



The Regional Municipality of Durham

Finance and Administration Committee Agenda

Tuesday, June 13, 2023, 9:30 a.m.

Regional Council Chambers

Regional Headquarters Building

605 Rossland Road East, Whitby

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2054.

Note: This meeting will be held in a hybrid meeting format with electronic and in-person participation. Committee meetings may be [viewed via live streaming](#).

	Pages
1. Roll Call	
2. Declarations of Pecuniary Interest	
3. Adoption of Minutes	
3.1 Finance and Administration Committee meeting - April 11, 2023	3
3.2 Closed Finance and Administration Committee meeting - April 11, 2023 Under Separate Cover	
4. Statutory Public Meetings	
There are no statutory public meetings	
5. Presentations	
There are no presentations	
6. Delegations	
6.1 Patricia Conlin - President, Speaker, Author and Trainer, Global Consulting Group Inc., re: Digital Transformation and SMART Initiatives in Durham Region	
7. Administration	
7.1 Correspondence	
7.2 Reports	
There are no Administration reports to be considered	
8. Finance	

8.1	Correspondence	
8.2	Reports	
	a. Report #2023-F-11	8
	Tile Drainage Loan on Behalf of Township of Brock for Mr. Chris Vestergaard (B1160 Concession 3 Beaverton, ON)	
	b. Report #2023-F-12	11
	Establishment of a Debenture Committee	
	c. Report #2023-F-16	24
	Updated Policies – Financial Securities Acceptance for Development Agreements	

9. Advisory Committee Resolutions

There are no advisory committee resolutions to be considered

10. Confidential Matters

There are no confidential matters to be considered

11. Other Business

12. Date of Next Meeting

Tuesday, September 12, 2023 at 9:30 AM

13. Adjournment

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If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2097.

The Regional Municipality of Durham

MINUTES

FINANCE & ADMINISTRATION COMMITTEE

Tuesday, April 11, 2023

A regular meeting of the Finance & Administration Committee was held on Tuesday, April 11, 2023 in the Council Chambers, Regional Headquarters Building, 605 Rossland Road East, Whitby, Ontario at 9:31 AM. Electronic participation was offered for this meeting.

1. Roll Call

Present: Councillor Ashe, Chair
Councillor Leahy, Vice-Chair
Councillor Garrod
Councillor Lee
Councillor McDougall
Councillor Woo
Regional Chair Henry

Also

Present: Councillor Crawford

Absent: Councillor Schummer was absent on municipal business

Staff

Present: E. Baxter-Trahair, Chief Administrative Officer
B. Goodwin, Commissioner of Corporate Services
N. Taylor, Commissioner of Finance
J. Demanuele, Director of Corporate Infrastructure and Strategic Business Services
A. Harras, Regional Clerk/Director of Legislative Services
A. Hector-Alexander, Director, Diversity, Equity, and Inclusion
W. Holmes, General Manager, DRT
J. Hunt, Regional Solicitor/Director of Legal Services, CAO's Office – Legal
R. Inacio, Systems Support Specialist, Corporate Services - IT
K. Wall, Accessibility Coordinator, CAO's Office
K. Smith, Committee Clerk, Corporate Services – Legislative Services
L. Fleury, Legislative Officer and Deputy Clerk Pro Tem, Corporate Services – Legislative Services

2. Declarations of Interest

There were no declarations of interest made.

3. Adoption of Minutes

Moved by Councillor Leahy, Seconded by Councillor McDougall,

- (38) That the minutes of the regular Finance & Administration Committee meeting held on Tuesday, March 21, 2023, be adopted.
CARRIED

4. Statutory Public Meetings

There were no statutory public meetings.

5. Presentations

There were no presentations.

6. Delegations

There were no delegations.

7. Administration

7.1 Correspondence

- A) Correspondence from the Town of Ajax, re: Resolution passed at their Council meeting held on March 27, 2023, in support for Bill 5 – Stopping Harassment & Abuse by Local Leaders Act

Chair Ashe and J. Hunt, Regional Solicitor, responded to questions about the status and intent of Bill 5, and what mechanisms are in place for removing MPs and MPPs from office.

Comments were made with respect to the current lack of consequences for local leaders, and the differences in Integrity Commissioner's with respect to their training and the severity of their recommendations.

Moved by Councillor Lee, Seconded by Councillor Woo,

- (39) That we recommend to Council:

That the correspondence from the Town of Ajax, regarding Resolution passed at their Council meeting held on March 27, 2023, in support for Bill 5 – Stopping Harassment & Abuse by Local Leaders Act, be endorsed.

CARRIED

7.2 Reports

- A) Update to the Community Flag Policy (2023-A-8)

Report #2023-A-8 from Elaine Baxter-Trahair, Chief Administrative Officer, was received.

Staff responded to questions with respect to whether the Region has explored the option of not accommodating community flag requests and the potential consequences of accommodating too many requests. Staff advised that the Community Flag Policy has been looked at from a community engagement,

involvement, and visibility perspective and wanting community groups to feel validated.

Chair Henry stated that there are many great causes to celebrate in Durham Region and added that there is a lot of effort put into screening prior to accommodating community flag requests.

Moved by Regional Chair Henry, Seconded by Councillor Lee,
(40) That we recommend to Council:

- A) That the updates to the Community Flag Policy be approved; and
- B) That authority for future updates and amendments to the Community Flag Policy be delegated to staff within the Office of the Regional Chair.

CARRIED

B) Succession Management Bi-Annual Update (2023-A-9)

Report #2023-A-9 from Barb Goodwin, Commissioner of Corporate Services, was considered later in the meeting. [See Item 7.2 B) on Pages 4 and 5]

C) The Regional Municipality of Durham 2021 Accessibility Report (2023-A-10)

Report #2023-A-10 from Elaine Baxter-Trahair, Chief Administrative Officer, was received.

Staff responded to questions with respect to whether there is any risk of not being fully compliant with the Accessibility for Ontarians with Disabilities Act (AODA) and if the capital is available to ensure the Region continues to make advances in accessibility. Staff advised that the Region is continuing to work towards the goal of being fully accessible.

Comments were made with respect to businesses going beyond what is required in the legislation to make their buildings accessible, and how Durham is leading the way in making services accessible to the public through initiatives such as Durham 311.

Moved by Councillor McDougall, Seconded by Regional Chair Henry,
(41) That we recommend to Council:

That the Regional Municipality of Durham 2021 Accessibility Report be received for information.

