

NO: R015

COUNCIL DATE: January 27, 2025

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 23, 2025**

FROM: **General Manager, Engineering**

FILE: **5250-01**

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

RECOMMENDATION

The Engineering Department recommends that Council:

1. Receive this report for information;
2. Approve the change to the number of eligible land development projects using surety bond pilot from 30 to a new maximum of 50; and
3. Endorse the eligibility criteria for Surety Bond Pilot Program.

INTENT

The purpose of this report is to provide an update on the Surety Bond Pilot Program (the “Program”) while seeking Council’s approval to increase the number of eligible land development projects to use surety bonds as an alternate form of security for Servicing.

BACKGROUND

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 Program. In lieu of the traditional forms of security, like cash or letter-of-credit, a surety bond allows for greater liquidity for the developer’s working capital that can then be encouraged for reinvestment into the City.

In 2016, Council approved Corporate Report No. R257; 2016 (attached as Appendix “I”) which authorized the Program for the use of surety bonds as an alternate form of security for Servicing Agreements. Subsequently, Council approved various Corporate Reports to increase the maximum number of eligible land development projects from the original value of three projects in 2016 to the current maximum of 30 on-going projects in 2024.

DISCUSSION

Since the initial approval of the Program in 2016, staff and the development industry have found it to be a successful approach to financing, and staff continue to receive frequent enquiries from the development industry wanting to participate in the Program. As a result of the interest, staff are seeking Council's approval to further increase the Program to a new maximum of 50 land development servicing projects.

Since the inception of the Program in 2016, 30 projects have utilized surety bonding. Of these projects, four have been completed and another four are nearing final completion/acceptance; the remaining projects are actively under construction or have subsequent phases of development to be complete before all engineering works and services are constructed.

To date, staff have qualified land development projects for the Program based on their proximity along Rapid Transit corridors, City Centre enhancements, and/or their significant economic benefits. As the Program is continuing to grow, staff recommend that Council endorse the following eligible criteria that a land development project must fall within to qualify for the Program:

- Land development projects within City Centre Office or Entertainment District; or
- Projects that provide front-ending engineering infrastructure (i.e., detention ponds, pump stations, trunk utilities, etc.) that provide a neighbourhood-wide benefit for housing or industrial uses; and
- Acceptable Surety companies with a minimum of A+ level from A.M. Best Rating Services; and
- Securities amount ranging from \$3,000,000.00 to \$15,000,000.00.

A Development Variance Permit will still be required for each land development project to be included in the Program. As such, the ultimate decision for a land development project to utilize Surety Bond will be brought forward for Council's consideration.

Land development projects that already have an executed Service Agreement cannot be permitted to retroactively qualify for the Program.

CONCLUSION

Based on the above discussion, it is recommended that Council approve the change to the number of eligible land development projects using surety bonds to a new maximum of 50 and approve the list of criteria to be eligible for the Program.

Scott Neuman, P.Eng.
General Manager, Engineering

JP/cc/bn

Appendix "I" – Corporate Report No. R257; 2016

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

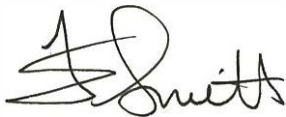
This pilot program supports the goals of the Sustainability Charter 2.0 to increase housing options and affordability by allowing improved utilization of Developer's capital funds for reinvestment. In particular, the pilot program supports the theme of Inclusion, specifically the following Desired Outcomes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



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