



CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: March 19, 2013	
SUBJECT/REPORT NO: Adoption of Pay Assurance Provisions for the City's Standard Form Subdivision and External Works Agreements on a Permanent Basis (PED10095(a)) (City Wide)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Mark Inrig (905) 546-2424 Ext. 4303
SIGNATURE:	

RECOMMENDATION

That the pay assurance process and provisions for the City's Standard Form Subdivision and External Works Agreements, approved by Council in adopting Item 5 of the Economic Development and Planning Committee Report 10-010 for a two year trial period commencing September 6, 2010, be approved for permanent use by the City.

EXECUTIVE SUMMARY

On May 12, 2010 the City adopted a pay assurance process for its Standard Form Subdivision and External Works Agreements on a trial basis for two (2) years beginning September 6, 2010. At the conclusion of the trial period, staff is required to report back to Committee recommending adoption or rejection of the pay assurance process.

Pay assurance is a term which describes a type of conditional guarantee made by the City and a developer through its Standard Form Subdivision and External Works Agreements to ensure a prime contractor who has been hired by the developer to

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construct municipal works in new development will be paid from the developer's security deposit in the event the developer defaults on their payment to the contractor.

During the trial period there were no requests received by the City to initiate the pay assurance process. The Ontario Sewer & Watermain Construction Association and the Hamilton & District Heavy Construction Association view the presence of pay assurance in a municipality's development agreements as a strong deterrent against developer/contractor disputes with respect to payments. The Hamilton-Halton Home Builders' Association has advised that their membership has no objection to adoption of pay assurance by the City.

Therefore, as the process is supported by the development industry and actual administration appears to be rare, in the opinion of staff, it would appear adoption of pay assurance on a permanent basis will have a minimal impact on the City's administration of development agreements.

Alternatives for Consideration – See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

On December 8, 2008, the City of Hamilton received a written request by Mahoney International to appear before the City's Planning and Economic Development Committee and present a proposal to include provisions for pay assurance clauses in the City's Standard Form Subdivision and External Works Agreements. The proposal was brought before Committee at its meeting of February 3, 2009 by representatives of the Ontario Sewer & Watermain Construction Association and the Hamilton & District Heavy Equipment Association.

The Committee referred the matter to staff with direction to meet with the affected parties, review options available to the City and prepare a recommendation report in response to the Ontario Sewer & Watermain Construction Association's proposal, for consideration by the Committee. Staff recommended adoption of a pay assurance process for a two (2) year trial period commencing September 6, 2010 which was

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approved by Council on May 12, 2012 in adopting Item 5 of the Economic Development and Planning Committee Report 10-010.

During the trial period no requests were received by the City to adjudicate any disputes between contractors and developers through its pay assurance process. The Ontario Sewer & Watermain Construction Association and Hamilton & District Heavy Construction Association view pay assurance clauses as a successful deterrent to contractor/developer disputes (see Appendices 'A' and 'B'). In addition the Hamilton-Halton Home Builders' Association (an association representing local area builders and developers) has advised that their members have no objection to adoption of pay assurance on a permanent basis (see Appendix 'C').

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

There are no existing policies affected by the recommendation in this report. Under the pay assurance process, the purpose of the security will be extended to ensure that developers fulfil their contractual obligations to the prime contractor with regard to payment for municipal works constructed under the City's Standard Form Subdivision or External Works Agreements.

RELEVANT CONSULTATION

- Ontario Sewer & Watermain Construction Association;
- Hamilton & District Heavy Construction Association; and,
- Hamilton-Halton Home Builders' Association.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

The purpose of the security deposit held under the City's Standard Form Subdivision and External Works Agreements is to protect the City and the public by ensuring that sufficient funds are available to the City to complete installation of municipal services and fulfil warranty obligations within a development which includes the contractor's labour cost for the completed works in the event a developer fails to do so.

To ensure that the intent of the developer's security is not compromised, under the pay assurance process, the security held by the City will not be reduced below the value of incomplete works as well as the value of all warranty obligations of a developer under the subdivision agreement. In addition, under the pay assurance process, any draw on

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a developer's security for payment to a prime contractor by the City will be conditional upon certification by the developer's consulting engineer that the works, to which the payment relates, have been completed and accepted by the City. In addition, pay assurance will apply only to prime contractors whose companies operate at 'arms-length' from the company of the developer and not where a developer and contractor are related companies.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Upon conclusion of the trial period for pay assurance staff considered the option of terminating the process or implementing it on a permanent basis.

During the trial period there was no impact to the City and, historically, as the incidents of contractor disputes with developers in the Hamilton area is very rare, staff is of the opinion that adoption of pay assurance on a permanent basis does not impose an administrative burden to the City. In addition, as this process is supported by the development industry and acts as a deterrent to contractor/developer disputes, staff recommends that pay assurance be adopted by the City on a permanent basis.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

In keeping with the Corporate strategic plan, the recommendation in this report attempts to provide delivery of municipal services in a sustainable, innovative and cost effective manner.

APPENDICES / SCHEDULES

- Appendix "A": Letter dated January 8, 2013 from the Ontario Sewer & Watermain Construction Association.
- Appendix "B": Letter dated December 21, 2012 from the Hamilton & District Heavy Construction Association.
- Appendix "C": E-mail dated January 14, 2013 from the Hamilton-Halton Home Builders' Association.

