



# 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

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

## **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

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

## **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:

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.

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