CARRIED

8. Finance

8.1 Correspondence

- A) Correspondence from the City of Pickering, re: Motion to Support the Earthquake Victims of Turkey and Syria

Moved by Councillor Garrod, Seconded by Councillor Leahy,
(42) That correspondence from the City of Pickering regarding Motion to Support the Earthquake Victims of Turkey and Syria, be received for information.

CARRIED

8.2 Reports

There were no Finance reports to be considered.

9. **Advisory Committee Resolutions**

There were no advisory committee resolutions to be considered.

10. **Confidential Matters**

The Committee considered Item 7.2 B), Report #2023-A-9 re: Succession Management Bi-Annual Update at this time.

7.2 Reports

B) Succession Management Bi-Annual Update (2023-A-9)

Report #2023-A-9 from Barb Goodwin, Commissioner of Corporate Services, was received.

Moved by Councillor Leahy, Seconded by Councillor McDougall,
(43) That the meeting be closed to the public in order to consider a matter related to personal matters about an identifiable individual and that is subject to labour relations or employee negotiations as it relates to succession management.

CARRIED

The Committee recessed at 9:53 AM and reconvened at 9:58 AM.

(Refer to the Closed Meeting Minutes of April 11, 2023)

Chair Ashe advised that during the closed meeting session the Committee did not consider any motions and no direction was given. Moved by Regional Chair

Henry, Seconded by Councillor Lee,
(45) That we recommend to Council:

That Report #2023-A-9 from the Commissioner of Corporate Services be received for information.

CARRIED

11. **Other Business**

There was no other business to be considered.

12. Date of Next Meeting

The next regularly scheduled Finance & Administration Committee meeting will be held on Tuesday, May 09, 2023 at 9:30 AM in Council Chambers, Regional Headquarters Building, 605 Rossland Road East, Whitby.

13. Adjournment

Moved by Councillor Leahy, Seconded by Councillor Woo,
(46) That the meeting be adjourned.

CARRIED

The meeting adjourned at 10:20 AM

Respectfully submitted,

K. Ashe, Chair

L. Fleury, Legislative Officer



The Regional Municipality of Durham Report

To: The Finance & Administration Committee
From: Commissioner of Finance
Report: #2023-F-11
Date: June 13, 2023

Subject:

Tile Drainage Loan on behalf of the Township of Brock for Mr. Chris Vestergaard (B1160 Concession 3 Beaverton, ON)

Recommendation:

That the Finance & Administration Committee recommends to Regional Council that:

- A) Funds in the amount of \$41,700 be advanced to the Township of Brock with respect to a loan application pursuant to the *Tile Drainage Act*, R.S.O., 1990, c. T. 8 (the "Act") for Mr. Chris Vestergaard (B1160 Concession 3) in the Beaverton area of the Township of Brock).
- B) The requisite by-laws be approved by Regional Council.

Report:

1. Purpose

1.1 The purpose of this report is to advise the Finance and Administration Committee of the Township of Brock's application, on behalf of the property owner Mr. Chris Vestergaard, under the Act for a loan for the purpose of constructing sub-surface drainage works on his property, and further to seek authorization for the requisite by-laws.

2. Background

2.1 Under this provincial program, landowners are eligible for a loan for up to 75% of the total cost of the tile drainage work up to a maximum of \$50,000 in any fiscal year. The 2023 Tile Loan Program has set the fixed interest rate of 6% for the 10-year term of the loan.

2.2 The Township of Brock is required to: (i) review the loan application; (ii) confirm with the Province that sufficient provincial funding is available for the loan; (iii) obtain the Township of Brock's Council approval for the loan and the allocation of funds; and (iv) pass a Rating By-law.

3. Analysis

3.1 The Regional Treasurer received the Township of Brock's submission on behalf of Mr. Chris Vestergaard for a tile drainage loan in the amount of \$41,700 for the installation of a tile drainage system on the landowner's property located on B1160 Concession 3 in the Beaverton area of the Township of Brock ("Tile Loan"). July 1, 2023 is the agreed date of issue of the Region's tile drainage debenture for the Tile Loan.

3.2 The Township of Brock, in accordance with the Act has provided the following required documents to the Region:

- A) copy of Mr. Chris Vestergaard's application for the Tile Loan in the amount of \$41,700;
- B) copy of resolution number 2023-113 dated April 24, 2023 from the Township of Brock approving the \$41,700 Tile Loan;
- C) certified copy of Township of Brock's rating by-law, Number 3183-2023, being a by-law to impose annual drainage rates upon land in respect of which money will be borrowed under the Act;
- D) inspection and completion certificate of the work completed; and
- E) drainage map

3.3 The Region is now required to approve a borrowing by-law to authorize the issuance of the tile drainage debenture, a by-law to raise money to aid in the construction of drainage works and a by-law to impose annual drainage rates upon the land in the Township of Brock in respect of which the money will be borrowed to collect the annual instalments of principal and interest required for the repayment for the Tile Loan.

4. Financial Implication

4.1 There are no financial implications for the Region. The Region is the facilitator acting as the administrator between the Province, the Township of Brock and the landowner.

4.2 The Region obtains the funds in the amount of the Tile Loan from the Province through the Ministry of Agriculture, Food and Rural Affairs and provides such funds to the Township of Brock to provide to the landowner.

4.3 In accordance with the Act, the Region imposes annual levies upon the Township of Brock for the annual instalments of principal and interest required for the repayment of the Tile Loan to the Province.

5. Conclusion

- 5.1 Council of the Township of Brock has approved Mr. Chris Vestergaard's application for a tile loan in in the amount of \$41,700 under the Act and submitted the required documents to the Region.

- 5.2 In accordance with the Act, Regional Council approval of a borrowing by-law to authorize the issuance of the tile drainage debenture, a by-law to raise money to aid in the construction of drainage works as well as a by-law to impose annual levies upon the Township of Brock to collect the annual instalments of principal and interest for the repayment of the Tile Loan is required.

