

# CITY OF WELLAND

## POLICY

<b>Policy Title: Development Agreement Surety Bond</b>	
<b>Date of Approval:</b> September 20, 2022	<b>Policy Number:</b> FIN-001-0017
<b>Lead Role:</b> Director of Finance, Chief Financial Officer, Treasurer	<b>Support Role:</b> Infrastructure Services Department and Planning & Development Services Department
<b>Cross Reference:</b> FIN-001-0008	<b>Next Review Date:</b> January 1, 2027
<b>Council File Number:</b> 22-4	<b>Revision Date:</b> September 20, 2022

### Policy Statement:

This policy outlines the requirements of a surety bond to be an acceptable form of security for Development Agreements. Issuing insurance companies of Surety Bonds accepted by the City must meet specific credit-rating requirements and the Surety Bond must be written in a specific form.

### PURPOSE:

To ensure the equitable and transparent administration of the use of Surety Bonds for Development Agreements. Acceptance of only certain types of Surety Bonds ensures that the interest of the city is protected.

This policy identifies:

- the City's requirements for the format of Surety Bonds
- the requirements which must be met by the issuing insurance company
- the requirements which must be met by the developer
- acceptable alternatives to a letter of credit
- responsibility for administration of Surety Bonds

### SCOPE:

This policy is applicable, in all cases, in which a Surety Bond is being invoked as security for a development agreement.

Surety Bonds may be provided for any Development Agreement which is required to provide security and may be for the full amount of security required or for a portion if supplemented with a Letter of Credit or cash, only where the language in the associated Development Agreement permits Surety Bonds.

### RELATED LEGISLATION:

Development Agreements are entered into under the *Planning Act, 1990, as amended*, and the required security that this Development Agreement Surety Bond Policy applies to is outlined in each of the respective Development Agreements.

**DEFINITIONS:**

- “Development Agreement” Refers to any agreement entered into between the City of Welland (“City”) and a landowner to regulate the provision of on-site and municipal works required to service land under development applications, and includes, but is not limited to, a Plan Subdivision, Site Plan, Construction Agreement, Shared Services Agreement and Consent Agreement.
- “Security” An amount required to be provided under a Development Agreement which will ultimately be returned to the developer after the terms of the Development Agreement have been executed to the City’s satisfaction.
- “Surety Bond” A bond which guarantees the assumption of responsibility for payment of security in the event of default of a Development Agreement.
- “Surety Provider” A company legally capable of acting as the surety in the surety bond agreement.

**POLICY APPLICATION AND LIMITATIONS:**

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

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

1. The Developer must complete the Surety Bond Application Form and submit this to the City Treasurer. The City Treasurer and the Director of Infrastructure Services will review and approve application. Attached as Appendix “B”.
2. The Development Agreement Surety Bond shall be issued by a Canadian surety provider having a minimum credit rating of:
  - a. “A” or higher as assessed by Dominion Bond Rating Service Limited, or;
  - b. “A-” or higher as assessed by Fitch Ratings, or;
  - c. “A3” or higher as assessed by Moody’s Investors Services Inc.; or
  - d. “A-” or higher as assessed by S&P.
3. The issuing company shall be incorporated in Canada for no less than ten (10) years and issue surety bonds in Canadian dollars.
4. The issuing surety provider must be an active institution monitored by the Office of the Superintendent of Financial Institutions (OSFI).
5. When a surety provider that has issued or has confirmed a surety bond received and held by the City, subsequently ceases, in the opinion of the City to meet all or any of the requirements of this Policy, the City may, in its discretion, and subject to Section 7 of this Policy, require a new security to its satisfaction, to be provided to the City 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 City may draw upon the original Surety Bond.

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6. Where there is doubt as to the credit rating or other qualification of a surety provider, the City Treasurer or Alternate shall be satisfied that the institution meets the guidelines of this Policy.
7. The surety bond to be provided to the City issued by a surety provider shall be irrevocable and shall be in the form and on the terms of the “Development Agreement Surety Bond” template, attached hereto as Appendix “A”.
8. Notwithstanding anything in this Policy,
  - a. the City 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 City, and the City is no longer satisfied that the surety bond adequately provides adequate protection, the City may require a new security to its satisfaction, to be provided to the City 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 City may draw upon the original Surety Bond.
9. Any deviations from the said approved form of Development Agreement Surety Bond template shall be reviewed by and are subject to approval of the Treasurer or alternate and the City Solicitor.

### **ACCEPTABLE ALTERNATIVES:**

Acceptable alternatives to a Surety Bond are cash, valid certified cheque, bank draft, money order or Letter of Credit.

If any of the above are provided as security for a Development Agreement, the funds must be forwarded to the Finance Division, for deposit to the City’s accounts. Releases or draws on funds will be processed in the same manner as a Surety Bond or Letter of Credit. No interest will be paid.

### **ADMINISTRATION:**

The Finance Division is responsible for the safekeeping of all Surety Bonds (or acceptable alternatives) received by the city, and for processing all draws, reductions or releases of Surety Bonds. All Surety Bonds are to be sent by registered mail to the attention of the City Treasurer. The City Treasurer will inform the requesting department upon receipt of an acceptable Surety Bond.

