



The Corporation of the Town of Milton

Report To: Council

From: Glen Cowan, Chief Financial Officer / Treasurer

Date: March 17, 2025

Report No: ES-007-25

Subject: Financial Securities - Acceptance of Surety Bonds

Recommendation: THAT Council approve the Pay-on-Demand Surety Bond Template attached as Appendix A to this report;

AND THAT Council authorize the Chief Financial Officer and Treasurer to make amendments to Appendix A and the associated schedules thereto as necessary to comply with provincial legislation or reflect evolving best practices;

AND THAT Council approve a new user fee, in the amount of \$279, for the conversion of an existing letter of credit financial security with a surety bond.

EXECUTIVE SUMMARY

- Through Town Policy No. 117 Financial Management - Development Finance, Milton currently accepts financial securities in the form of cash or letters of credit to guarantee performance under various development agreements.
- Legislative changes to the *Planning Act* through Bill 109, *More Homes for Everyone Act, 2022*, compel municipalities to accept surety bonds as a form of financial security as prescribed by the Minister.
- Concurrent to this report, recommended changes are being proposed to Town Policy No. 117 Financial Management - Development Finance to allow surety bonds as a form of security in accordance with the *Planning Act* and as summarized in this report.
- A new user fee of \$279 is recommended to recover staff time administering any exchanges of existing financial securities with a surety bond, where applicable, under the amended financial policy.

REPORT

Background

When a property owner enters into a development agreement with the Town under the *Planning Act*, the owner is required to deliver financial securities to the Town to guarantee performance of the owner's obligations under the development agreement. The financial security represents a portion of the cost of municipal related construction work (sewers, grading, stormwater management, related site management, etc.) and are held by the Town until the agreed upon work has been completed to the satisfaction of the Town. Town Policy No. 117 Financial Management - Development Finance defines cash and letters of credits as the form of financial securities currently accepted by the Town. Letters of credit are often the preferred option for developers of large-scale projects whereas cash securities are typically used for smaller projects.

A Letter of Credit (LC) is a form of security issued by a financial institution that guarantees payment or performance by allowing the Town the right to draw upon the security in the case of developer default. LCs, as a security instrument, continue to be widely and most commonly used by municipalities due to their ease of use and minimal financial risk to the municipality.

Discussion

On April 14, 2022, legislative changes were approved through Bill 109, *More Homes for Everyone Act, 2022*, that added the following section to the *Planning Act* requiring municipalities to accept surety bonds as a form of financial security for land use planning matters:

70.3.1 (1) The Minister may make regulations,

(a) prescribing and defining surety bonds and prescribing and further defining other instruments for the purpose of this section;

(b) authorizing owners of land, and applicants for approvals in respect of land use planning matters, to stipulate the specified types of surety bond or other instrument to be used to secure an obligation imposed by the municipality, if the municipality requires the obligation to be secured as a condition to an approval in connection with land use planning, and specifying any particular circumstances in which the authority can be exercised.

A surety bond is a form of financial guarantee and is an agreement between three parties: the principal (the developer), the obligee (the Town), and the surety. The surety provides a

Discussion

promise to the Town that it will be liable for the debt, default or failure of the developer under a development agreement. In most cases, the surety will rigorously vet the financial means, expertise, resources, and operational controls of the principal to bring a development project to completion prior to issuing the surety bond. Surety bonds benefit the development community as they do not tie up funds in the manner that LCs may, and instead allow the applicants to commit more finances towards their development activities.

Similar to LCs and cash securities, the surety bond will be in an amount that meets the financial security requirements of the Town under the development agreement, and should, at any point, the developer fail to meet their obligations under the development agreement, the Town can make a demand to the surety in an amount commensurate with the default.

