POLICY

Name: Securities for Development Agreements **Policy Number:** FI-018-2020

Administrative Approval Date: August 14, 2020 **Council Approval Date:** September 21, 2020

Most Recent Amendment Date: August 14, 2020 **Effective Date:** September 21, 2020

By-law reference: **Supersedes: New**

1. POLICY STATEMENT

1.1 The District Municipality of Muskoka (District) regularly enters into agreements in which a developer is required to provide a sum of money to ensure that financial security is available in the event that the developer is unable to meet their obligations respecting District infrastructure assets to be assumed by the District under the agreement.

1.2 This policy is designed to provide adequate protection to the District as well as to be fair, reasonable, and flexible with developers.

2. PURPOSE

2.1 This policy establishes the requirement that developers place adequate security against development projects within the District boundaries to ensure that District standards on infrastructure to be assumed are achieved prior to release of the securities.

3. APPLICATION

3.1 To ensure compliance with these requirements the District may require that deposits or securities be submitted in connection with the related approval processes including but not limited to:

3.1.1 Servicing, subdivision, site plan, condominium or development agreements, implementation agreements;

3.1.2 Improvements to existing sites, where site plan, development permit or building permit is not required.

3.2 This policy does not apply to securities collected for infrastructure that will not be assumed by the District, including but not limited to private communal water and wastewater services for commercial resorts and securities related to common element construction in vacant land condominium developments.

4. DEFINITIONS

The following terms have the meanings set out below:

"Development Agreement" means a legal agreement between the applicant for a development or developer under the Planning Act and the District committing to the provision of infrastructure services and any other matter required by a condition of the application. This definition includes but it is not limited to master servicing agreements, implementation agreements, subdivision agreements, site plan agreements, condominium agreements or other similar agreements.

"On-site Municipal Work" means all infrastructure works which takes place on the land owned by the developer (or for an owner represented by the developer) and would be assumed, owned and maintained by the District upon the developer obtaining Initial and Final Acceptance of the said work.

"Off-site Municipal Work" means all infrastructure works that would be assumed, owned and maintained by the District upon the developer obtaining Initial and Final Acceptance of the work which is not located on the land owned by the developer (or for an owner represented by the developer).

5. RESPONSIBILITIES

5.1 The Director of Planning, or designate, is responsible for ensuring the proposed development is in accordance with the District's Official Plan policies and any conditions of approval.

5.2 The Director of Water and Wastewater and/or Roads and Engineering, or designates, are responsible for reviewing estimated costs, calculating and obtaining the securities required, ensuring ongoing inspections are completed and that the development is proceeding in accordance with the Development Agreement and District infrastructure standards, and calculating and authorizing the release of securities pursuant to this policy.

5.3 The District Solicitor, or designate, is responsible for the preparation of the Development Agreement in accordance with this policy and in conjunction with District staff identified in Sections 5.1 and 5.2 and to assist in confirming conformity to the applicable agreement as it relates to the release of securities pursuant to this policy.

5.4 The Director of Finance, or designate, is responsible for maintaining records of securities collected and verifying the calculation of any release of securities.

6. ADMINISTRATION

6.1 No installation of the on-site or off-site municipal works will commence until the appropriate security has been submitted to the District and associated Development Agreements noted in section 3.1 have been registered on title to the subject land(s).

6.2 Securities for on-site and off-site municipal works, as required as a condition of a development approval will be collected as part of the development agreement process.

6.3 The amount of securities taken shall be a percentage of the total estimated cost of any required work as defined herein in accordance with Table 6.3.

Table 6.3:

Type of Work	Timing	Proposed Securities
On-site municipal works, if building permits are not issued for fully connected dwellings	Held from registration of the applicable development agreement(s) until initial acceptance	20%
On-site municipal works, if building permits are issued for fully connected dwellings	Held from registration of the applicable development agreement(s) until initial acceptance	100%
Off-site municipal works	Held from registration of the applicable development agreement(s) until initial acceptance	100%
Unfinished work and deficiencies for both on and off-site municipal works	Held from initial acceptance until work is completed, including deficiencies	100%
Maintenance Security	Held from initial acceptance for a period of 1 to 2 years depending on the type of infrastructure and District Engineering Standards	20%

6.4 Estimated Costs of construction/installation are the calculation of the total cost as provided in writing by a qualified professional commissioned by the Developer and as agreed to by the District, in its sole discretion and following the completion of its review and shall include construction/installation costs and all construction phase engineering costs.

6.5 At the sole discretion of the District, estimated costs in section 6.4 may be subject to third party review to ensure sound engineering judgments are followed and that industry costing and standards are utilized. The cost of this review, if any, will be invoiced to the Developer and will be in addition to the securities required in section 6.3.

6.6 Further to section 6.3, in the event that the Developer obtains building permits for anything other than “dry” model homes, buildings or units that remain unconnected to municipal water and wastewater (sewer) works prior to initial acceptance by the District, the percentage of securities for

on-site municipal works will be increased from 20% to 100% of the estimated costs to reflect the additional financial risk to the District.

6.7 Further to section 6.3, at initial acceptance of both on-site and off-site municipal works, the estimated costs of unfinished work or deficiencies will be provided in writing by a qualified professional commissioned by the Developer and as agreed to by the District, in its sole discretion and following the completion of its review and the percentage of securities for will be increased to 100% of these costs.

6.8 Acceptable forms of security are:

6.8.1 Irrevocable, automatically renewable (12 month minimum) letter of credit;
6.8.2 Certified cheque;
6.8.3 Money order; or
6.8.4 Bank draft.

6.9 The following forms of security are not accepted:

6.9.1 Cash or Personal cheques;
6.9.2 Term deposits;
6.9.3 Land or lots in lieu;
6.9.4 Guaranteed investment certificates; or
6.9.5 Surety or development bonds.

6.10 Regular inspections of the on-site and off-site municipal work will be completed by District staff or an independent engineering consultant engaged by the District. The cost of these inspections will be invoiced to the Developer and will be in addition to the securities required in section 6.3. Inspection costs may vary depending on the complexity of the development and experience of the contractor.

6.11 In the event that a Developer is not fulfilling their obligations identified under the Development Agreement and does not act on requests from the District to remedy maintenance or safety concerns, the District will draw on the securities collected against the development to complete the maintenance or safety concerns to the satisfaction of the District.

6.12 The Developer shall forfeit all remaining securities to the District after ten (10) years from the date a development agreement has been issued, if in the sole discretion of the District (acting reasonably), the Developer has not acted in a reasonable manner to complete remaining work related to their development.

6.13 Upon application by the owner or the owner's representative, securities, net of any outstanding invoices related to third-party review or inspections as identified in Sections 6.5 and 6.10, shall be fully released if all on-site and off-site work are completed, and conditions met, as per Development Agreement requirements.

6.14 Upon application by the owner or the owner's representative, a portion of securities may be released if a specific portion of on-site or off-site work is completed in accordance with the requirements set out in the applicable Development Agreement. Any reduction shall take into account the cost of any unfinished work, maintenance securities and any outstanding invoices pursuant to Sections 6.5 and 6.10.

6.15 No interest shall be paid on any security, regardless of its type. When returning a security paid by certified cheque, money order or bank draft, the District will issue an electronic funds transfer or standard cheque.

6.16 If a change in ownership occurs and the Development is transferred to a new owner, the applicable securities must be provided in the name of the new party and any previously held securities will be released.

Related Policies/Procedures:

Reference:
Finance and Corporate Services Committee minutes of meeting on August 21, 2020
District Council minutes of meeting on September 21, 2020