RICHMOND HILL
INCORPORATED 1873

Staff Report for Committee of the Whole Meeting

Date of Meeting: March 19, 2025
Report Number: SRCFS.25.006

Department: **Corporate and Financial Services**
Division: **Financial Services**

Subject: SRCFS.25.006 – Development Agreement Surety Bonds Policy

Purpose:

The purpose of the report is to inform Council of a new Development Agreement Surety Bonds administrative policy permitting infrastructure works required through Development Agreements (subdivision, site plans and servicing agreements) be secured by Pay-On-Demand Surety Bonds. The report also seeks delegated authority, to amend existing development agreements to allow Pay-on-Demand Surety Bonds to replace existing securities.

Recommendation(s):

a) That staff report SRCFS.25.006 – Development Agreement Surety Bonds Policy be received;

b) That the Development Agreement Surety Bond Policy attached as Appendix "A" be received for informational purposes only;

c) That staff be directed to update the standard development agreement templates to include the option to provide Pay-On-Demand Surety Bonds as a form of security; and

d) That the Mayor and City Clerk be authorized to execute amending agreements to replace existing security as set out in the Development Agreement Surety Bond Policy, upon the recommendation of Commissioner of Corporate & Financial Services.

Contact Person(s):

- Michael Lam, Manager Revenue Billing, extension #6493
- Gigi Li, Director Financial Services and Treasurer, extension #6435
- Sherry Adams, Commissioner Corporate and Financial Services, extension #2521

Report Approval:

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner, and City Manager. Details of the reports approval are attached.

Key Messages:

- As per Bill 109, More Homes for Everyone Act, 2022, Municipalities are required to accept Surety Bonds as a form of security.
- O.Reg 461/24 was released last Fall, providing regulatory framework for section 70.3.1 of the Planning Act, specifically related to the use of Surety Bonds.
- The purpose of the Policy is to follow the regulation and provide terms of use and standard language when engaged in the use of Surety Bonds.
- It is recognized that Pay-on-Demand Surety Bond is preferred by the Development community, as the financial tool provides Developers with increased liquidity, when compared to traditional Letters of Credits or Cash (Certified Cheques, Bank Drafts, or Money Order).
- The legislation is prescriptive, if the City demands for the security to be drawn, the Surety Provider is obligated to make the payment without objection from the Principal (Developer). This provides the necessary financial protection to secure development agreements.
- It is anticipated that some developers may request to have existing letters of credits be replaced. As such, amendments to existing development agreements will be required. The recommendation seeks delegated authority to amend development agreements when the only amendment is to exchange the Letters of Credit for a Surety Bond.

Background:

Bill 109, More Homes for Everyone Act, 2022, introduced Surety Bonds as a form of allowable financial security, if a municipality requires an obligation to be secured as a condition to an approval in connection with land use planning. Initial reactions by many municipalities have been to take a "wait and see" approach as the use of the instrument was not prevalent and the framework was not clear. Some municipalities introduced policies in advance of legislation to provide a framework given the lack of guidance. The Province, however after consultation with stakeholders released additional guidance and the needed legislative framework by introducing O.Reg 461/24 to section 70.3.1 of the Planning Act. This regulation provided the needed framework on how to proceed with accepting Pay-On-Demand Surety Bonds and many neighboring municipalities have subsequently started to introduce policies to further guide the use of this financial instrument.

The City like many municipalities in Ontario have traditionally only accepted Letters of Credit (LC) issued by financial institutions or "Cash" as the form of financial security. LCs and Cash have been the financial tools used to protect the City's interest and to ensure Developers' obligations are fulfilled as part of subdivisions, site plan, servicing agreements and other agreements that require a financial security. Letters of Credit allow the City to draw on the funds on default of the Developers' obligations, and as such can either lead to a resolution for the default, or the City can make alternative arrangements to complete the work. It should be noted in many instances, LCs are simply returned to the Developer once all obligations have been satisfied.

The development community over the last year have highlighted some of the advantages of the use of Pay-On-Demand Surety bonds over LCs. The main advantage is the increased liquidity and borrowing capacity for the Developer, which in-turn allows Developers to have more active developments at the same time and can address the housing shortages.