MJl:mah
Attachs. (3)



RECEIVED
JAN 11 2013

January 8, 2013

City of Hamilton
Planning and Economic Development Department
Growth Management Division
71 Main Street West, 6th Floor
Hamilton, ON
L8P 4Y5

ATTN: Mr. Mark Inrig, C.E.T
Senior Development Administrator

RE: City of Hamilton File No. 205-05
Contractor Pay Assurance Clauses in the City of Hamilton Subdivision Agreements

Dear Mr. Inrig,

Thank you for your letter dated November 26, 2012 in regards to the pay assurance clauses in the City of Hamilton Subdivision agreement.

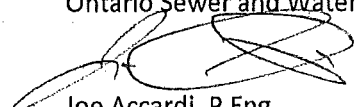
Firstly, the OSWCA would like to thank the City of Hamilton for including the pay assurance clauses into the City's subdivision agreement in 2010 for a two year trail. We have implemented pay assurance in many municipalities throughout the province over the past 15 years to great success for both the municipality and the contractors.

The success of the pay assurance program throughout the province program has been precisely what the City of Hamilton has encountered in the past two years. Both the OSWCA and the municipalities that apply pay assurance clauses in their subdivision agreements have seen little to no dispute requests being presented to them and contractors have experienced less conflict with respect to payments in these areas.

The OSWCA is pleased to hear that the pay assurance clauses have successfully reduced the City of Hamilton's need to adjudicate any disputes and thus, our opinion is that the City permanently adopts the pay assurance clauses into their subdivision agreements in 2013.

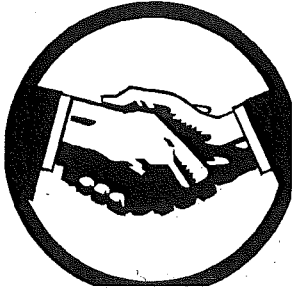
Please contact me if you have any questions.

Best Regards,
Ontario Sewer and Watermain Construction Association



Joe Accardi, P.Eng.
Executive Director

cc: Sally Yong-Lee, Manager, Infrastructure Planning



HAMILTON & DISTRICT HEAVY CONSTRUCTION ASSOCIATION

(HAND Association of Sewer, Watermain and Road Contractors)

104 – 370 York Boulevard, Hamilton, Ontario L8R 3L1

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heavyonstruction@hdhca.ca

December 21, 2012

City of Hamilton
Planning and Economic Development Department
Growth Management Division
71 Main Street West, 6th Floor
Hamilton, ON
L8P 4Y5

Attention: Mr. Mark Inrig, Senior Development Administrator, Growth Management Division

**RE: CITY OF HAMILTON FILE NO. E205-05
HAMILTON & DISTRICT HEAVY CONSTRUCTION ASSOCIATION RESPONSE
CONTRACTOR PAY ASSURANCE CLAUSES – SUBDIVISION AGREEMENT**

Dear Mr. Inrig:

I am in receipt of your letter of November 26, 2012. Thank-you.

It is understood that City Staff is preparing report to council with respect to implementing Pay Assurance on a permanent basis within the City's Subdivision Agreement and request for input from the Hamilton and District Heavy Construction Association (H.D.H.C.A.) and Ontario Sewer Watermain Construction Association (O.S.W.C.A.) as a result of the two (2) year trial period now expiring.

It is the position of the H.D.H.C.A. Board of Directors that since the adoption of the policy, the past two year history has proven that Contractors engaged in work in the City of Hamilton have not experienced conflict with respect to payment for work performed. As such deem the instatement of the Pay Assurance provision clause on a permanent basis has, and will, prove a benefit to all concerned.

I expect response from the Ontario Sewer Watermain Construction Association shortly and will forward in the near future.

On behalf of the Hamilton & District Heavy Construction Association Board of Directors.

Elda Heinrich
General Manager
Hamilton & District Heavy Construction (Hand) Association

Inrig, Mark

From: Suzanne Mammel <smammel@ajclarke.com>
Sent: Monday, January 14, 2013 12:07 PM
To: Yong-Lee, Sally; Inrig, Mark
Cc: development (development@hhhba.ca)
Subject: HHHBA - Pay assurance as part of subdivision agreements

Hi Sally, Mark:

Further to your letter dated November 21, 2012 and our discussion at HHHBA/City Liaison committee last week, on behalf of the HHHBA, I wish to advise you that our members have had no experience with the Pay Assurance clause incorporated into subdivision agreements two years ago. I understand that the City has never had to implement the procedures outlined in Pay Assurance, so we have no comment in that regard.

As such, at this time, we have no additional concerns with its continued inclusion in the subdivision agreement. However, I would request that should the City be in a position to have to enforce Pay Assurance in the future, it advise our Liaison Committee and outline the pros and cons they encountered with the procedure at that time.

With respect to additional costs members were concerned they would incur as a result of the inclusion of this in subdivision agreements, no noticeable changes have occurred in pricing that could be directly attributed to this policy.

If you have any further questions regarding this matter, please do not hesitate to contact me.

Suzanne Mammel, MBA, CET
Chair, Development Council
Hamilton Halton Home Builders' Association
development@hhhba.ca