**APPENDIX “A” TO POLICY FIN001-0017  
DEVELOPMENT AGREEMENT SURETY BOND**

**BOND NO.:** \_\_\_\_\_

**AMOUNT:** \$ \_\_\_\_\_

**KNOW ALL PERSONS BY THESE PRESENTS**, that

,

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

,

as Surety, hereinafter <sup>1</sup> called the "Surety", are held and firmly bound unto \_\_\_\_\_, 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, administrators, 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 City of Welland (said agreement is by reference made a part hereof and is hereinafter referred to as the "**Development Agreement**").

**NOW THEREFORE**, the condition of this obligation is such that if the Principal shall, in the opinion of the Obligee do and perform all of the stipulations, conditions, covenants and terms of the Development Agreement, then this obligation shall be void and of no effect; otherwise, it shall remain in full force and effect.

**PROVIDED**, however, the foregoing obligation is subject to the following terms and conditions:

1. Whenever the Principal shall be declared in writing by the Obligee to be in default under the Development Agreement, and the Obligee intends to make a claim under this 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 Development Agreement, the Surety and Principal agree that the Surety will make payments to the Obligee for amounts demanded by the Obligee,

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<sup>1</sup>  
\* IF THERE ARE TWO OR MORE COMPANIES IN PARTNERSHIP OR JOINT VENTURE, JOINTLY AND SEVERALLY BOUND, INSERT THE NAME OF EACH PARTNER OR JOINT VENTURE PARTY, AND INSERT THE WORD "COLLECTIVELY" AFTER THE WORD "HEREINAFTER" IN THE FIRST LINE.

\*\* IF THERE ARE TWO OR MORE SURETY COMPANIES, JOINTLY AND SEVERALLY BOUND, INSERT THE "(Name of the surety company), a corporation created and existing under the laws of (Place or incorporation)," FOR EACH SURETY, FOLLOWED BY "each as a surety and each duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter collectively called the "Surety".

up to an aggregate of the Bond Amount, within ten (10) business days after the Surety's receipt of a Demand from the Oblige.

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 Oblige, and the Surety shall not assert any defence or grounds of any nature or description for not making payment to the Oblige, in whole or in part, pursuant to such Demand, including but not limited to any of the following reasons: that a Default has not occurred, that the Principal committed any fraud or misrepresentation in its application for the Bond, or that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Development Agreement. The Surety's liability under this Bond is unconditional and shall not be discharged or released or affected by any arrangements made between the Oblige and the Principal or by any dispute between the Surety and Principal, or the taking or receiving of security by the Oblige from the Principal, or by any alteration, change, addition, modification, or variation in the Principal's obligation under the Development Agreement, or by the exercise of the Oblige or any of the rights or remedies reserved to it under the Development Agreement or by any forbearance to exercise any such rights or remedies whether as to payment, time, performance or otherwise (whether or not by any arrangement, alteration or forbearance is made without the Surety's knowledge or consent). All payments by the Surety shall be made free and clear without deduction, set-off or withholding.
4. The Oblige 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 Oblige to the Surety. The Oblige 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 Oblige.
9. When the Principal has completed all works required by the Development Agreement to the Oblige's satisfaction, all maintenance and rectification periods contained within the Development Agreement have expired, and the Oblige has finally assumed all works in writing, all in accordance with the terms of the Development Agreement, the Oblige shall return this Bond to the Surety for termination and provide a release letter to the Surety.
10. If the Surety at any time delivers at least ninety (90) days prior written notice to the Oblige and to the Principal of its intention to terminate this obligation, the Principal shall deliver to the Oblige, 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 Oblige. If the replacement financial security is not provided by the Principal or is not accepted by the Oblige, this Bond shall remain in effect.
11. Nothing in this bond shall limit the Principal's liability to the Oblige under the Development 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 correspondence 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.

**SIGNED AND SEALED** this \_\_\_\_ day of \_\_\_\_\_, **20**\_\_\_\_, in the presence of:

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have the authority to bind the Corporation.

\_\_\_\_\_  
Attorney in Fact

**Schedule “A”  
DEMAND – NOTICE OF DEFAULT**

**Date:**

**Surety:**

**Address:**

**Attention:**

**Re:** Development Agreement Bond No. \_\_\_\_\_ (the “Bond”)  
Principal: \_\_\_\_\_ (the “Principal”)  
Obligee: \_\_\_\_\_ (the “Obligee”)  
Agreement: \_\_\_\_\_ (the “Development Agreement”)

Dear \_\_\_\_\_,

Pursuant to the above referenced Bond, The City of Welland 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 CITY OF WELLAND

**APPENDIX “B” TO POLICY FIN-001-0017  
DEVELOPERS REQUEST TO POST SURETY BONDS**

**Date of Request:**

**Security to be Posted:**

**Developers Name:**

**Address & Postal Code:**

**Development Location:**

Dear City,

Pursuant to the Development Agreement I am requesting the City of Welland consider the posting of Surety bonds as a form of security under the Development Agreement.

I am aware of the requirements within the City of Welland’s Development Agreement Surety Bond Policy.

As part of the application process, we are providing the City of Welland with the following requested information here to attached:

1. Estimated Number of Units in Development:
2. Credit Rating of Developer:
3. Experience with posting Surety Bonds:

By making this application we understand the City of Welland will utilize this information to determine our eligibility to fulfill the Development Agreement requirements by way of a surety Bond.

Yours truly,

Per:\_\_\_\_\_

Per:\_\_\_\_\_

Name:

Name:

Title:

Title:

I/We have the authority to bind the Corporation.