Although approved in April 2022, the legislation only came into force on November 20, 2024 with the release of O.Reg 461/24 which defines the legislated requirements a surety bond must satisfy. These requirements serve to protect municipal financial interests and include the following:

- Insurer must be licensed under the *Insurance Act* to write surety insurance and meet minimum bond rating requirements
- Municipality must be guaranteed payment if the principal defaults in performing an obligation guaranteed by the bond
- Municipality has sole discretion in determining if the principal has defaulted on an obligation guaranteed by the bond
- Insurer must make payment to the municipality, within 15 business days, after receiving a demand from the municipality, notwithstanding any objection by the principal and the insurer cannot assert any defence or grounds for not making the payment
- Requirements for termination of an insurer's obligation under the bond

Concurrent to this report, staff are recommending modifications to Town Policy No. 117 Financial Management - Development Finance to reflect the legislative requirements to accept surety bonds for land use planning matters. The recommended policy changes provide direction on when and in what form surety bonds will be accepted as well as identify the responsibilities of various Town staff involved in the process of their collection and administration. Key policy highlights include:

Discussion

- All surety bonds must meet the requirements of subsection 2(2) of Regulation 461/24 of the *Planning Act* and will only be accepted to secure an obligation required in connection with land planning approvals under the *Planning Act*
- The surety bond must be in Canadian dollars and in compliance with the Town's Surety Bond Template, attached as Appendix A to this report
- Requests to transition existing financial securities will only be accepted if the language in the underlying development agreement permits the provision of a surety bond as a form of security

Although the *Planning Act* does not require municipalities to exchange existing financial securities for agreements executed before the legislative changes came into force, staff are recommending the Town accept such exchanges but only where the underlying financial agreement permits surety bonds as a form of security. In such cases, Town staff are recommending a new user fee in the amount of \$279 be established and imposed where a developer requests a change in form of security to recover staff time to administer these requests.

Staff have also updated the financial security related language in the relevant development agreement templates to align with the updated financial policy so all future land use planning related development agreements permit the provision of surety bonds as a form of financial security in accordance with the *Planning Act*.



Discussion Financial Impact

As currently written, the legislation governing the provision of surety bonds appears to provide similar financial security and protection to municipalities as letters of credit provide. This protection, however, has yet to be tested as it is difficult to find many examples to date where a demand for payment was required by a municipality for non-performance under a surety bond. For context, as of the end of 2024, the Town held just over \$200 million in LC securities under various financial agreements.

The introduction of the recommended new user fee of \$279 for the exchange of an existing LC with a surety bond is not expected to yield significant revenue for the Town as staff are not projecting a large quantity of security exchanges. Any revenue from the new user fee will be reflected in the operating budget and related variance reporting.

In accordance with Town Policy No. 117 Financial Management - Development Finance, surety bond holdings will be reported annually with the other financial securities through the Town's Development Charges Reserve Fund Treasurer's Statement report.

Respectfully submitted,

Glen Cowan
Chief Financial Officer / Treasurer

For questions, please contact: Melanie Wallhouse
Manager, Development Finance and Financial Consulting Ext: 2314

Attachments

Appendix A: Surety Bond Template

Approved by CAO
Andrew M. Siltala
Chief Administrative Officer

Recognition of Traditional Lands

The Town of Milton resides on the Treaty Lands and Territory of the Mississaugas of the Credit First Nation. We also recognize the traditional territory of the Huron-Wendat and



The Corporation of the Town of Milton

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Recognition of Traditional Lands

Haudenosaunee people. The Town of Milton shares this land and the responsibility for the water, food and resources. We stand as allies with the First Nations as stewards of these lands.

Development Agreement Pay-on-Demand Surety Bond

Bond No: _____

Bond Amount: \$ _____

KNOW ALL PERSONS BY THESE PRESENTS, that

[insert name of Principal],

as Principal, hereinafter called the “Principal”, and

[insert name of Surety],

as Surety, hereinafter called the “Surety”,

are held and firmly bound unto The Corporation of the Town of Milton, as Obligee (hereinafter called “Milton”), in the amount of [insert amount in words] Dollars (\$[insert amount in numbers]) lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents as a primary obligation.

