Memorandum

To: Mayor and Members of Council

From: Finance Department

Date: Monday, March 17, 2025

RE: Pay-On-Demand Surety Bonds Policy

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 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 Letters of Credit (LC's).

Currently, any applicant for a subdivision or site plan development approval is required to secure their requirements for engineering works, planning, or design with LC's. This has been the traditional approach for years used by municipalities as LC's are secured by banks and are a reliable method if funds are required to rectify an issue with a development. If, for any reason, funds were required and the issue was not resolved by the developer, the Township could simply notify the bank and cash in the LC's to complete any of the deficiencies or repair any infrastructure or damages.

The Township accepts LC's from only registered Schedule I or II banks which are banks that are domestic institutions or permitted to operate in Canada, under the *Bank Act*, Canada's primary banking law as security of any development application.

A surety bond or guaranty involves a promise by one party to assume responsibility for the debt obligation of a borrower if the borrower defaults. Usually, a surety bond is a promise by the surety or guarantor to pay one party a certain amount if a second party fails to meet its obligations. LC's are issued by banks and cost a fee plus you must have sufficient funds in the bank to secure it whereas surety bonds do not encumber funds and leave it more flexible for developers to fund projects.

In the past, surety bonds were not an acceptable form of payment for municipalities due to concerns over the ability to withdraw funds on demand without the need to justify to the bond company the reason the funds are required, or to prove default under the agreement, before the demand for payment is accepted. Recently, the surety bonds issuers and the development industry created a newer version of a surety bond, commonly referred to as a Pay-on-Demand bond. This new version provides the level of protection required in financial securities by a municipality. Typically, surety bonds are issued by insurance companies to developers/landowners who qualify, and some municipalities have already been accepting this as a form of security for their development applications.

With the recent change in legislation under the *Planning Act* this gives the Township an opportunity to adopt this policy and provide other options for developers for funding projects.

The following provides the major updates being recommended with respect to the acceptance of Surety Bonds provided as security in connection with development agreements:

- specifies a minimum credit rating as assessed by the four major credit rating agencies.
- minimum requirements for the surety provider:
    - incorporated in Canada for not less than 10 years
    - active institution monitored by Office of the Superintendent of Financial Institutions (OFSI)
- similar to Letters of Credit, have a standard required form and format

Below are some guidelines on the types of bonds:

1. The surety bond shall be issued by a Canadian surety provider having a minimum credit rating of:

    1. “A” or higher as assessed by DBRS Morningstar;

    2. “A-“ or higher as assessed by Fitch Ratings;

    3. “A3” or higher as assessed by Moody’s Investor Services; or

    4. “A-“ or higher as assessed by S&P Global

2. The issuing company shall be incorporated in Canada for no less than ten (10) years and issue surety bonds in Canadian dollars.

3. The issuing security provider must be an active institution monitored by the Office of the Superintendent of Financial Institutions (OSFI).

4. The surety bond to be provided to the Township issued by a surety provider shall be irrevocable and shall be in the form and on the terms of the Surety Bond Standard Format Requirement (see Appendix A).

5. The Township will not accept Letters of Guarantee, Guaranteed Investment Certificates, Term Deposits or any form of non-cash security in place of a Surety Bond.

There is no immediate financial impact to the Township, as the changes only serve to make the Township's approach consistent with updated Provincial regulations. The structure imposed on the pay-on-demand surety bonds will be similar to the structure imposed on LC's.

Peggy Tollett
Director of Finance / Treasurer
Attachment: Appendix A - Sample - Surety Bond Acceptance Template