

**Pay-on-Demand Surety Bonds Policy**


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<b>Effective:</b>	March 19, 2025	<b>Supersedes:</b>	N/A
<b>Applicable to:</b>	Council and Employees	<b>Authority:</b>	Commissioner of Finance and Treasurer

**1.0 Overview**

This policy outlines the requirements and procedures for the use of Surety Bonds as a form of Security for Development Agreements in the Town of Whitchurch-Stouffville. It aims to ensure that land development projects meet the Town's standards and legal requirements, thereby protecting the interests of the Town and its stakeholders.

The Town of Whitchurch-Stouffville requires developers/landowners to secure the performance of certain obligations by providing financial Security to be utilized if the developers/landowners fail to deliver on the requirements of their Development Agreement. Financial Security normally takes the form of letters of credit or cash. However, the Province has enacted Ontario Regulation 461/24 under section 70.3.1 of the *Planning Act* that authorizes the use of Surety Bonds, with prescribed features, as an acceptable financial instrument to secure the construction of public infrastructure required through development agreements.

A Surety Bond is a three-party instrument that establishes the obligations and rights of the Principal (landowner/developer), the Obligee (the Town), and the Surety Provider (i.e., the insurer). The bond represents a promise by the Surety Provider to pay the Obligee an agreed amount, on demand, if the Principal fails to satisfy the agreed-upon development obligation. All Surety Bonds must be prepared in the Town's standard form in accordance with Attachment A to this Policy

**2.0 Purpose**

The purpose of this policy is to establish the criteria for the requirement, issuance, and management of Surety Bonds from landowners and/or developers pursuant to Development Agreements with the Town of Whitchurch-Stouffville. This ensures the equitable and transparent administration of the use of Surety Bonds for Development Agreements.

**3.0 Scope**

This policy applies to all Development Agreements where a Surety Bond is provided as Security for the installation of municipal services. Surety Bonds may be provided for any Development Agreement where financial Security is required and may be for the full amount of Security required or for a portion if

supplemented with a letter of credit or cash. The policy applies to Development Agreements executed on or after the effective date of the policy.

## 4.0 Definitions

**Development Agreement:** A formal contract made between the Town and a landowner or developer outlining the terms and conditions for land development, regulating the provision of on-site and municipal works required to service the land. These include, but are not limited to, Site Plan Control Agreements, Development Agreements, Subdivision Agreements, Servicing Agreements and Pre-Servicing (Earthworks) Agreements.

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

**Security:** An amount required to be provided under a Development Agreement to secure the construction of on-site or municipal services, which will ultimately be returned to the developer/landowner when the terms of the Development Agreement have been performed to the Town's satisfaction.

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

**Surety Provider:** A company legally capable of acting as the surety in the Surety Bond agreement, meeting the criteria established in provincial regulations.

**The Town:** The Corporation of the Town of Whitchurch-Stouffville.

**Treasurer:** The Treasurer of the Town of Whitchurch-Stouffville, their successor, or delegate.

## 5.0 Procedure

### 5.1 Issuance of Surety Bonds

**5.1.1** The Surety Bond shall be issued by a Canadian Surety Provider who meets at least one of the following credit ratings:

- "A" or higher as rated by Dominion Bond Rating Service.
- "A-" or higher as rated by Fitch Ratings.
- "A3" or higher as rated by Moody's Investors Services Inc.
- "A-" or higher as rated by Standard and Poor's.
- "A-" or higher as rated by A.M. Best Company, Inc.

**5.1.2** The Surety Provider shall be incorporated in Canada for no less than ten (10) years and issue Surety Bonds in Canadian dollars.

- 5.1.3** The Surety Provider must be licensed under the *Insurance Act* (Ontario), as amended, to write surety insurance in Ontario and be overseen by the Financial Services Regulatory Authority of Ontario.

## **5.2 Bond Amount**

- 5.2.1** The minimum Security amount, inclusive of the Bond amount, shall not be less than 100 per cent of the estimated cost of the works being secured.
- 5.2.2** The Bond amount may be either the full Security amount; or a portion of the Security amount, as a supplement to a Letter of Credit or cash Security. But in no case shall the total Security amount, inclusive of the Bond amount, be less than 100% of the total estimated costs of the works being secured.
- 5.2.3** The required Bond amount shall be determined by Development Engineering staff of the Town, in consultation with the Financial Services Commission, based on the scope, scale, and risk profile of the land development project. The Bond amount should cover potential costs for completion, compliance, and any other contingencies as assessed by each, and all, relevant Commission(s) of the Town.

