

Interoffice Memorandum



Date: April 24, 2024
To: Regional Council
From: Nancy Taylor, Commissioner of Finance
Subject: Administrative Updates to Regional Surety Bond Acceptance Policy

The Regional Municipality of Durham

Finance Department

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**Nancy Taylor BBA,
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Commissioner of
Finance

It is being recommended:

- A) That Council Adopt the proposed policy revisions to the Surety Bond Acceptance Policy as outlined in the Memorandum to Council dated April 24, 2024 from the Commissioner of Finance and Treasurer, and
- B) That Council delegate authority to the Commissioner of Finance and Treasurer to make further updates to the Surety Bond Acceptance Policy as required.

Finance & Administration Committee Report #2023-F-16, approved by Regional Council on June 28, 2023, updated the Financial Security Acceptance Policy for Development Agreements. A new policy for Surety Bond Acceptance for surety bonds submitted as security for Performance and Maintenance obligations under Development Agreements was approved at that time.

While Section 1.1 of the Surety Bond Acceptance Policy indicated the policy applied to Development Agreements, other sections referred only to Subdivision Agreements. An administrative update to the Policy to replace Subdivision Agreement with Development Agreement wherever it appears is recommended to permit the acceptance of Surety Bonds for standard Servicing Agreements as well as Subdivision Agreements. The following sections of the Policy are impacted by these housekeeping changes:

- Sections 2.1 and 2.3: Replaced each instance of the term “Subdivision Agreement” with “Development Agreement”; and
- Schedule “A”: Replaced each instance of the term “Subdivision Agreement” with “Development Agreement”.

There are no budgetary impacts arising from these administrative corrections. A copy of the updated policy is attached for reference.



Regional Municipality of Durham
Finance Department
Policy Manual

Title: Surety Bond Acceptance	
Issued: June 28, 2023	Page #: 1 of 7
Revised: April 24, 2024	
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 Development 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 Development 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: Development Agreement Bond No. XXXXX (the “Bond”)

Principal: (the “Principal”)

Obligee: (the “Obligee”)

Agreement: (the “Development Agreement”)

Dear ,

Pursuant to the above referenced Bond, The Region of Durham hereby declares a default under the Development 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 Development Agreement and demand payment of \$ under the terms of the Bond.

Payment Instructions:

Yours truly,
The Region of Durham