Respectfully submitted,

Original Signed By
Nancy Taylor, BBA, CPA, CA
Commissioner of Finance

Recommended for Presentation to Committee

Original Signed By
Elaine C. Baxter-Trahair
Chief Administrative Officer



The Regional Municipality of Durham Report

To: Finance and Administration Committee
From: Commissioner of Finance
Report: #2023-F-12
Date: June 13, 2023

Subject:

Establishment of a Debenture Committee

Recommendation:

That the Finance and Administration Committee recommends to Regional Council:

- A) That a Debenture Committee be established in accordance with the Terms of Reference outlined in Attachment #1 to this report;
- B) That Council delegate to the Debenture Committee the authority to enact by-laws authorizing the issuance of debentures and the entering into of prescribed financial agreements for long-term borrowing where the debt authority for the capital works or classes of capital works to be financed has been approved by Council;
- C) That Council delegate to the Debenture Committee the power to authorize by by-law any one or more officers of The Regional Municipality of Durham (“**Region**”) to do all things, including the execution of all debentures, the entering into of financial agreements and all ancillary documents necessary in order to give effect to the issuance of any debentures and the financing pursuant to any financial agreements;
- D) That Council delegate to the Debenture Committee the authority to enact temporary borrowing by-laws for current operations in accordance with section 407 of the Municipal Act, 2001 to authorize short-term borrowing for the purpose of meeting current expenditures in any year until such time as the taxes are collected and other revenues are received and to authorize any one or more members of the Debenture Committee to do all things and execute any loan or other agreements required to give effect to any temporary borrowing;
- E) That any Regional policies on the delegation of the Region’s powers and duties and on debt and capital financing reflect the establishment of the Debenture Committee and indicate that the authority to enact debenture, other long-term borrowing and temporary borrowing by-laws has been delegated to the Debenture Committee; and

- F) That the by-law(s) generally in the form contained in Attachment #2 and Attachment #3 to this report be presented to Council for adoption to give effect to these recommendations.
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Report:

1. Purpose

- 1.1 This report is to authorize the establishment of a Debenture Committee and delegate to it the authority to enact debenture and other long-term borrowing and temporary borrowing by-laws.

2. Background

2.1 Issuance of Debentures

- a. The authority to issue long-term debt for specific capital projects of the Region and one or more of its lower-tier municipalities is granted by Council each year through the approval of the Region's Capital Budget or authorized through a Council report requesting authority to issue internal and/or external debentures for the Region and/or one or more of its lower-tier municipalities. The Delegation of Authority By-law gives the authority to the Commissioner of Finance/Treasurer to proceed with debenture issues by finalizing the terms and conditions of such issues.
- b. Based on the need for debentures and general market conditions, and in accordance with Delegation of Authority By-law Number [04-2023](#), the Commissioner of Finance/Treasurer may enter into long-term borrowing agreements with investment bankers and with government agencies that contemplate the issuance of debentures during the year.
- c. Before the relevant financial transactions can be closed, Council must enact by-laws to authorize the issuance of debentures in the capital markets and/or the issuance of debentures required by such long-term borrowing agreements, as appropriate.

2.2 Temporary Borrowing By-law

- a. Each year Council enacts a temporary borrowing by-law in accordance with Section 407 of the Municipal Act, 2001 to authorize any short-term borrowings required to meet the current expenditures of the Region for the year. This includes amounts required for principal and interest falling due within the year upon any debt of the Region, and the sums required by law to be provided by the Region for any local board of the Region.

3. Previous Reports and Decisions

n/a

4. Discussion

Limitations of the Current Process & Benefits of a Debenture Committee

- 4.1 The timing of a debenture issue is constrained by the requirement for Council to enact debenture by-laws before the financial transaction can be closed and proceeds can be received. This may result in a delay of two to three weeks between the pricing of a debenture issue and the execution of documents to close the transaction. If delays exceed industry standards, investors may require fees for delayed settlements in the area of \$5,000 to \$10,000 per \$100 million (0.005% to 0.01%).
- 4.2 There are also occasions when other municipal issuers are bringing forward new debenture issues in the capital markets at the same time as the Region and it may be appropriate to adjust the timeline of the Region's debenture issue to avoid competing for a limited number of investors and funds at the same time.
- 4.3 Market conditions for selling and issuing debentures can fluctuate significantly over a very short period and opportunities to obtain attractive interest rates to lower borrowing costs can be missed when timing the enactment of a by-law authorizing a particular financial transaction with a specific scheduled Council date. Completing debenture issues within a shorter time frame may improve the Region's access to opportunities in the capital markets and borrowing partners, potentially lowering debt service costs.
- 4.4 Similarly, for long-term borrowing agreements with government agencies that contemplate the issuance of debentures, the setting of the applicable interest rate can be impacted by market factors. Having the flexibility to enact the required by-laws on relatively short notice may facilitate the finalization of such financing arrangements when market conditions provide rate advantages.
- 4.5 The establishment of a Debenture Committee would improve flexibility for enacting by-laws authorizing debenture issues in the capital markets and long-term borrowing agreements with government agencies, including during those periods when Council is not available such as during an election period and during the summer months. Settlement of these transactions could occur more quickly and efficiently and as a result, staff and the Region's bond syndicate would have the ability to respond more quickly to favourable interest rate opportunities. The Debenture Committee could meet on short notice to enact the required by-laws rather than waiting for the next scheduled Council meeting.

Delegated Authority

- 4.6 Section 23.1 and subsection 23.2 (1) of the Municipal Act, 2001, authorize Council to delegate its powers and duties, including legislative powers to:
 - a) One or more members of its council or a council committee;
 - b) A body having at least two members of whom at least 50 percent are,

- (i) members of its council,
- (ii) individuals appointed by its council,
- (iii) a combination of individuals described in the above two subclauses.

- 4.7 The Debenture Committee would be comprised of the Regional Chair, the Chief Administrative Officer and the Commissioner of Finance/Treasurer, or their designates, all of whom are very familiar with the Region's financial matters. The proposed composition of the Committee would provide sufficient flexibility to allow it to meet in a timelier manner when needed while also satisfying the requirements of the Municipal Act, 2001.
- 4.8 It is recommended that the Debenture Committee be delegated the authority to enact by-laws authorizing the issuance of debentures to the extent that debt authorities have been previously approved by Council in the case of long-term borrowing, annual debt charges are within the debt servicing budget as approved by Council and the terms of the debenture issue and of the financial agreement comply with any regional debt and financing policies.
- 4.9 Given that the approval to long-term borrow has previously been approved by Council and the authority to negotiate and finalize terms and conditions of specific debenture issues has been delegated to the Treasurer, delegating the authority to enact the debenture by-laws to a Debenture Committee would enable the Region to act more quickly to take advantage of favourable capital market situations and potentially reduce costs.
- 4.10 The Debenture Committee will also have the authority to enact by-laws authorizing the entering into of bank loan agreements and the entering into of prescribed financial agreements in connection with long-term borrowing offered through governments and their agencies.
- 4.11 To assure external legal counsel that the decisions taken by the Debenture Committee are binding and final, the delegation remains in full force and effect and exclusive to the Debenture Committee unless Council revokes such delegation.

