



Policy

Policy Name:	Development Agreement Surety Bond Policy
Policy Owner:	Corporate and Financial Services –Treasurer
Approved by:	Commissioner of Corporate and Financial Services
Effective Date:	March 19, 2025
Date of Last Revision:	March 19, 2025
Review Date:	as required
Procedure Status:	New Policy

Purpose:

As per Bill 109, More Homes for Everyone Act, 2022 and subsequent O.Reg 461/24, the City is legislated to accept Pay-On-Demand Surety Bonds as a form of security. This Policy outlines the requirements of a Pay-On-Demand Surety Bond to be an acceptable as a form of security for Development Agreements.

Policy Principles:

O.Reg 461/24 provides the framework for a Pay-On-Demand Surety Bond to be used as a form of security for Development Agreements. The Development Agreement Surety Bond Policy establishes additional terms of use and criteria to protect the financial interests of the City and to ensure transparent administration of the use of Pay-On-Demand Surety Bonds for Development Agreements. This Policy will define requirements for the uses of Pay-On-Demand Surety Bonds, which include but are not limited to the following:

- The terms and conditions to be included for the instruments to be accepted.
- Standard wording in the “Surety Bond for Development Agreement Standard Format” to be acceptable by the City and attached as Appendix A

Definitions:

In this Policy, the following words and/or terms have the associated meaning:

Business Day: means a day from Monday to Friday, other than a holiday

City (alternatively “Obligee”): means The Corporation of the City of Richmond Hill (the “City”)

City Solicitor: means the Solicitor of the City, their successor or delegate

Development Agreement: Refers to an agreement between the City and a landowner to regulate the provision of on-site and municipal works required to service land as a condition of land-use planning approvals. These agreements include Plans of Subdivision, Site Plans, Servicing Agreements and any other agreements as may be approved by the Treasurer.

Letter of Credit (LC): means an irrevocable, unconditional demand letter of credit issued by a Canadian chartered bank acceptable to the Treasurer.

Principal: A party that has entered into a Development Agreement with the City and has tendered a Surety Bond to the City to secure the construction of on-site and/ or municipal services.

Security: An amount required to be provided under a Development Agreement, to secure the construction obligations of on-site and/or municipal services, which will ultimately be returned to the Principal when the terms of the Development Agreement have been performed to the City's satisfaction. The Security can alternatively be drawn upon to rectify and/or complete any on-site or municipal services not performed to the City's satisfaction.

Surety Bond: A bond which guarantees the payment of the amount of the Security in the event of a default in a Development Agreement

Surety Provider: A company legally capable of acting as the surety in the Surety Bond agreement, that meets the criteria established in Provincial regulations in Ontario.

Treasurer: means the Treasurer of the City, their successor or delegate

Written Notice: Correspondence to the Principal and Surety Provider from the City Treasurer delivered by regular mail, courier services, certified mail or electronically.

Scope

This Policy is applicable, in all cases, in which a Surety Bond is being used as a security for a Development Agreement where on-site and/ or municipal works are to be constructed. Surety Bonds may be provided for any Development Agreement which is required to provide a Security for on-site and/ or municipal works to permit the construction of works and may be for the full amount of the Security required or for a portion of the Security, if supplemented with a Letter of Credit or a certified "cash" (certified cheque, bank draft or money order) deposit. Surety Bonds will only be applicable to a Development Agreement that has specific language within the agreement permitting Surety Bonds as a form of Security.

Policy

This Policy is applicable, in all cases, in which a Surety Bond is being evoked as security for a Development Agreement.

Terms and Conditions

Where a financial Security is required by the City, as a condition of a planning approval, Development Agreement related to planning approval, Surety Bonds are a satisfactory financial Security provided that they are issued to and received by the City in accordance with the following terms and conditions:

1. The Surety Bond for a Development Agreement shall be issued by a Canadian Surety Provider having a minimum credit rating of:
 - a. "A" or higher as assessed by Dominion Bond Rating Service Limited;
 - b. "A-" or higher as assessed by Fitch Ratings;
 - c. "A3" or higher as assessed by Moody's Investors Services Inc.; or
 - d. "A-" or higher as assessed by S&P.
 - e. "A-" or higher as assessed by A.M. Best Company, Inc
2. The Surety Provider is incorporated in Canada for no less than ten (10) years prior to the date of issuance of the Surety Bond and having the capability to issue a Surety Bond in Canadian dollars.
3. The issuing Surety Provider must be an active institution monitored by the Office of the Superintendent of Financial Institutions (OSFI).
4. The Surety Bond to be provided to the City issued by a Surety Provider shall be irrevocable and shall be in the form and on the terms of the **"Surety Bond for Development Agreement Standard Format"** template attached hereto as **Appendix A**.
5. The Development Agreement being secured must have language and/or clause(s) to allow a Surety Bond to be used as a form of security.
6. If an amendment is required to the Development Agreement being secured, to allow the use of a Surety Bond. A non-refundable fee will be charged and must be paid in advance by the Principal, as part of the City's Tariff of Fees bylaw (as amended).
7. Amendments to existing Developments Agreement to allow for a Surety Bond as a form of security will need to satisfy the following conditions:
 - a. The active Security amount held by the City related to Development Agreement is greater than One Million Dollars (\$1,000,000)
 - b. The ownership of the lands affected by the Development Agreement has not changed since it was originally executed
 - c. The Development Agreement is not in default and
 - d. The landowner or developer is not currently a party to litigation in relation to the Development Agreement where, in the opinion of Legal Services, the landowner or developer is adverse in interest to the City.

8. The Principal must submit a proposed Pay-On-Demand Surety Bond in advance to the City for review. This Pay-On-Demand Surety Bond should follow “**Surety Bond for Development Agreement Standard Format**” template attached hereto as **Appendix A** and must include details about the type of bond, the issuing entity, the bond amount, duration and contact information of all parties. The proposal will be reviewed and approved by the City before the Surety Bond can be accepted.
9. Any deviations from the form in **Appendix A** shall be reviewed by and are subject to the approval of the Treasurer and/or City Solicitor.
10. Where there is doubt as to the credit rating or other qualification of a Surety Provider, the City’s Treasurer shall make the final determination on whether the Surety Provider satisfies the requirements of this Policy.
11. Notwithstanding anything in this Policy,
 - a. the City may, in its discretion, decline a Surety Bond for any reason; and or
 - b. when a Surety Bond has been received and is being held by the City and the City is no longer satisfied that the Surety Bond adequately provides adequate protection, the City may require a new form of Security to its satisfaction to be provided to the City within Ten (10) Business Days of demand for same. The original Surety Bond will be returned and / or exchanged for the replacement Security. In the event the new Security is not received as required, the City may draw upon the original Surety Bond.
12. In order for the Surety Provider to terminate its obligations under the Surety Bond, the following requirements must be satisfied:
 - a. The Surety Provider must give Written Notice to the City and to the Principal of the Surety Provider’s intention to terminate its obligations under the Surety Bond.
 - b. The Written Notice must be given at least ninety (90) days before the day on which the Surety Provider intends to terminate its obligations under the Surety Bond.
 - c. At least thirty (30) days before the day on which the Surety Provider intends to terminate its obligations under the Surety Bond, the Principal must deliver financial Security to the City in the amount of the Surety Bond that is acceptable to the City to replace the Surety Bond; and;
 - d. In the event the new Security is not received as required, the City may draw upon the original Surety Bond.
13. Surety Bonds may be accepted for other types of agreements at the discretion of the Treasurer

Roles and Responsibilities:

Financial Services Division

Director Financial Services and Treasurer

- Maintains administrative authority and responsibility for this Policy;
- Accept or reject Surety Bonds that do not conform to the standard format
- Accept or reject replacement Surety Bonds
- Determine that a Surety Provider satisfies or does not satisfy the requirements of this Policy
- Issuing the required Written Notice to the Surety Provider

Legal Services Division

- At the request and discretion of the City Treasurer, assist in the drafting, reviewing and interpreting any Development Agreements that are required as a part of this policy to protect the legal interests of the City pertaining to Surety Bonds; and
- Ensure appropriate clauses are added within Development Agreements permitting the use of Surety Bonds as a form of Security

Infrastructure and Engineering Services Division / Planning and Building Services Division

- Determines the amount of Security requirement for a Development Agreement.
- Determines if conditions within a Development Agreement are satisfied in order to release held Securities.
- Determines default of the Principal's obligation and provides written instructions to the City's Treasurer, including the dollar amount to draw on the Surety Bond.

Related Documents

- Municipal Act, 2001
- Planning Act, R.S.O. 1990
- O. Reg. 461/24: SURETY BONDS - SECTION 70.3.1 OF THE ACT

**Appendix A- Surety Bond for Development
Agreement Standard Format**

DEVELOPMENT AGREEMENT SURETY BOND

BOND NO.:

AMOUNT: \$_____ (CAD)

KNOW ALL PERSONS BY THESE PRESENTS, that

(Name and Address of Developer / Registered Owner(s)),

as Principal, hereinafter called the "**Principal**", and

(Name of Surety Provider),

As Surety Provider, hereinafter called the "**Surety**", are held and firmly bound unto The Corporation of the City of Richmond Hill, as Obligee, hereinafter called the "**Obligee**", in the amount of _____ Canadian Dollars (\$_____) 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.