WHEREAS the Principal and Milton have entered into, or will enter into, a [insert type of agreement (Pre-Servicing, Subdivision, Site Plan, Servicing)] Agreement dated [insert date here] under file number [insert 24T-XXXX/M or SP-XX/XX (remove if servicing agreement)], for [insert Town Development Name and Phase (if applicable)] which agreement is by reference made a part hereof and is hereinafter referred to as the “Development Agreement,” with respect to Lands as defined in the Development Agreement.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall, in the opinion of Milton do and perform all of the stipulations, conditions, covenants and terms of the Development Agreement, then this obligation shall be void and of no effect; otherwise, it shall remain in full force and effect,

PROVIDED, however, the foregoing obligation is subject to the following terms and conditions:

1. Whenever the Principal shall be declared in writing by Milton to be in default under the Development Agreement, and Milton intends to make a claim under this bond, Milton shall promptly notify the Principal and the Surety in writing of such default in the form of a Demand, the form of which is attached to this Bond as Schedule “A”.
2. On determination by Milton, in its sole and absolute discretion, that the Principal is in default of its obligations under the Development Agreement, the Surety and Principal agree that the Surety will make payments to Milton for amounts demanded by Milton, up to an aggregate of the Bond Amount, within fifteen (15) business days after the Surety’s receipt of a Demand from Milton at the address noted herein by hand or courier.
3. This Bond is irrevocable, unconditional and constitutes a primary obligation. Payment will be made notwithstanding any objection by the Principal. Where a Demand in the

prescribed form has been delivered to the Surety, it shall be accepted by the Surety as conclusive evidence of its obligation to make payment to Milton, and the Surety shall not assert any defense or grounds of any nature or description for not making payment to Milton, in whole or in part, pursuant to such Demand, including but not limited to any of the following reasons:

- a. that a Default has not occurred;
 - b. that the Principal committed any fraud or misrepresentation in its application for the Bond;
 - c. that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Development Agreement;
 - d. any bankruptcy, reorganization, or insolvency of the Principal or any successor or assignee thereof; or,
 - e. that the Principal is no longer the registered owner of the Development Lands.
4. The Surety's liability under this Bond shall not be discharged or released or affected by any arrangements made between Milton and the Principal or by any dispute between the Surety and Principal, or the taking or receiving of security by Milton from the Principal, or by any alteration, change, addition, modification, or variation in the Principal's obligation under the Development Agreement, or by the exercise of Milton or any of the rights or remedies reserved to it under the Development Agreement or by any forbearance to exercise any such rights or remedies whether as to payment, time, performance or otherwise (whether or not by any arrangement, alteration or forbearance is made without the Surety's knowledge or consent). All payments by the Surety shall be made free and clear without deduction, set-off or withholding.
 5. Milton may make multiple Demands under this Bond.
 6. The Bond cannot be amended or terminated without the express approval of Milton. Any amendment to the Bond will be, substantially in accordance with Schedule "B" to this Bond.
 7. The amount of the Bond may be reduced from time to time as advised by notice in writing by Milton to the Surety.
 8. Each payment made by the Surety under this Bond shall reduce the amount of this Bond.
 9. In no event shall the Surety be liable for a greater sum than the amount of this Bond.
 10. No right of action shall accrue upon or by reason hereof to or for the use or benefit of any person other than Milton.
 11. The Bond shall only apply to one (1) security requirement, for one (1) development agreement.
 12. Upon completion of a portion of the works required by the Development Agreement to Milton's satisfaction, Milton may undertake a partial release of the Bond. A partial release

may be made in an amount that does not exceed the value of the work that is outstanding. A partial release of the Bond will be approved and processed at the sole discretion of Milton.