Temporary Borrowing By-law

- 4.12 In accordance with Section 407 of the Municipal Act, 2001, a municipality may authorize such short-term borrowings for current expenditures in the year as may be required from time to time. The maximum amount of short-term borrowings that may be outstanding at any one time, determined in accordance with subsection 407 (2), shall not, except with the approval of the Ontario Land Tribunal, exceed, from January 1st to September 30th of the year, 50 percent and from October 1st to December 31st, 25 percent of the total amount of the estimated revenues of the Region as set out in the estimates adopted for the year. Annually, Council receives a request to enact a temporary borrowing by-law.

- 4.13 The consolidated cash position for the Region is normally sufficient to finance its usual daily cash requirements as well as to allow cash to be invested in a variety of short-term, liquid investments to optimize investment income. Occasionally, however, unusual or unanticipated cash outflows may result in overdraft positions.
- 4.14 As the Region typically has sufficient cash flow available to meet its operating requirements, the temporary borrowing by-law is administrative in nature which supports the credit arrangements which are in place with the Region's banker, the Royal Bank of Canada. On December 21, 2022, Council enacted By-law Number [53-2022](#), a temporary borrowing by-law, for 2023.
- 4.15 The limits on temporary borrowing are established in the Municipal Act, 2001 and the authority to enact by-laws for temporary borrowing can appropriately be delegated to the Debenture Committee. Delegating authority to enact the temporary borrowing by-laws in the future to the Debenture Committee would remove this administrative requirement from Council's agenda.

Delegation of Authority By-law amendments

5. The Delegation of Authority By-law currently provides the Commissioner of Finance/Treasurer with authority to proceed with a debenture issue in accordance with the provisions of that by-law. If the delegation of authority to the Debenture Committee described in this report is authorized by Council, the Delegation of Authority By-law will be amended to authorize debenture by-laws, other long-term borrowing by-laws as well as temporary borrowing by-laws to go to the Debenture Committee for enactment. The exercise of the delegated authority by the Commissioner of Finance/Treasurer and the Debenture Committee will then be reported to Council at the earliest opportunity after the debenture issue and after the entering into of other authorized financial agreements.

6. Relationship to Strategic Plan

- 6.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:
- a. Goal 5.4 Service Excellence – This report demonstrates the commitment to effective, responsible financial management and provision of exceptional value to Durham taxpayers by identifying opportunities to drive organizational success through innovation, a skilled workforce, and modernized services.

7. Conclusion

- 7.1 Debenture Committees have been established in other municipalities, including the Cities of Toronto and Ottawa and the Regions of York and Peel, to allow them to quickly respond to the capital market requirements described earlier. With the establishment of a Debenture Committee, the Region's long-term borrowing program would be more efficient and flexible, thereby providing significantly more

opportunities to access the capital markets on a timelier and more cost-effective basis.

- 7.2 Approving the recommendations will improve marketability when issuing debt without diminishing the guidelines provided in the Long-Term Financial Planning Framework, any debt and financing policies and the Delegation of Authority By-law 04-2023, authorizing the Regional Treasurer to proceed with debenture issues and the entering into of other authorized financial agreements.
- 7.3 Although there is no quantifiable financial impact at this time, the flexibility and efficiency offered through the establishment of the Debenture Committee could save the Region up to \$10,000 in lower delay fees annually per \$100 million borrowed due to shorter settlement periods. In addition, more flexible and timelier debenture issuances may provide opportunities to access lower borrowing rates in the market.
- 7.4 Lower-tier municipalities participating in future debenture issues would realize the same benefits as outlined in this report.
- 7.5 For additional information, please contact: investmentportfolio@durham.ca.

8. Attachments

Attachment #1: Debenture Committee Terms of Reference

Attachment #2: Debenture Committee By-law

Attachment #3: Amending By-law to Delegation of Authority By-law

Respectfully submitted,

Original Signed By

Nancy Taylor
Commissioner of Finance/Treasurer

Recommended for Presentation to Committee

Original Signed By

Elaine C. Baxter-Trahair
Chief Administrative Officer



Debenture Committee

Terms of Reference

June 2023

1. Goal

- 1.1 To enact debenture by-laws and other long-term borrowing and temporary borrowing by-laws.

2. Mandate

- 2.1 The Debenture Committee is established by Regional Council in accordance with these Terms of Reference. Committee members are guided by these Terms of Reference.
- 2.2 The Terms of Reference provide for the flexibility for the Debenture Committee to enact debenture, other long-term borrowing and temporary borrowing by-laws in a timely manner while satisfying the requirements of the Municipal Act, 2001.

3. Scope of Activities/Responsibilities

- 3.1 The Debenture Committee has been delegated the authority to enact by-laws authorizing:
- a) the issuance of debentures where the issue of debentures for the capital works and/or the classes of capital works has already been approved by Council.
 - b) the entering into of temporary borrowing agreements with the Region's banker; and
 - c) the entering into of other authorized financial agreements in connection with long-term borrowing offered through governments, their agencies and others.

4. Composition

- 4.1 The Debenture Committee shall be comprised of three members in total, as follows:
- The Regional Chair, or designate.
 - The Chief Administrative Officer, or designate.
 - The Commissioner of Finance, or designate.

4.2 The designate for the Regional Chair shall be an elected member of Council.

5. Membership Selection

5.1 The Regional Chair, Chief Administrative Officer and Commissioner of Finance by virtue of their position, or their selected designate should they choose to appoint one, will form the Debenture Committee.

5.2 The Regional Chair, CAO and/or Commissioner of Finance may appoint their own designate, if required.

5.3 Designations should be formally approved by the Debenture Committee.

6. Officers

6.1 The Regional Chair or their designate, shall be the Chair of the Debenture Committee.

6.2 The Chief Administrative Officer or their designate shall be the vice chair of the Debenture Committee and shall assume the chair if the Chair of the Committee is unavailable.

7. Support Services

7.1 A designate from the Chief Administrative Office shall serve as staff liaison to the Debenture Committee. The staff liaison will provide administrative, procedural and technical support to the Debenture Committee.

7.2 Staff from the Chief Administrative Office will co-ordinate the preparation of meeting agendas and supporting documents and will provide secretarial and other support services to the Debenture Committee.

8. Meetings

8.1 The Debenture Committee shall meet at the call of the Regional Chair or designate.

8.2 The Debenture Committee is subject to the Regional Procedural By-law, unless otherwise specified in these Terms of Reference.