WHEREAS the Principal and Obligee have entered into an agreement dated _____ between _____ the "Principal" and The Corporation of the City of Richmond Hill "Obligee" and The Regional Municipality of York (if applicable – remove if the Region is not a party) is hereinafter referred to as the "**Development Agreement**").

NOW THEREFORE, the condition of this obligation is such that if the Principal shall, in the opinion of the Obligee 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 the Obligee to be in default under the Development Agreement, and the Obligee intends to make a claim under this Surety Bond, the Obligee shall promptly notify the Principal and the Surety in writing of such default in the form of a Written Demand, the form of which is attached to this Surety Bond as Schedule "A".
2. On determination by the Obligee, 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 the Obligee for amounts demanded by the Obligee, up to an aggregate of the Bond Amount, within ten (10) Business Days after the Surety's receipt of a Written Demand from the Obligee at the address noted herein by hand or by courier.

Appendix A- Surety Bond for Development Agreement Standard Format

3. This Surety Bond is irrevocable and payment will be made notwithstanding any objection by the Principal. Where a Written 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 the Obligee, and the Surety shall not assert any defence or grounds of any nature or description for not making payment to the Obligee, 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, or
 - c) that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Development Agreement.

The Surety's liability under this Surety Bond is unconditional and shall not be discharged or released or affected by any arrangements made between the Obligee and the Principal or by any dispute between the Surety and the Principal, or the taking or receiving of the security by the Obligee 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 the Obligee 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.

4. The Obligee may make multiple Written Demands under this Surety Bond.
5. The amount of the Surety Bond may be reduced from time to time as advised by notice in writing by the Obligee to the Surety. The Obligee has the ability and sole discretion to decide as to whether the amount of the Bond should be reduced.
6. Each payment made by the Surety under this Bond shall reduce the amount of this Surety Bond.
7. In no event shall the Surety be liable for a greater sum than the amount of this Surety Bond.
8. No right of action shall accrue upon or by reason hereof to or for the use or benefit of any person other than the Obligee.
9. When the Principal has completed all works required by the Development Agreement to the Obligee's satisfaction, all maintenance and rectification periods contained within the Development Agreement have expired, and the Obligee has finally assumed all works in writing, the Obligee shall return this Surety Bond to the Surety for termination or the Obligee is to advise the Surety in writing that this Bond is terminated, in accordance with the terms of the Development Agreement.
10. If the Surety at any time delivers at least ninety (90) days prior Written Notice to the Obligee and to the Principal of its intention to terminate this obligation, the Principal shall deliver to the Obligee, not less than thirty (30) days prior to the termination of this Surety Bond, financial security in the amount of this Bond in a form acceptable to the Obligee. If the replacement financial security is not provided by the Principal or is not accepted by the Obligee, this Bond shall remain in effect.

**Appendix A- Surety Bond for Development
Agreement Standard Format**

11. Nothing in this bond shall limit the Principal's liability to the Obligee under the Development Agreement.
12. This Surety 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.
13. All Demands and notices under this Surety Bond shall be delivered by hand, registered mail or courier to the Surety, with a copy to the Principal at the addresses set out below, subject to any change of address in accordance with this Section. All other correspondence may be delivered by regular mail, registered mail, courier, or electronic mail. A change of address for the Surety is publicly available on the Financial Services Regulatory Authority of Ontario website. The address for the Principal may be changed by giving notice to the other parties setting out the new address in accordance with this Section.

The Surety:

Name:

Address:

Email:

Phone:

The Principal:

Name:

Address:

Email:

Phone:

The Obligee:

Name:

Address:

Email:

Phone:

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 _____ day of _____, **20**_____, in the presence of:

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I / We have the authority to bind the Corporation.

Attorney in Fact

Schedule A

**WRITTEN DEMAND – NOTICE OF
DEFAULT**

Date:

Surety:

Address:

Attention:

Re: Agreement Bond No. (the “Bond”)

Principal: (the Principal”)

Obligee: (the “Obligee”)

Agreement: (the “Agreement”)

Pursuant to the above referenced Surety Bond, The Corporation of the City of Richmond Hill hereby declares a default under the Development Agreement.

We hereby demand that the Surety honour its ten (10) Business Day payment obligation as per the terms of the Surety Bond and we hereby certify that we are entitled to draw on the Surety Bond pursuant to the terms of the Development Agreement and demand payment of (CAD) \$ _____ under the terms of the Surety Bond.

Payment Instructions:

Director of Financial Services
and Treasurer

Verified by _____