

NO: **R227**

COUNCIL DATE: **December 2, 2019**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **November 28, 2019**

FROM: **General Manager, Engineering
General Manager, Corporate Services
General Manager, Finance**

FILE: **5250-01**

SUBJECT: **Update on Surety Bond Pilot Program**

RECOMMENDATION

The Engineering Department, the Corporate Services Department, and the Finance Department recommend that Council:

1. Receive this report for information; and
2. Approve the change to the number of eligible land development projects using surety bonds from the current maximum of five to the new maximum of 12, when the developers have been qualified by acceptable surety bond companies.

INTENT

The purpose of this report is to seek Council's approval to increase the number of eligible land development projects to use surety bonds, as an alternate form of security, for Servicing Agreements from the current maximum of five to a new maximum of 12.

BACKGROUND

In 2016, Council approved Corporate Report No. R257; 2016 (attached as Appendix "I") which authorized a pilot program for the use of surety bonds as an alternate form of security for Servicing Agreements. Subsequently, in 2017, Council approved Corporate Report No. L001; 2017 (attached as Appendix "II") which included a modification to the terms of the pilot program that increased the maximum number of eligible land development projects from three to five.

DISCUSSION

A surety bond is a three-party agreement between the City, the developer, and the surety bond company (the "Surety") which obligates the Surety to pay the City if the developer defaults in completing the off-site engineering servicing works for the land development projects in this pilot program.

Since Council's initial approval of the pilot program on December 5, 2016, the following benefits of the pilot program have been realized:

- Two projects have been successfully completed and three projects are in construction or about to commence construction.
- Four of the projects with surety bonds were provided by the same Surety.
- Each developer participating in the pilot program have been qualified by the Surety as financially stable and capable of completing the projects.
- The participating developers paid lower fees for surety bonds compared to the cost associated with obtaining letters of credit.
- There have been no defaults or issues on these projects by the developers to date.

Staff have found the surety bond pilot program to be successful to date. In addition, staff have received enquiries from other interested developers and Surety companies wanting to participate in the pilot program. To this end, staff believe there is merit in continuing with the pilot program and to increase the maximum number of projects to 12. While the projects will continue to be allocated on a first-in-first-selected basis, each developer should be limited to a maximum of three projects each. Once the 12 projects have completed the servicing works, or there is a default, staff will evaluate the pilot program.

The surety bond pilot program will continue to require that surety companies will maintain a minimum of A level from A.M. Best Rating Services.

Through discussions with surety bond companies, the conditions and provisions have been updated and reviewed by Legal Services staff and will become the standard for the City's new surety bond going forward.

Legal Services Review

Legal Services has reviewed this report and has no concerns.

SUSTAINABILITY CONSIDERATIONS

This pilot program supports the objectives of the City's Sustainability Charter 2.0. In particular, this pilot program relates to the Sustainability Charter 2.0 theme of Inclusion. Specifically, this pilot program supports the following Desired Outcomes ("DO") and Strategic Directions ("SD"):

- Housing DO₁₂: Everyone in Surrey has a place to call home;
- Housing DO₁₃: Appropriate and affordable housing is available to meet the needs of all households in Surrey;
- Housing SD₁₀: Increase and maintain the supply of affordable and appropriate rental housing across all Surrey communities; and
- Housing SD₁₁: Ensure development of a variety of housing types to support people at all stages of life.

CONCLUSION

The surety bond pilot program has been successful in preserving the City's interests, while using an alternate form of security for Servicing Agreements. It has reduced the developer's fees related to securities for engineering works. In addition, it has encouraged additional development activities and projects in the City. Based on continued interest in the pilot program, it is recommended to increase the maximum number of eligible land development projects using surety bonds from five to 12.

Scott Neuman, P.Eng.
General Manager,
Engineering

Rob Costanzo
General Manager,
Corporate Services

Kam Grewal, CPA, CMA
General Manager,
Finance

SSL/cc

Appendix "I" - Corporate Report No. R257; 2016
Appendix "II" - Corporate Report No. L001; 2017

CORPORATE REPORT

NO: **R257**

COUNCIL DATE: **December 5, 2016**

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **November 30, 2016**

FROM: **General Manager, Engineering** FILE: **5250-01**
General Manager, Finance & Technology
City Solicitor

SUBJECT: **Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements**

RECOMMENDATION

The Engineering Department, the Finance & Technology Department and the Legal Services Division recommend that Council:

1. Receive this report as information; and
2. Approve a pilot program, for up to three land development projects on a first-in-first-selected basis, for the use of a Surety Bond, from acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services, in a form acceptable to the City as an alternate form of security to Cash or Letter of Credit for Servicing Agreements in which the Developers have been qualified by an acceptable Surety Bond Insurer.