Pay-On-Demand Surety Bonds are issued by insurance companies (also known as Surety Provider) to Developers/landowners (Principal) who qualify for the instruments. The Surety Provider assesses the risk of the Developer before issuing a Pay-on-Demand Surety Bond to the City. Not all Developers/landowners will qualify and meet the requirements set by the Surety Provider, as the Surety Provider assumes the risk of payout of the Surety Bond amount by issuing the bond to the City. In the event, that the Surety Bond is demanded by the City and paid, the Surety Provider needs to collect directly from the Developer.

The proposed Policy recommends terms of use for the Pay-On-Demand Surety Bonds, which mimics the Provincial O.Reg 461/24 regulatory framework. The O.Reg was a result of consultation and addresses concerns brought forth by stakeholders including municipalities. The O.Reg framework has effectively mitigated some level of risk associated with this type of alternative financial security. The policy will guide the administration of accepting and exchanging the financial instrument.

Discussion:

The City is legislated to accept Pay-on-Demand Surety Bonds. Pay-on-Demand Surety Bonds offer the advantage of increased liquidity for the Developer so more projects can be active at the same time. The introduction of O.Reg 461/24 adds clarity on how Surety Bonds should be administered and the policy adds to the legislation framework by providing terms of use and acceptable templates to add additional clarity to assist staff when administering these Bonds.

O.Reg 461/24, provided guidance and addressed the main concerns of Pay-on-Demand Surety Bonds. Below are some of the highlights:

1) The Surety Provider needs to have a minimum Credit Rating and be in operations for over Ten (10) years and monitored by the Office of the Superintendent of Financial Institutions (OSFI). This mitigating the risk of the City having to conduct business with less recognized financial institutions.

2) The Surety Provider guarantees payment to the municipality if the Developer defaults in performing the obligations guaranteed by the Pay-On-Demand Surety Bond and is required to make the payment promptly when requested by the City. This mitigates the need to provide proof of default to the Surety Provider. Once written notice is provided, the Surety Provider is obligated to make the payment as requested and agreed to in the Surety Bond.

3) Cancellations of the Surety Bond by the Surety Provider requires a ninety (90)-day written notice in advance of their request to cancel the Surety Bond. This provides the Developer sufficient time to provide replacement securities, and in the event, satisfactory replacement securities are not received, the City can draw on the Surety Bond in advance of the bond being cancelled. Thus, mitigating the risk of expiring Surety Bonds and leaving Development Agreements being unsecured.

The above highlights, effectively addresses the original concerns raised by municipalities.

Staff recognize the merits to the use of this financial instrument, and anticipate that eligible developers may request exchanging currently held LCs for a Pay-On-Demand Surety Bond. In order to have the security exchanged, it is recommended that the underlying development agreement be amended to allow for the use of the Pay-On-Demand Surety Bond. If the amendment to the development agreement is for the purpose of allowing the use of a Pay-On-Demand Surety Bond versus a letter of credit that was previously approved, it would be more efficient to have delegated authority to staff to execute these amendments, as opposed to bringing forth a separate staff reports to seek approval every time such request occurs.

Financial Implications:

There is no financial impact to the City, as Pay-On-Demand Surety Bonds will be similar in function to traditional Letters of Credit and “cash” securities with no anticipated increase in risk.

Relationship to Strategic Plan 2024-2027:

Providing financial liquidity to Developers in efforts to advance more housing development and options, while at the same time maintaining the City’s financial protection, relates to Pillar 1, Growing a Livable Sustainable Community, specifically Priority 1, encouraging and supporting a range of housing options and affordability.

Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. All attachments have been reviewed and made accessible. If you require an alternative format please call the contact person listed in this document.

- Appendix A - Pay-On-Demand Surety Bonds Policy

Report Approval Details

Document Title:	SRCFS.25.006-Development Agreement Surety Bond Policy.docx
Attachments:	- SRCFS.25.006-Appendix A-Development Agreement Surety Bond Policy.pdf
Final Approval Date:	Mar 4, 2025

This report and all of its attachments were approved and signed as outlined below:

Gigi Li - Mar 4, 2025 - 12:21 PM

Sherry Adams - Mar 4, 2025 - 1:26 PM

Darlene Joslin - Mar 4, 2025 - 1:40 PM