8.3 A quorum for Debenture Committee meetings shall be two members, with one of the two members being the Regional Chair or designate.

8.4 Every by-law enacted by the Debenture Committee shall be signed by the Regional Chair, or designate in their absence, and by the Regional Clerk. The corporate seal shall be affixed to the by-law, and the by-law shall be numbered, dated and deposited in the Regional Clerk's office.

8.5 The Debenture Committee shall comply with any debt and/or capital financing policies.

9. Minutes, Agenda & Notice

9.1 The minutes of each Debenture Committee meeting will be approved at the following meeting.

9.2 The Debenture Committee agendas will be prepared by the staff liaison and provided to members of the Debenture Committee and posted to the Region's website a minimum of 24 hours in advance of the meeting.

10. Committee Resolutions

10.1 The Debenture Committee will seek to achieve consensus on decisions. Recommendations are "carried" if supported by a majority. Only resolutions as they appear in the adopted Minutes may be considered as officially representing the position of the Debenture Committee.

10.2 The Debenture Committee shall provide an information report to Council regarding the exercise of its delegated authority at the earliest opportunity including after each debenture issuance and/or after the entering into of each authorized borrowing agreement.

**By-law Number xx-2023
of The Regional Municipality of Durham**

Being a by-law to amend By-law #04-2023 to provide the Debenture Committee with the authority to enact by-laws to authorize debentures, and authorized financial agreements including agreements for temporary borrowing, promissory notes, bankers' acceptances, bank loan agreements, for long-term borrowing, debentures, and to execute all documents necessary to give effect to the foregoing;

Whereas the Municipal Act, 2001 S.O. 2001, c.25, as amended (the "Act"), provides that a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures and prescribed financial instruments and enter prescribed financial agreements for or in relation to the debt;

And Whereas the Act also provides that subject to limitations contained therein, at any time during a fiscal year, a municipality may authorize temporary borrowing, until the taxes are collected and other revenues are received, of the amounts that the municipality considers necessary to meet the expenses of the municipality for the year;

And Whereas subsection 23.2 of the Act provides that a municipality may delegate certain legislative and quasi-judicial powers to a body having at least two members of whom at least 50 per cent are:

- (i) members of its council;
- (ii) individuals appointed by its council; or
- (iii) a combination of individuals described in (i) and (ii);

And Whereas the Debenture Committee shall consist of the following members:

- a) the Regional Chair;
- b) the Chief Administrative Officer; and
- c) the Commissioner of Finance/Treasurer.

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. That the table in Schedule "A" to By-law #04-2023 be amended by adding thereto the following:

#	Delegation of Authority	Delegate	Delegation Process	Document	Reporting Existing/Proposed
2.22	The authority to enact by-laws to authorize debentures, and authorized financial agreements including agreements for temporary borrowing, promissory notes, bankers' acceptances, bank loan agreements, for long-term borrowing, debentures, and to execute all documents necessary to give effect to the foregoing;	Debenture Committee	In accordance with the By-law Establishing the Debenture Committee	Information Report	Reports to Council in accordance with the Debenture Committee Terms of Reference

This By-law Read and Passed on the 28th day of June, 2023.

J. Henry, Regional Chair and CEO

A. Harras, Regional Clerk

By-law Number **-2023
of The Regional Municipality of Durham

Being a by-law to establish a Debenture Committee.

Whereas the Municipal Act, 2001 S.O. 2001, c.25, as amended (the "Act"), provides that a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures and prescribed financial instruments and enter prescribed financial agreements for or in relation to the debt;

And Whereas the Act also provides that subject to limitations contained therein, at any time during a fiscal year, a municipality may authorize temporary borrowing, until the taxes are collected and other revenues are received, of the amounts that the municipality considers necessary to meet the expenses of the municipality for the year;

AND WHEREAS subsection 23.2 of the Act provides that a municipality may delegate certain legislative and quasi-judicial powers to a body having at least two members of whom at least 50 per cent are:

- (i) members of its council;
- (ii) individuals appointed by its council; or
- (iii) a combination of individuals described in (i) and (ii);

AND WHEREAS Regional Council wishes to establish a Debenture Committee and delegate to the Debenture Committee the authority to enact by-laws to authorize debentures, and authorized financial agreements including agreements for temporary borrowing, promissory notes, bankers' acceptances, bank loan agreements, for long-term borrowing, debentures, and to execute all documents necessary to give effect to the foregoing;

Now therefore, the Council of The Regional Municipality of Durham ("Regional Municipality") hereby enacts as follows:

1. The Debenture Committee is hereby established and shall consist of the following members:
 - a) the Regional Chair, or designate;
 - b) the Chief Administrative Officer, or designate; and
 - c) the Commissioner of Finance/Treasurer, or designate.
2. The Chair of the Debenture Committee shall be the Regional Chair or designate.
3. The Debenture Committee shall provide an information report to Regional Council regarding the exercise of its delegated authority at the earliest opportunity after each debenture issuance and after entering into authorized financial agreements, both for temporary and long-term borrowing.
4. The quorum for the meetings of the Debenture Committee shall be two members, of whom at least one shall be the Regional Chair or designate.
5. Regional Council hereby delegates to the Debenture Committee the authority to enact by-laws authorizing:

- a) temporary borrowing for expenses from time to time by way of promissory notes, bankers' acceptances and loan agreements, to meet the current expenditures of the Region for the year of borrowing in accordance with the limitations set forth in the Act.
 - b) long-term borrowing from time to time by the issuance of debentures and the entering into of financial agreements in accordance with the debt authority previously provided by Regional Council and in accordance with the Act and its Regulations.
 - c) any one or more Regional officers to do all things and execute all debentures and all ancillary documents in order to give effect to the issuance of any debentures and the entering into of the financial agreements described in this section 7.
6. The Debenture Committee is subject to the Regional Procedural By-law, unless otherwise specified in the Terms of Reference for the Committee.
 7. Every by-law enacted by the Debenture Committee shall be signed by the Regional Chair or designate and by the Regional Clerk. The corporate seal shall be affixed to the by-law and the by-law shall be numbered, dated and deposited in the Office of the Regional Clerk.
 8. Any debenture, financial agreement, financial instrument, promissory note, bankers' acceptance or loan agreement authorized pursuant to this by-law shall be sealed with the seal of the Regional Municipality and signed by the Regional Chair or such other signing officer as may be designated by by-law and the Commissioner of Finance/Treasurer.

