



# Development Agreement Surety Bond Policy

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<b>Policy Number:</b>	<b>FIN-POL-2024-01</b>
<b>Applies to:</b>	Development Agreements
<b>Approval Date:</b>	February 5 <sup>th</sup> , 2024
<b>Revision Date(s):</b>	N/A
<b>Approval Authority:</b>	Council, approved by Council Resolution No. 080-2024 & 081-2024

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## 1. 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 Town must meet specific credit-rating requirements and the Surety Bond must be written in a specific form.

## 2. Purpose

The purpose of this policy is 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 Town is protected.

This policy identifies:

- the Town's requirements for the format of Surety Bonds
- the requirements which must be met by the issuing Surety Provider
- the requirements which must be met by the Principal (i.e. developer)
- acceptable alternatives to a letter of credit
- responsibility for administration of Surety Bonds

## 3. Definitions

- **Development Agreement:** Refers to any agreement entered into between the Town of Collingwood (the "Town") and a landowner to regulate the provision of on-site, off-site and/or municipal works required for the appropriate development of land under development applications, and includes, but is not limited to, a Subdivision Agreement, Site Plan Agreement, Construction Agreement, Shared Services Agreement and Consent Agreement.
- **Principal:** The party whose obligation is guaranteed (i.e. developer).
- **Security:** An amount of funds required to be provided under a Development Agreement which will ultimately be returned to the Principal after the terms of the Development Agreement have been executed and carried out to the Town's satisfaction, but may be drawn upon in the event of a contravention to the Agreement obligations.

- **Surety:** The party that assumes the obligation if the Principal cannot.
- **Surety Bond:** A bond which guarantees the assumption of responsibility for payment of Security in the event of a default under a Development Agreement.
- **Surety Provider:** A company legally capable of acting as the Surety in the Surety Bond agreement.

#### 4. Scope

This policy is applicable in all cases in which a Surety Bond is being provided as Security for a Development Agreement.

Surety Bonds may be provided on the terms set out in this policy 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.

#### 5. Principles of the Policy

Provide flexibility to the development community in acceptable forms of securities associated with Development Agreements where risks to the municipality can be minimized.

#### 6. Roles and Responsibilities

**Managers/Supervisors:** The Manager of Finance is responsible for the review and safekeeping of all Surety Bonds (or acceptable alternatives) received by the Town, and for processing all draws, reductions or releases of Surety Bonds.

**Town Treasurer:** All Surety Bonds and Requests to Post Surety Bonds are to be personally delivered or sent by courier or registered mail to the attention of the Town Treasurer. The Town Treasurer will inform the requesting Department upon receipt of an acceptable Surety Bond, and forward that to the Manager of Finance.

**Department Heads and Other Staff:** Assist the Town Treasurer as outlined in the Policy and provide information to developers regarding this Policy.

## 7. Policy

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

Where financial Security is required by the Town as a term of any Development Agreement, Surety Bonds may be a satisfactory financial Security provided they are issued to and received by the Town in accordance with the following terms and conditions:

- 7.1. The Developer must complete a Request to Post Surety Bond in the form attached hereto as Appendix "B" and submit this to the Town Treasurer. The Town Treasurer and the applicable Department Head (or their designate), in consultation with the Town's Solicitor, will review and determine whether to approve the request
- 7.2. 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.
- 7.3. The issuing Surety Provider shall be incorporated in Canada for not less than ten (10) years and issue Surety Bonds in Canadian dollars.
- 7.4. The issuing Surety Provider must be an active institution monitored by the Office of the Superintendent of Financial Institutions (OSFI).
- 7.5. When a Surety Provider that has issued or has confirmed a Surety Bond received and held by the Town subsequently ceases, in the opinion of the the Town Treasurer, to meet all or any of the requirements of this Policy, the Town may, in its sole discretion, require a new Security to its satisfaction, to be provided to the Town 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 Town may draw upon the original Surety Bond.
- 7.6. Where there is doubt as to the credit rating or other qualification of a Surety Provider, the Town Treasurer shall be satisfied that the Surety Provider meets the requirements of this Policy.
- 7.7. The Surety Bond to be provided to the Town 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".
- 7.8. Notwithstanding anything in this Policy,
  - a. the Town may, in its sole discretion, decline a Surety Bond for any reason;
  - b. when a Surety Bond has been received and is being held by the Town, and the Town is no longer satisfied that the Surety Bond adequately provides adequate protection, the Town may require a new Security to

the satisfaction of the Town Treasurer, to be provided to the Town 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 Town may draw upon the original Surety Bond.

- 7.9. Any deviations from the approved form of Development Agreement Surety Bond template shall be reviewed by and are subject to approval of the Treasurer, in consultation with the Town's Solicitor.

## **8. References and Related Documents**

Appendix A – Development Agreement Surety Bond template

Appendix B – Request to Post Surety Bond

## **9. Consequences of Non-Compliance**

If the Surety Bond is not able to meet this policy to the Town's satisfaction an alternative form of Security will be required.

Alternative forms of security include Letters of Credit, cash, valid certified cheque, bank draft or money order. If any of these are provided as Security for a Development Agreement, the funds must be forwarded to the Finance Division, for deposit to the Town'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.

## **10. Review Cycle**

This policy will be reviewed at a minimum of every five years, but no failure to review this policy within such time frames shall invalidate its provisions.

**APPENDIX “A” TO POLICY FIN-POL-2024-01  
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 The Corporation of the Town of Collingwood, 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 Town of Collingwood (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 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,

<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 Obligee. For greater certainty, the Obligee may include in its Demand any and all costs, expenses and reasonable legal fees incurred in connection with any default under the Development Agreement, all in accordance with and subject to the terms and conditions of the Development Agreement. Any money to be paid under this Bond must be paid in accordance with the payment instructions specified in the Notice of Demand.

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: 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 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 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 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 by a corresponding amount.
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 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, all in accordance with the terms of the Development Agreement, the Obligee 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 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.

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11. Nothing in this bond shall limit the Principal's liability to the Obligee under the Development Agreement.
12. The Surety shall have no right to be subrogated to the rights of the Obligee until the Obligee has received payment in full of the amount of the amounts demanded.
13. Neither this Bond nor any right or obligation under this Bond may be assigned by the Surety.
14. 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.
15. 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 WITNESS 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: \_\_\_\_\_

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

Name:

Name:

Title:

Title:

I/We have the authority to bind the Corporation.

**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 Town of Collingwood 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 Corporation of the Town of  
Collingwood



**APPENDIX “B” TO POLICY FIN-XXX DEVELOPER'S  
REQUEST TO POST SURETY BOND**

**Date of Request:**

**Amount of Security to be Posted:**

**Developer's Name:**

**Development Location:**

**Proposed Surety Bond Provider:**

**Years' Experience of Bond Provider:**

**Credit Rating of Bond Provider (attach proof):**

Dear Town of Collingwood,

Pursuant to the Development Agreement to be entered into with the Town in accordance with the above development, I am requesting that the Town approve the use of a Surety Bond as a form of security under the Development Agreement.

I am aware of the requirements of the Town of Collingwood's Development Agreement Security Bond Policy, and understand that the Town will utilize the information provided herein to determine the suitability of the proposed Surety Bond.

Yours truly,

Per:

Name:

Title:

Per:

Name:

Title:

I/We have the authority to bind the Corporation.