## **5.3 Bond proposal**

- 5.3.1** The landowner or developer must submit a bond proposal to the Town for review prior to agreement execution. This proposal should include details about the type of bond, the issuing entity, the bond amount, and duration.
- 5.3.2** The proposal will be reviewed and approved by the Town's Finance Services Commission & Development Services Commission, in consultation with all relevant Commissions before the bond can be accepted.
- 5.3.3** Upon receipt of an executed Pay-on-Demand Surety Bond Agreement (Appendix A), the Finance Services Commission & Development Services Commission shall be responsible for ensuring that the agreement has been duly executed and that the Surety Provider has applied their corporate seal.

## **5.4 Terms and Conditions**

- 5.4.1** The Surety Bond shall be irrevocable and conform to the format and terms of the "Pay- on-Demand Surety Bond Agreement" template (Appendix A)
- 5.4.2** The Surety Provider guarantees payment to the Town in the event that the Principal defaults in the performance of an obligation secured by the bond. Default shall be determined at the sole discretion of the Town's Treasurer, in consultation with relevant Commission personnel, and the Treasurer will also provide written notice of the default to the Surety Provider and Principal. The Surety Provider will make payment to the Town within 15 business days of delivery of written notice of default.
- 5.4.3** The Surety Bond will provide for a partial release or reduction of the Security when the Town is

satisfied that some obligations to install on-site and municipal infrastructure are complete, and the remaining Security will be sufficient to satisfy all other obligations, in accordance with the Development Agreement.

- 5.4.4** The Surety Provider is required to provide the Town and Principal with at least 90 days written notice of its intention to terminate the Surety Bond. If a replacement Security (another Surety Bond, cash, or letter of credit) is not provided, the existing Surety Bond shall remain in place.
- 5.4.5** Where notice of intention to terminate the Surety Bond is received, the Principal will be required to provide the Town with a replacement Surety Bond or equivalent Security (letter of credit or cash) satisfactory to the Treasurer at least 30 days before the day on which the Surety Provider intends to terminate its obligations under the bond. This provides the Town with the assurance of continuity in the Security and replicates the irrevocability feature of letters of credit.
- 5.4.6** If the Town determines that an existing Surety Bond does not satisfy all or any of the requirements of this Policy, the Treasurer may, in their sole discretion, require a new Security, satisfactory to the Treasurer, to be provided to the Town within thirty (30) days of demand for same, and upon receipt and acceptance of the new Security by the Treasurer, the original Surety Bond will be returned. In the event that a new Security is not received as required above, the Town may draw upon the original Surety Bond.
- 5.4.7** Where there is doubt as to the credit rating or other qualification of a Surety Provider, the Town's Treasurer shall make the determination on whether the Surety Provider satisfies the requirements of this Policy.
- 5.4.8** Notwithstanding anything in this Policy, the Treasurer may, in their sole discretion, decline a Surety Bond that does not align with the objectives of, and conform to the Policy and Attachment A.
- 5.4.9** Notwithstanding anything in this Policy, the Town may, in its sole and absolute discretion, decline a Pay-on-Demand Surety Bond, including a request to exchange Security, for any reason, or for no reason.
- 5.4.10** The Surety Bond shall remain in effect until all obligations under the Development Agreement have been fulfilled or until such time as specified in the Development Agreement. The Surety Bond may be required to be extended if project timelines are adjusted.

## **5.5 Exchange of Surety Bonds**

- 5.5.1** At any time, upon written request from the Principal, the Town will exchange a Surety Bond for an alternate financial Security, including cash, certified cheque or bank draft, provided the alternate financial Security is acceptable to the Town. The Town may also exchange Surety Bonds from one Insurer to another, subject to the approval of the replacement Surety Bond by the Treasurer.
- 5.5.2** To effect such an exchange, the Principal must provide the Town with the replacement Surety

Bond or alternate financial Security prior to the release of the previous Surety Bond. The Town will review the replacement Surety Bond or alternate financial Security and, if approved by the Treasurer, release the previous Surety Bond within 5 business days.

## **5.6 Roles and Responsibilities**

**5.6.1** The Finance Services Commission shall be responsible for future review of and updates to this policy, ensuring that all Commissions accepting Surety Bonds conform to this policy, and confirming that Surety Bonds conform to this policy after receipt by Finance Services.