This By-law Read and Passed on the 28th day of June, 2023.

J. Henry, Regional Chair and CEO

A. Harras, Regional Clerk



The Regional Municipality of Durham Report

To: The Finance & Administration Committee
From: Commissioner of Finance
Report: #2023-F-16
Date: June 13, 2023

Subject:

Updated Policies – Financial Securities Acceptance for Development Agreements

Recommendation:

That the Finance and Administration Committee recommends to Regional Council:

- A) That the policy on Letter of Credit Acceptance be approved;
 - B) That policy on Surety Bond Acceptance be approved;
 - C) That the Finance Department fee of \$475 for the initial acceptance of, and any subsequent exchanges of Letters of Credit, be extended to include Surety Bonds;
 - D) That the local area municipalities be exempted from the requirements to provide a financial security in connection with local municipality development projects; and,
 - E) That staff be directed to update the Standard Subdivision Agreement and Standard Servicing Agreement for Non-Subdivision Development templates to reflect the changes implemented through this report.
-

Report:

1. Purpose

- 1.1 The main purpose of this report is to update the Region's policy for the acceptance of Letters of Credit and Surety Bonds. Currently the policy is in the form of an attachment to a Report to Regional Council and will be replaced by two separate policies.

- 1.2 The policies only apply to securities submitted under Subdivision Agreements and Servicing Agreements for Non-Subdivision Related Agreements. Specifically, it does not apply to securities that may be required by Purchasing or Utility Finance.
- 1.3 In addition, the existing Finance Fee for handling Letters of Credit is being expanded to include Surety Bonds.

2. Background

- 2.1 Included as part of Bill 109: Homes for Everyone Act, 2022 is the authority for the Province to enact a regulation to prescribe and define Surety Bonds and potentially require, or even allow the developer to require a municipality to accept surety bonds. To date, the Province has not exercised their authority to enact such a regulation.
- 2.2 By-law #35-2018 that delegates the authority for the execution of standard Subdivision Agreements to the Regional Chair and Regional Clerk, specifies that only Letters of Credit will be accepted for Development Charges obligations. For Performance and Maintenance requirements, both Letters of Credit and Surety Bonds are accepted, although Surety Bonds have rarely been accepted in conjunction with these agreements.
- 2.3 By-Law #36-2018 that delegates the authority for the execution of standard Servicing Agreements for Non-Subdivision Related Agreements to the Regional Chair and Regional Clerk, requires that Letters of Credit be submitted as security for Performance Guarantees.
- 2.4 Non-standard Subdivision Agreements and non-standard Servicing Agreements for Non-Subdivision Related Agreements are executed by Regional Council.

Letter of Credit

- 2.5 The existing policy on the acceptance of Letters of Credit allowed for the acceptance of Letters of Credit from both Schedule I and Schedule II banks, based on specified credit ratings. The core of the current policy remains valid, with only some minor updates required as outlined in section 4.1, to reflect current terminology, best practices and to align with existing Regional by-laws.

Surety Bonds

- 2.6 The existing policy allowed for the acceptance of Surety Bonds based on an assessment of the surety provider's Financial Strength, Company Performance Rating and Profitability.
- 2.7 However, in practice, very few, if any municipalities including the Region of Durham, accepted surety bonds as security.

- 2.8 The primary reasons for the lack of use of Surety Bonds was that they could not be drawn upon unconditionally by the municipality and were not irrevocable in the same manner as a Letter of Credit.
- 2.9 Very recently, the surety bond issuers and the development industry created a newer version of a surety bond, commonly referred to as a Pay on Demand Bond, Subdivision Bond or Development Bond. The new version of the surety bonds now provide the level of protection required in financial securities by a municipality.
- 2.10 As a result of the new surety bond, the existing policy has been re-written as outlined in section 4.2, to align with the new surety bond security, best practices and Regional By-laws.
- 2.11 Letters of Credit are by far the most common form of securities held by municipalities throughout Ontario under development agreements. As a result, the requirements, processes, etc. are very consistent both within the municipalities and the banks.
- 2.12 Surety Bonds are slowly but gradually increasing in use throughout the Province. Larger Ontario municipalities accepting the new version of the surety bond include Belleville, Chatham-Kent, Hamilton, Sault Ste. Marie and Welland. Within Durham Region, Ajax (pilot project), Pickering (policy) and Whitby (informal case by case basis) accept surety bonds.

3. Previous Reports and Decisions

- 3.1 Regional Council approved Report #F/65-89, which established the Regional Policy regarding the acceptance of financial securities.
- 3.2 Regional Council Report #F/15-89 which implemented the Finance fee.
- 3.3 Regional Council report 2007-J-39 which increased the Finance fee.
- 3.4 By-law #35-2018 approved by Regional Council on June 13, 2018, authorized the Regional Chair and Regional Clerk to execute subdivision agreements.
- 3.5 By-law #36-2018 approved by Regional Council on June 13, 2018, authorized the Regional Chair and Regional Clerk to execute servicing agreements for non-subdivision related developments.

4. Policy Updates

- 4.1 The following provides the major updates being recommended with respect to the acceptance of Letters of Credit provided as security in connection with development agreements:

- updated DBRS company name to DBRS Morningstar
 - added equivalent credit ratings from other major rating agencies; Fitch Ratings, Moody's Investor Services and S&P Global ratings
 - deleted CBRS as company was acquired by S&P Global ratings
 - identified six largest Schedule 1 Banks as automatic acceptance
 - deleted the acceptance of bank accounts, Canada Savings Bonds and Guaranteed Investments as acceptable forms of security.
- 4.2 Letters of Credit will still be required to secure the payment of Development Charges due, in accordance with the Region's Development Charges by-laws, and may be used to secure the Performance and Maintenance obligations associated with development Agreements.
- 4.3 The following provides the major updates being recommended with respect to the acceptance of Surety Bonds provided as security in connection with development agreements:
- specifies a minimum credit rating as assessed by the four major credit rating agencies
 - minimum requirements for the surety provider:
 - incorporated in Canada for not less than 10 years
 - active institution monitored by Office of the Superintendent of Financial Institutions (OSFI)
 - similar to Letters of Credit, have a standard required form and format
- 4.4 As is the current practice, cash will be accepted in place of a Letter of Credit and Surety Bond.
- 4.5 On occasion, approval from Regional Council for the Region to enter into a development agreement with a local municipality is sought. It is typical to seek the waiver of the need for the local municipality to provide security for the completion of the servicing work. It is recommended that an exemption for local municipalities to provide security for the performance and maintenance obligations of such agreements be provided as part of the policy.
- 4.6 A Financial Administration fee of \$475 for the initial receipt and any subsequent exchanges/replacement of the security is currently in place with respect to development agreements. For clarity, it is being recommended that this processing/administration fee be extended to include Surety Bonds.