13. When the Principal has completed all works required by the Development Agreement to Milton's satisfaction, all maintenance and rectification periods contained within the Development Agreement have expired, and Milton has finally assumed all works in writing, Milton shall return this Bond to the Surety for termination or advise the Surety in writing that this Bond is terminated, in accordance with the terms of the Development Agreement.
14. If the Surety at any time delivers at least ninety (90) days prior written notice to Milton and to the Principal of its intention to terminate this obligation, the Principal shall deliver to Milton, not less than thirty (30) days prior to the day on which the Surety intends to terminate its obligations under this Bond, a financial security in the amount of this Bond in a form acceptable to Milton. If the replacement financial security is not provided by the Principal or is not accepted by Milton, this Bond shall remain in effect.
15. Nothing in this Bond shall limit the Principal's liability to Milton under the Development Agreement.
16. This Bond shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated, in all respects, as a contract entered into in the Province of Ontario without regard to conflict of laws principles. The Principal and Surety hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Ontario.
17. All Demands and notices under this Bond shall be delivered by email to the Surety, copying the Principal at their email set out below, subject to any change of email in accordance with this Section. A change of email for the Surety is publicly available on the Financial Services Regulatory Authority of Ontario website. The email for the Principal may be changed by giving notice to the other parties setting out the new email in accordance with this Section.

Surety:	Principal:	Obligee/Milton:
Name	Name	The Corporation of the Town of Milton
Address	Address	150 Mary Street, Milton, ON L9T 6Z5
Email	Email	developmentfinance@milton.ca
Phone	Phone	905-878-7252 ext. 2402

18. The Surety agrees to indemnify Milton from any claims related to the Bond, holding the Principal responsible for repaying any money paid by the surety to Milton in the process of settling a claim.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority.

SIGNED AND SEALED this [date] day of month, 20XX, in the presence of:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

_____, Attorney in Fact

SCHEDULE "A" TO
DEVELOPMENT AGREEMENT SURETY BOND
DEMAND

[Insert Date]

[Insert Issuing Surety Name]
[Insert Issuing Surety Address] and to:

[Insert Principal's Name]
[Insert Principal's Address]

Re: Bond No. [Insert Bond Number] dated [Insert Bond Date] for [insert full name of Principal] (hereafter referred to as the "Principal")

To Whom It May Concern:

This is a demand for payment of [Insert Specific Amount In Words] Canadian dollars (\$[Insert Specific Amount In Numbers]) under the above-referenced bond. We hereby certify that:

- (a) the Principal is in default of the Development Agreement; and
- (b) the monies demanded under this bond have been paid, are payable, or will be payable by us to remedy the Principal's default under the Development Agreement.

Please pay the amount demanded to The Corporation of the Town of Milton and deliver the payment to:

[Insert Delivery Instructions For The Payment Of The Demand]

Your Truly,

The Corporation of the Town of Milton

By: _____
Name: Glen Cowan
Title: Chief Financial Officer

SCHEDULE "B" TO
DEVELOPMENT AGREEMENT SURETY BOND
AMENDING BOND AMOUNT

Bond No: _____

This rider is to be attached to and form part of Bond number [insert bond number] dated the [insert day] day of [insert month], 20[insert year] and issued on behalf of [insert name of Principal] ("Principal") by [insert name of Surety] ("Surety") in favour of The Corporation of the Town of Milton ("Milton").

WHEREAS the Principal and the Surety issued the bond in favour of Milton in the amount of [insert amount of bond in numbers]; and

WHEREAS on the [insert day] day of [insert month], 20[insert year] Milton authorized amending the amount of the bond to [insert amended amount of bond in numbers];

NOW THEREFORE IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. the Bond Amount is amended to read:

[insert amended bond amount in words] [insert amended bond amount in numbers]

2. All other terms and conditions of the Bond remain unchanged.
3. This amendment is effective as of the [insert day] day of [insert month], 20[insert year].

Signed this [insert day] day of [insert month], 20[insert year].

[INSERT NAME OF PRINCIPAL]

[INSERT NAME OF SURETY]

Attorney in Fact