INTENT

The purpose of this report is to seek Council's approval for a pilot program, for up to three land development projects, for the use of Surety Bonds as an alternate form of security for Servicing Agreements.

BACKGROUND

The *Surrey Subdivision and Development Bylaw, 1986, No. 8830*, as amended, identifies only Cash or an irrevocable Letter of Credit in favour of the City as the only acceptable forms of securities for Servicing Agreements.

DISCUSSION

City staff have developed a Nexus approach to land development which envisions:

- A partnership between the Developer's team and City staff to expedite processing of key strategic applications/projects, e.g., developments along LRT corridors, City Centre enhancements, significant economic benefits, etc.; and
- Areas for continuous improvements, e.g., piloting the use of project schedules on several projects to establish realistic expectations of timelines, piloting the use of Surety Bonds as an alternate form of security for Servicing Agreements, etc.

Currently, security for engineering works and services ("Works") required to be constructed by the Developer in order to develop a property in accordance with the *Surrey Subdivision and Development Bylaw, 1986, No. 8830* is to be in the form of Cash or Letter of Credit only. These forms of security allow the City to immediately access and utilize these monies, if required, to complete outstanding or deficient Works should the Developer not fulfill the Servicing Agreement obligations which are required to support the development, e.g., subdivided lots which must have frontage works completed when houses are built and ready for occupancy. In a similar way, a Surety Bond, which is a three-party agreement between the Developer, Surety Bond Insurer ("Surety") and the City, obligates the Surety to pay the City for the debt or default of the Developer.

The City will qualify acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services. In turn, the Surety will qualify Developers after a review of their current and historical financial results to verify financial stability and capability to ensure completion of the development.

The City's Legal Services staff will provide the Surety with the form of the Surety Bond to ensure all terms and conditions are acceptable to the City. The proposed Surety Bond will have different and simplified terms and conditions from the standard bonds to be consistent with current terms and conditions of Letter of Credit. If the Surety and the City cannot agree to the form of the Surety Bond, then a Surety Bond will not be permitted.

The following is a summary of the pros and cons to the Developer and the City with using Surety Bonds:

Pros

Developer	<ul style="list-style-type: none">• The Developer's working capital will be freed for greater liquidity that can then be encouraged for reinvestment into the City.• The Surety will have qualified the Developers as financially stable and capable of completing the development after a review of their current and historical financial results.
City	<ul style="list-style-type: none">• The City may be viewed as more open for business with a new practice to facilitate development.• The City may benefit from the Developer's freed-up working capital for reinvestment into the City.

Cons

Developer	<ul style="list-style-type: none">• In order to effect the use of Surety Bond as an alternate form of security for a Servicing Agreement, the Developer will have to apply for a Development Variance Permit requesting Council's approval to vary the definition of "Bond" in the <i>Surrey Subdivision and Development Bylaw, 1986, No. 8830</i> to include the use of Surety Bond for that specific Servicing Agreement.
City	<ul style="list-style-type: none">• The City's Legal Services staff will need to prepare the form of the Surety Bond to ensure all terms and conditions are acceptable to the City.• If the Developer defaults in resolving a construction issue in a timely manner, the City traditionally holds the Cash or Letter of Credit security to ensure the defaulted work is completed by the Developer but, with a Surety Bond, the City will then have to take on the role of project manager and contract administrator to remedy the defaulted work.• The success of the pilot program can only be evaluated when an issue arises.

Staff will report back to Council on the results of the project(s) and with recommendations regarding its continuation.

SUSTAINABILITY CONSIDERATIONS

This pilot program supports the goals of the Sustainability Charter 2.0 to increase housing options and affordability by allowing improved utilization of Developer's capital funds for reinvestment. In particular, the pilot program supports the theme of Inclusion, specifically the following Desired Outcomes and Strategic Directions:

- Housing DO12: Everyone in Surrey has a place to call home;
- Housing DO13: Appropriate and affordable housing is available to meet the needs of all households in Surrey;
- Housing SD10: Increase and maintain the supply of affordable and appropriate rental housing across all Surrey communities; and
- Housing SD11: Ensure development of a variety of housing types to support people at all stages of life.

CONCLUSION

Based on the above discussion, it is recommended that Council:


- Receive this report as information; and
- Approve a pilot program, for up to three land development projects on a first-in-first-selected basis, for the use of a Surety Bond, from acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services, in a form acceptable to the City as an alternate form of security to Cash or Letter of Credit for Servicing Agreements in which the Developers have been qualified by an acceptable Surety Bond Insurer.