5. Relationship to Strategic Plan

- 5.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:

5.1 Optimize resources and partnerships to deliver exceptional quality services and value

The Region will streamline administrative processes and look for cost efficiencies through co-ordinated service delivery and partnerships. We will responsibly manage the Region's financial assets to deliver critical infrastructure and services for current and future generations.

6. Conclusion

Regional Council approval of the two policies will ensure that Region's practices align with relevant by-laws and reflect current best practices.

7. Attachments

Attachment #1: Policy Letter of Credit Acceptance

Attachment #2: Policy Surety Bond Acceptance

Respectfully submitted,

Original Signed By

Nancy Taylor, BBA, CPA, CA
Commissioner of Finance

Recommended for Presentation to Committee

Original Signed By

Elaine C. Baxter-Trahair
Chief Administrative Officer



Regional Municipality of Durham
Finance Department
Policy Manual

Title: Letter of Credit Acceptance	
Issued: June 28, 2023	Page #: 1 of 4
Revised:	
Approved by: Regional Council	
Responsibility: Finance Department	Section: Financial Services

1. Policy

- 1.1 The Region of Durham requires Letters of Credit to be submitted for Development Charges payable under Subdivision Agreements and will accept Letters of Credit as security for Regional works required under a Servicing Agreement for a Non-Subdivision Related Development.
- 1.2 Banks submitting Letters of Credit for acceptance by the Region of Durham must meet the credit rating criteria and submit the Letter of Credit in a form and content that matches the Region of Durham’s Standard Letter of Credit format.
- 1.3 Under this policy, Surety Bonds cannot be submitted in place of a Letter of Credit as security for payment of Development Charges.

2. Definitions

2.1 Letter of Credit:

A document issued by a financial institution on behalf of their client to guarantee payment to the beneficiary (the Region). This security can be drawn against should the client fail to meet their obligations under an agreement.

2.2 Irrevocable:

Letter of Credit cannot be revoked or amended without the agreement of both the beneficiary (the Region) and the issuing financial institution.

2.3 Automatic Renewal:

A condition that states the Letter of Credit shall automatically extended without formal amendment for a specified period of time beyond the stated expiry date. Written notification must be received by the beneficiary (the Region) prior to the expiration if automatic renewal is to be terminated.

2. Definitions (cont'd)

2.4 Unconditional

The Letter of Credit is payable upon demand to the beneficiary (the Region) without further documentary evidence of obligation, without enquiry by the issuing financial institution as to the beneficiary's right to make the demand, and without recognizing any claim of their client.

3. Policy

3.1 Letters of Credit submitted to the Region must adhere to the standard format requirements detailed in Appendix "A".

3.2 Credit Rating Criteria

Letters of Credit will be accepted from the following Canadian Banks

a) Schedule I Banks

- Bank of Montreal
- Bank of Nova Scotia
- Canadian Imperial Bank of Commerce
- National Bank of Canada
- Royal Bank of Canada
- TD Canada Trust

b) Other Schedule I Banks and Schedule II Banks

- Must have a DBRS Morningstar credit rating of R-1 (Mid) or higher, or an equivalent rating by the rating agencies Fitch Ratings, Moody's Investor Services or S&P Global Ratings.
- Subject to approval by the Commissioner of Finance and Treasurer.
- The bank must maintain the minimum credit rating throughout the period of time the Letter of Credit is held by the Region. Should the bank's rating fall below the minimum level, the developer will be required, at their expense, to replace the Letter of Credit with one that meets the minimum rating.
- Should the Letter of Credit not be replaced within the time frame specified by the Region, the Region may at their discretion draw down the existing Letter of Credit.

c) Trust Companies and Credit Unions

Letters of Credit will not be accepted from Trust Companies or Credit Unions.

3.3 Letters of Guarantee, Guaranteed Investment Certificates, Term Deposits or any form of non-cash security will not be accepted in place of a Letter of Credit.

- 3.4 The Financial Administration fee will be charged for the acceptance or exchange of a Letter of Credit.
- 3.5 Letters of Credit may be required for other types of agreements at the discretion of the Commissioner of Finance.

4. Roles and Responsibilities

- 4.1 The Financial Services Section of the Finance Department is responsible for ensuring that Letters of Credit submitted meet the requirements of this policy.
- 4.2 The Financial Services Section is also responsible for processing all Letter of Credit draws, reductions, replacements and returns.
- 4.3 The Commissioner of Finance and Treasurer is responsible for approving any Letters of Credit submitted under section 3.2 b) of this policy.

Appendix “A” Letter of Credit Standard Format Requirement

LETTER OF CREDIT WILL BE ACCEPTED IN THIS FORM ONLY

Date

The Treasurer,
The Regional Municipality of Durham,
605 Rossland Road East,
Whitby, Ontario L1N 6A3

IRREVOCABLE STANDBY LETTER OF CREDIT

We hereby authorize you to draw on (bank) for account of (customer) up to an aggregate amount of (dollar value) available on demand as follows:

Pursuant to the request of our customers, (name) we, (bank) hereby establish and give you a letter of credit in your favour in the total amount of (dollar value) which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you which demand we shall honour without enquiring whether you have a right as between yourself and our said customers to make such demand and without recognizing any claim of our said customers.

Provided, however, that you are to deliver to (bank) at such time as a written demand for payment is made upon us a certificate signed by you agreeing and/or confirming that monies drawn pursuant to this letter of credit are being drawn because of the obligations of our customers, incurred or to be incurred with reference to an Agreement dated (date) between (customer) and The Regional Municipality of Durham.

The amount of this letter of credit shall be reduced from time to time as advised by notice in writing given to us from time to time by you.

This letter of credit will continue up to (one year from date of issue) and will expire on that date and you may call for payment of the full amount outstanding under this letter of credit at any time prior to that date should this letter of credit not be renewed. It is a condition of this letter of credit that it shall be deemed to be automatically extended without amendment for one (1) year from the present or any future expiration date hereof, unless thirty (30) days prior to any such date we shall notify you in writing by registered mail that we elect not to consider this letter of credit renewed for any such additional period. Any and all renewals to this letter of credit shall be for a period of not less than one year and without amendment to the original terms of this letter of credit.