**5.6.2** The Treasurer shall be responsible for:

- accepting or rejecting Surety Bonds that do not conform to the standard format
- accepting or rejecting replacement Surety Bonds
- determining that Surety Bond providers satisfy or do not satisfy the requirements of this policy
- determining default of the Principal's obligations in consultation with relevant Commission personnel
- issuing notice of default to the Surety Provider.

## **6.0 References**

This policy should be read together with the Town's Letter of Credit Policy No. AP-110

## PAY-ON-DEMAND SURETY BOND TEMPLATE

BOND NO.:

AMOUNT: \$

KNOW ALL PERSONS BY THESE PRESENTS, that

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**(Name of Corporation),**as Principal, hereinafter called the "**Principal**", and

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**(Name of Insurance Company),**

as Surety, hereinafter called the "**Surety**", are held and firmly bound unto The Corporation of the Town of Whitchurch-Stouffville, 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 an agreement No. \_\_\_\_\_ dated \_\_\_\_\_ with respect to lands known as \_\_\_\_\_ in the Town of Whitchurch-Stouffville (said agreement is by reference made a part hereof and is hereinafter referred to as the "**Development Agreement**").

**AND WHEREAS** the Principal and the Surety confirm that the Surety meets the requirements of O.Reg. 461/24 – Surety Bonds, made pursuant to the *Planning Act*, R.S.O. 1990, c. P. 13.

**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, up to an aggregate of the Bond Amount, within fifteen (15) 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, unconditional and constitutes a primary obligation and guarantee. Payment under this Bond 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 a Default has not occurred;
  - (b) that the Principal committed any fraud or misrepresentation in its application for the Bond,
  - (c) that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Development Agreement.
  - (d) any bankruptcy, reorganization, or insolvency of the Principal or any successor or assignee therefor; or
  - (e) that the Principal is no longer the registered owner of the Development Lands.
4. The Surety's liability under this Bond is unconditional and shall not be discharged or released or affected by any arrangements made between the Obligee and the Principal or by any dispute between the Surety and 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 Development Agreement, or by the exercise of the Obligee or any of the rights or remedies reserved to it under the Development Agreement or by any forbearance to exercise any such rights or remedies whether as to payment, time, performance or otherwise (whether or not by any arrangement, alteration or forbearance is made without the Surety's knowledge or consent). All payments by the Surety shall be made free and clear without deduction, set-off or withholding.
5. The Obligee may make multiple Demands under this Bond.
6. The Bond cannot be amended or terminated without the express approval of the Obligee.

7. The amount of the Bond may be reduced from time to time as advised by notice in writing by the Obligee to the Surety.
8. Each payment made by the Surety under this Bond shall reduce the amount of this Bond.
9. In no event shall the Surety be liable for a greater sum than the amount of this Bond.
10. 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.
11. The Bond shall only apply to one (1) security requirement, for one (1) development agreement.
12. Upon completion of a portion of the works required by the Development Agreement to the Obligee's satisfaction, the Obligee may undertake a partial release of the Bond. A partial release may be made in an amount that does not exceed the value of the work that is outstanding. A partial release of the Bond will be approved and processed at the Obligee's sole discretion.
13. When the Principal has completed all works required by the Development Agreement to the Obligee's satisfaction, all maintenance and rectification periods contained within the Development Agreement have expired, and the Obligee has finally assumed all works in writing, the Obligee shall return this Bond to the Surety for termination or advise the Surety in writing that this Bond is terminated, in accordance with the terms of the Development Agreement.
14. 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.
15. Nothing in this bond shall limit the Principal's liability to the Obligee under the Development Agreement.
16. 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.
17. 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.

18. The Surety agrees to indemnify the Obligee from any claims related to the Bond, holding the Principal responsible for repaying any money paid by the Surety to the Obligee in the process of settling a claim.

**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:

NAME OF PRINCIPAL

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I / We have the authority to bind the Corporation.

NAME OF SURETY

\_\_\_\_\_  
, 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 Corporation of Town of Whitchurch-Stouffville hereby declares a default under the Development Agreement No. \_\_\_\_\_

We hereby demand that the Surety honour its fifteen (15) 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 No. \_\_\_\_\_ and demand payment of \$ \_\_\_\_\_ under the terms of the Bond.

Payment Instructions:

Yours truly,

**THE CORPORATION OF THE TOWN OF WHITCHURCH-STOUFFVILLE**

Per: Treasurer