Fraser Smith, P.Eng., MBA
General Manager,
Engineering



Vivienne Wilke, CPA, CGA
General Manager,
Finance & Technology



Craig MacFarlane
City Solicitor

SSL/clr

NO: 2001

COUNCIL DATE: March 6, 2017

REGULAR COUNCIL - LAND USE

TO: **Mayor & Council** DATE: **February 27, 2017**

FROM: **General Manager, Engineering** FILE: **5250-01**
Acting General Manager, Finance & Technology XC: **7914-0348-01**
City Solicitor **7915-0130-01**

SUBJECT: **Update on Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements**

RECOMMENDATION

The Engineering Department, the Finance & Technology Department, and the Legal Services Division recommend that Council:

1. Approve the change of acceptable Surety companies from a minimum of A+ level to a minimum of A level from A.M. Best Rating Services;
2. Approve the change in the maximum number from three to five for land development projects eligible to participate in the pilot program on a first-in-first-selected basis for the use of a Surety Bond when the Developers have been qualified by an acceptable Surety company;
3. Approve the Development Variance Permit No. 7914-0348-01 (Appendix "I") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7814-0348-00 and to proceed to Public Notification; and
4. Approve the Development Variance Permit No. 7915-0130-01 (Appendix "II") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7815-0130-00 and to proceed to Public Notification.

INTENT

The purpose of this report is to seek Council's approval to change the acceptable Surety companies' rating from A+ to A, to change the number of eligible projects and to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for the noted development projects.

BACKGROUND

On December 5, 2016, Council approved Corporate Report R257;2016 titled "Pilot Program for Use of Surety Bonds as Alternate Form of Security for Servicing Agreements".

DISCUSSION

Upon further discussions with the development industry, it was requested that the Surety companies' minimum rating be changed from A+ to A. This change is acceptable, as staff have been advised that this will allow more Surety companies in Canada to underwrite Surety Bonds and still meet our expectations.

Two developers have requested that their development projects, which have each provided a Letter of Credit for the respective Servicing Agreement, be permitted to retroactively replace each Letter of Credit with a Surety Bond. Staff support this request, but recommend that only one of each developer's projects be permitted to implement the replacement. Including these projects will allow a shortened timeline to evaluate the success of the pilot program.

In order to allow the use of Surety Bonds, a Development Variance Permit is required to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for each of the two development projects. As a result of the inclusion of these two development projects, staff are recommending that the original maximum number of three projects indicated in Corporate Report R257;2016 be increased to a maximum of five projects.

SUSTAINABILITY CONSIDERATIONS

This pilot program supports the goals of the City's Sustainability Charter to increase housing options and affordability by allowing improved utilization of developers' capital funds for reinvestment. In particular, the pilot program supports the Sustainability Charter theme of Inclusion, specifically the following Desired Outcomes and Strategic Directions:


- Housing DO₁₂: Everyone in Surrey has a place to call home;
- Housing DO₁₃: Appropriate and affordable housing is available to meet the needs of all households in Surrey;
- Housing SD₁₀: Increase and maintain the supply of affordable and appropriate rental housing across all Surrey communities; and
- Housing SD₁₁: Ensure development of a variety of housing types to support people at all stages of life.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Approve the change of acceptable Surety companies from a minimum of A+ level to a minimum of A level from A.M. Best Rating Services;

- Approve the change in the maximum number from three to five for land development projects eligible to participate in the pilot program on a first-in-first-selected basis for the use of a Surety Bond when the Developers have been qualified by an acceptable Surety company;
- Approve the Development Variance Permit No. 7914-0348-01 (Appendix "I") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7814-0348-00 and to proceed to Public Notification; and
- Approve the Development Variance Permit No. 7915-0130-01 (Appendix "II") to vary the definition of "Bond" in the *Surrey Subdivision and Development By-law, 1986, No. 8830, as amended*, to include the use of a Surety Bond for Servicing Agreement No. 7815-0130-00 and to proceed to Public Notification.



Fraser Smith, P.Eng., MBA
General Manager,
Engineering



Suzanne Fillion, CPA, CGA
Acting General Manager,
Finance & Technology



Craig MacFarlane
City Solicitor

SSL/cc

Appendix "I" – Development Variance Permit No. 7914-0348-01
Appendix "II" – Development Variance Permit No. 7915-0130-01

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Note: Appendices available upon request