Partial drawings are permitted.

We hereby covenant with drawers, endorsers, and bona fide holders of drafts drawn under and in accordance with the terms of this letter of credit that such drafts will be honoured if drawn and negotiated on or before (one year from date of issue) or any automatically extended date as hereinbefore set out.

DATED at this day of , 20XX.

Name/signing capacity



Regional Municipality of Durham
Finance Department
Policy Manual

Title: Surety Bond Acceptance	
Issued: June 28, 2023	Page #: 1 of 7
Revised:	
Approved by: Regional Council	
Responsibility: Finance Department	Section: Financial Services

1. Policy

- 1.1 The Region of Durham allows Surety Bonds to be submitted as security for Performance and Maintenance obligations under Development Agreements.
- 1.2 Surety companies submitting Surety Bonds for acceptance by the Region of Durham must meet the credit rating criteria and submit the Surety Bond in a form and content that matches the Region of Durham's Standard Surety Bond format.
- 1.3 This policy does not apply to the local municipalities within Durham Region as they are not required to provide any security for performance or maintenance guarantees.

2. Definitions

- 2.1 **Surety Bond:**
A bond which guarantees the assumption of responsibility for payment of security in the event of a default of a Subdivision agreement.
- 2.2 **Surety Provider:**
A company legally capable of acting as a surety in the surety bond agreement.
- 2.3 **Security:**
An amount required to be provided under a Subdivision Agreement which will ultimately be returned to the developer after the terms of the agreement have been executed to the Region's satisfaction.

3. Policy

- 3.1 The surety bond shall be issued by a Canadian surety provider having a minimum credit rating of:
- a) "A" or higher as assessed by DBRS Morningstar;
 - b) "A-" or higher as assessed by Fitch Ratings;
 - c) "A3" or higher as assessed by Moody's Investor Services; or
 - d) "A-" or higher as assessed by S&P Global
- 3.2 The issuing company shall be incorporated in Canada for no less than ten (10) years and issue surety bonds in Canadian dollars.
- 3.3 The issuing security provider must be an active institution monitored by the Office of the Superintendent of Financial Institutions (OSFI).
- 3.4 When a surety provider that has issued or confirmed a surety bond received and held by the Region, subsequently ceases, in the opinion of the Region, to meet all or any of the requirements of this policy, The Region may, at its discretion and subject to section 3.7 of this policy, require a new security to its satisfaction to be provided to the Region within ten (10) days of demand for same and the original surety bond will be returned or exchanged for the replacement security. In the event the new security is received as required, the Region may draw upon the original Surety Bond.
- 3.5 Where there is doubt as to the credit rating or other qualification of a surety provider, the Region's Commissioner of Finance and Treasurer shall be satisfied that the institution meets the guidelines of this policy.
- 3.6 The surety bond to be provided to the Region issued by a surety provider shall be irrevocable and shall be in the form and on the terms of the Surety Bond Standard Format Requirement attached as Appendix "A".
- 3.7 Notwithstanding anything in this policy,
- a) The Region, may in its discretion, decline a surety bond for any reason;
 - b) When a surety bond has been received and is being held by the Region and the Region is no longer satisfied that the surety bond provides adequate protection, the Region may require a new security to its satisfaction, to be provided to the Region within ten (10) days of demand for same and 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 Region may draw upon the original surety bond.
- 3.8 The Region will not accept Letters of Guarantee, Guaranteed Investment Certificates, Term Deposits or any form of non-cash security in place of a Surety Bond.

- 3.9 The Financial Administration fee will be charged for the acceptance or exchange of the Surety Bond.
- 3.10 Surety Bonds may be accepted for other types of agreements at the discretion of the Commissioner of Finance.

4. Roles and Responsibilities

- 4.1 The Financial Services Section of the Finance Department is responsible for ensuring that Surety Bonds submitted meet the requirements of this policy.
- 4.2 The Financial Services Section is also responsible for processing all Surety Bond draws, reductions, replacements and returns.

Appendix "A" Surety Bond Standard Format Requirement

SURETY BOND WILL BE ACCEPTED IN THIS FORM ONLY

BOND NO.:

AMOUNT: \$

KNOW ALL PERSONS BY THESE PRESENTS, that:

(Name and Address),

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

(Name of Surety)

As Surety, hereinafter called "Surety", are held and firmly bound unto The Regional Municipality of Durham, as Obligee, hereinafter called the "Obligee", in the amount of _____ 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, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal and Obligee have entered into, or will enter into, an agreement with reference number _____ with respect to lands known as _____ in The Region of Durham (said agreement is by reference made a part hereof and is hereinafter referred to as the "**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 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 Agreement, and the Obligee intends to make a claim under this bond, the Obligee 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 the Obligee, in its sole and absolute discretion, that the Principal is in default of its obligations under the 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 Demand from the Obligee at the address noted herein by hand or courier.

3. This Bond is irrevocable and 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 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 the 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 Agreement.

The Surety's liability under this Bond 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 Principal, or the taking or receiving of security by the Obligee from the Principal, or by any alteration, change, addition, modification, or variation in the Principal's obligation under the Agreement, or by exercise of the Obligee or any of the rights or remedies reserved to it under the Agreement or by any 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 without deduction, set-off or withholding.

4. The Obligee may make multiple Demands under this bond.
5. The amount of the 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 Bond.
7. In no event shall the Surety be liable for a greater sum than the amount of this 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 Agreement to the Obligee's satisfaction, all maintenance and rectification periods contained within the Agreement have expired, and the Obligee has finally assumed all works in writing, the Obligee 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 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 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.

- 11. Nothing in this Bond shall limit the Principal’s liability to the Obligee under the Agreement.
- 12. 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.
- 13. All Demands and notices under this 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 correspondences may be delivered by regular mail, registered mail, courier, or email. 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:

The Principal:

The Obligee:

Name:
 Address:
 Email:
 Phone:

Name:
 Address:
 Email:
 Phone:

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.

SINGED 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
DEMAND – NOTICE OF DEFAULT**

Date:
Surety:
Address:
Attention:

Re: Subdivision Agreement Bond No. XXXXX (the “Bond”)

Principal: (the “Principal”)

Obligee: (the “Obligee”)

Agreement: (the “Subdivision Agreement”)

Dear ,

Pursuant to the above referenced Bond, The Region of Durham hereby declares a default under the Subdivision Agreement.

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

Payment Instructions:

Yours truly,
The Region of Durham