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General Manager, Finance and Corporate Services
Corporate Services Department
1st Floor, 71 Main Street West

October 9, 2024

ERO Number: 019-9198

Ruchi Parkash, Director, Municipal Finance Policy Branch
Ministry of Municipal Affairs and Housing
17th Floor, 777 Bay Street
Toronto, Ontario
M7A 2J3

Dear Director Parkash:

**Subject: City of Hamilton Submission on Proposed Regulation Notice:
*Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-
Use Planning Obligations under Section 70.3.1 of the Planning Act***

Thank you for the opportunity to provide comments on ERO 019-9198: *Enabling the Use of Pay-on-Demand Surety Bonds to Secure Land-Use Planning Obligations under Section 70.3.1 of the Planning Act* ("Surety Bond Regulation"). Please accept the following comments for consideration.

As communicated by the Province of Ontario (Province), the Provincial commenting period closes at 11:59 pm on October 16, 2024. Given the short timeline provided to municipalities to comment on the Surety Bond Regulation, City of Hamilton (City) staff has assembled a letter that highlights initial thoughts/requests. The City's final comments will be forwarded to the Province once they have been endorsed by Council in November 2024.

The City is committed to working with the Province to address the Housing Crisis in a thought out and responsible manner. The City has been accepting pay-on-demand surety bonds since the summer of 2021. To date, the City has not needed to draw on one. The pay-on-demand surety bond as a tool for municipalities to secure development agreements is still considered new and, as such, the complexities that may arise across the sector are in their infancy. It is noted that pay-on-demand surety bonds as security for construction have been in place since 2018 and the Province provided a template bond which has been successful (Form 5, Construction Lien Act); no template appears to be proposed related to the use of pay-on-demand surety bonds as security for development agreements and the City's comments are based on no template being mandated.

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For ease of review, the City's comments have been grouped into the same six categories presented in the Surety Bond Regulation. In addition, the City has added a General Feedback category and Concluding Comments:

1. General Feedback
2. Licensing Requirements
3. Credit Rating Requirements
4. Guaranteed Payment
5. Timely Payment
6. Partial Drawdowns
7. Cancellation
8. Concluding Comments

General Feedback

The pay-on-demand surety bond as a tool for municipalities is still considered new and, as such, the complexities that may arise across the sector are in their infancy. **The City requests that the Province include guidelines for surety bonds rather than requirements for surety bonds in the Surety Bond Regulation.**

The Surety Bond Regulation has been presented as elements which will be contained in the Regulation. As with any piece of legislation, the detail and language choices matter. Without the exact language and structure that will be used it is not possible to truly understand the impacts of this proposed regulation on Municipalities. **The City requests that the Province release the specific language intended for the Regulation, with a 90 day consultation period, so that the industry and municipalities can provide meaningful and specific feedback.**

The Surety Bond Regulation has a number of terms presented, municipalities may have specific needs in addition to the presented terms; such as a requiring the issuer have been in operation a certain number of years, no expiration date of the surety bond, specific notice methods, etc. **The City requests that the Surety Bond Regulation be clear that a municipality may include additional terms as deemed necessary by the municipality.**

The Surety Bond Regulation would require that municipalities accept surety bonds from all licensed issuers (provided they meet the credit rating requirements) and does not permit municipalities to apply discretion to accepting surety bonds should municipalities encounter negative experiences with an issuer. For example, not making payments within the agreed time frames. **The City requests that municipalities be provided discretion to reject surety bonds from issuers where there is evidence of negative experiences with that issuer.**

Licensing Requirements

The Surety Bond Regulation proposes that surety bond would need to be issued by an insurer licensed under the Insurance Act. **The City is generally supportive of this requirement.** However, to ease the administrative process for municipalities, **the City requests that the Province maintain a public list of eligible companies and their credit ratings that is updated regularly.**

Credit Rating Requirements

The Surety Bond Regulation proposes minimum credit ratings that an issuer would need to meet. **The City is generally supportive of this requirement and the credit ratings proposed.** However, to ease the administration of processes for municipalities, **the City requests that the Province include the credit rating for eligible companies in a public list that is updated regularly.**

The Surety Bond Regulation does not address what options are available to a municipality should the credit rating of an issuer fall below the minimum requirements while the surety bond is held. **The City requests that the Surety Bond Regulation be clear that a municipality may require a new security or draw on the surety bond should the issuer's credit rating fall below the minimum credit rating.**

Guaranteed Payment

The Surety Bond Regulation proposes that the surety bond issuer would be required to pay the municipality "if the municipality determines, in its sole discretion, that the principal has defaulted". **The City is generally supportive of a guaranteed payment provision provided the language absolutely precludes the assertion of defences by the bond issuer, or the taking of any other action that would result in a lower level of security than would be obtained from cash security or irrevocable letters of credit.**

Timely Payment

The Surety Bond Regulation proposes that payment would be required from the issuer "to the municipality within 15 business days of being provided with a written notice of default." The City's current surety bond Policy requires payment within 10 business days and this was accepted by the industry as reasonable. **The City is generally supportive of this 15 day requirement; however, encourages that the timeline align with the 10 day requirement under Form 5 in the Construction Lien Act.**

Partial Drawdowns

The Surety Bond Regulation identifies that "a municipality would release portions of the security when it is satisfied that the condition of development has been fulfilled". This is the same as how security by letter of credit functions, i.e. the municipality, in its sole

discretion determines when a portion of the security can be released. **The City is generally supportive of this requirement and requests that it be clarified that partial drawdowns are at the sole discretion of the municipality.**

Cancellation

The Surety Bond Regulation proposes a 90 day notice for intention to terminate and a replacement security is required within 60 days of receipt of that notice; otherwise the surety bond would remain in full force. **The City requests that where an intention to terminate is received, that the municipality be able to rely on the bond remaining in force and also be provided an option that can be exercised at the municipality's discretion to draw on the security if a replacement is not provided.**

Concluding Comments

The City is generally supportive of the elements proposed to be contained in the Regulation. As with any piece of legislation, the detail and language choices matter. **The City requests that the Province include guidelines for surety bonds rather than requirements for surety bonds in the Surety Bond Regulation and that the Province release the specific language intended for the Regulation, with a 90 day consultation period, so that the industry and municipalities can provide meaningful and specific feedback.**

Yours truly,

A handwritten signature in black ink, appearing to read "Mike Zegarac", with a stylized flourish at the end.

Mike Zegarac
General Manager, Finance and Corporate Services
City of Hamilton