on LCs to secure such funds.

Over the past few years, developers have been enquiring about the use of surety bonds to secure their obligations as an alternative to LCs. A surety bond is a promise to be liable for the debt, default, or failure of another. It is a three-party contract by which one party guarantees the performance or obligations of a second party to a third party. The development community has advised that unlike LCs, surety bonds will not encumber funds that they can otherwise utilize in their current and prospective developments.

Developers indicate that access to more funds will help them to invest in additional projects and assist the City in meeting the Provincial housing target.

The City had concerns about surety bonds from the standpoint of the ability to draw funds on demand, without the need to justify to the bond company the reason the funds are required or prove default under the secured agreement, before the demand for payment is accepted. There have been changes over the years to improve this aspect of bonds, particularly the introduction of pay-on-demand bonds, along with other characteristics in order to better align with LCs and provide the reliability required by municipalities.

Currently, surety bonds are issued by insurance companies to developers/landowners who qualify for the instruments, and there have been a number of municipalities that have adopted policies in recent years to accept pay-on-demand surety bonds as security for infrastructure required to facilitate approvals under subdivision and site plan agreements.

The City was aware that the Province had been reviewing the use of bonds with a view to introducing regulations for their use, and staff opted to await the proposal rather than proceed with a policy framework that could possibly be misaligned with the regulations.

OPTIONS/ DISCUSSION:

In September 2024 the Province proposed a regulatory framework under Section 70.3.1 of the *Planning Act* to guide the use of pay-on-demand surety bonds to include the following features, which are intended to help ensure these bonds are sufficiently secure and reliable to meet the purpose and needs of municipalities and serve as an appropriate alternative or supplement to LCs

Category	Particulars	Staff Comments
Licensing Requirement	The pay-on-demand surety bond will be issued by an insurer licensed under the *Insurance Act* and overseen by the Financial Services Regulatory Authority of Ontario.	Being regulated adds security to the instruments
Credit Ratings Requirement	The insurer will be required to meet one of the following credit ratings: • Dominion Bond Rating Service as “A” or higher; • Fitch Ratings as “A-” or higher; • Moody’s Investors Service Inc. as “A3” or higher; • by Standard and Poor’s as “A-” or higher;	If a pay-on-demand surety bond is called on by a municipality, the surety bond issuer’s ability to pay the amount due and on time is supported by a third party (i.e., credit rating) assessment.

	• A.M. Best Company, Inc. as "A" or higher.	
Guaranteed Payment	The pay-on-demand surety bond issuer (insurer) guarantees payment to the municipality if the developer/homebuilder defaults in performing the obligation guaranteed by the bond.	Requires the insurer to make payments to the municipality for amounts demanded in the municipality's sole discretion in the event of a default by the developer.
Timely Payment	The insurer would be required to make payment to the municipality within 15 business days of being provided with a written notice of default.	Ensures that the municipality will have timely access to funds to rectify a default.
Partial Drawdowns	The pay-on-demand bond instrument will provide for partial drawdowns.	Similar to an LC, the municipality can release/reduce the amount of the security as, and when, conditions are satisfied by the developer.
Cancellation	The insurer will be required to provide a written notice to the municipality and the developer at least 90 days in advance of its intention to terminate the pay-on-demand surety bond. The developer will be required to provide the municipality with a replacement security (e.g., LC or another equivalent pay-on-demand surety bond) within 60 days of receiving the notice, failing which, the existing pay-on-demand surety bond would remain in full force.	Similar to LCs, the municipality will be advised if the security will be discontinued. There are safeguards to ensure that the municipal obligation will always be secured as the existing bond will still be in force if no replacement is provided.

In an effort to help facilitate development and support achievement of the City's housing objectives, City staff have prepared a Pay-on-Demand Surety Bonds Policy (see Appendix A) to enable the use of such bonds as an alternative or supplement to LCs where appropriate. The Policy utilizes the Province's proposed regulation as the overarching framework to guide the use of the bonds, which will be used to secure the construction of on-site/municipal services required by subdivision and site plan approvals and agreements, is aligned with the general parameters used by the City for LCs where appropriate?, and is modeled after the policies used by other municipalities that have introduced such changes to their development finance framework. A draft template for the surety bonds instrument is also included with the policy as Attachment A to the Policy.

Surety bonds will not be used to secure development charge payments, and it is not anticipated that they will be used for smaller security obligations related to construction such as in-fill housing and pool construction. LCs will continue to be used for these obligations.

FINANCIAL CONSIDERATIONS
There is no financial impact to the City, as pay-on-demand surety bonds will mirror the features and function of LCs with no anticipated increase in risk.

HUMAN RESOURCES CONSIDERATIONS
Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:
This is consistent with the City's goal of efficient service delivery and financial stewardship.

BUSINESS UNITS CONSULTED AND AFFECTED:
The Legal Department has been consulted in, and supported the formulation of this Policy. Their comments are incorporated.

RECOMMENDED BY:

Joseph Silva
Treasurer

Trinela Cane
Commissioner, Corporate Services

Claudia Storto
City Solicitor &
Director of People Services

ATTACHMENTS:
Appendix A - Pay-on-Demand Surety Bonds Policy
- Attachment A – Pay-on-Demand Surety Bond Template