

Surety Bond Policy

Policy #	POL-90
Effective Date	February 20, 2024
Final Approver	City Council

1.0 Interpretation

1.1 In this policy, unless the context requires otherwise:

"City" means The Corporation of the City of Kingston;

"City Solicitor" means the person appointed as the city solicitor for the *City* or their designate;

"City Treasurer" means the person appointed as the Treasurer of the *City* or their designate;

"development agreement" means an agreement entered into between the *City* and an owner pursuant to the *Planning Act* in which the owner is required to provide security to the *City*, and includes a site plan control agreement, a condominium agreement, a development agreement, a subdivision agreement, an off-site works (construction) agreement, an off-site works and cost recovery agreement, or a pre-servicing agreement;

"owner" means the registered owner or developer of lands to be developed in accordance with the *Planning Act*, and may include an individual, an association, a partnership or corporation;

"Planning Act" means the *Planning Act*, R.S.O. 1990, c. P.13;

"security" means an amount to be paid by an owner to the *City* to guarantee performance of the owner's obligations under a *development agreement*;

"surety bond" means a bond issued by a *surety provider* in connection with a contract, which secures the performance and fulfillment of the undertakings, covenants, terms, conditions and agreements contained in the contract; and

"surety provider" means a company licensed, either federally or by a provincial insurance regulatory body, to issue *surety bonds* in the Province of Ontario.

1.2 In this policy, "include", "includes" and "including" indicate that the subsequent list is not exhaustive.

- 1.3 A reference to any legislation, regulation, by-law, rule, policy or provision thereof includes a reference to any legislation, regulation, by-law, rule or provision thereof enacted in substitution thereof or amendment thereof.
- 1.4 A reference to legislation includes all of the regulations made thereunder.
- 1.5 A reference to the position or title of any *City employee* includes a reference to any position or title created in substitution thereof.

2.0 Policy Statement & Purpose

- 2.1 It is the policy of the *City* to require the provision of *security* to ensure the satisfactory performance and completion of works under a *development agreement*.
- 2.2 The purpose of this policy is to establish the *City's* minimum standards for the acceptance of *surety bonds* as a form of *security* for *development agreements*.

3.0 Application

- 3.1 This policy applies to all *surety bonds* received by the *City* as a form of *security* for *development agreements*.

4.0 Surety Provider Requirements

- 4.1 All *surety bonds* delivered to the *City* must be issued by a *surety provider* that:
 - (a) has a minimum credit rating of:
 - (i) A- or higher, as assessed by Standard and Poor's;
 - (ii) A- or higher, as assessed by Fitch Ratings;
 - (iii) A (low) or higher, as assessed by Dominion Bond Rating Service Limited; or
 - (iv) A3 or higher, as assessed by Moody's Investors Services Inc.; and
 - (b) is regulated by the Office of the Superintendent of Financial Institutions ("**OSFI**") and is required to comply with *OSFI's* minimum capital requirements.
- 4.2 The *owner* is responsible, at its cost, for providing all information or documentation required by the *City* to demonstrate that the minimum requirements set out in subsection 4.1 above have been met, which information or documentation must be in a form satisfactory to the *City Treasurer*.

- 4.3 If, at any time, the *surety provider* fails to maintain the minimum requirements set out in subsection 4.1 above, the *City* may require the *owner* to provide a replacement *surety bond* that meets the minimum requirements set out in this policy or other *security* that is satisfactory to the *City Treasurer*. If a replacement *surety bond* or other *security* satisfactory to the *City Treasurer* is not provided within 30 days after demand by the *City*, the *City* reserves the right to demand payment of the full amount of the original *surety bond* and hold the non-interest bearing cash *security* in the same manner as the *surety bond*.

5.0 Surety Bond Requirements

- 5.1 All *surety bonds* delivered to the *City* must be prepared on the *City's* standard template set out in Appendix 10.1 of this policy.
- 5.2 Despite subsection 5.1, the *City* may, in its sole discretion, accept a *surety bond* that is not on the *City's* standard template, provided that the *surety bond*:
- (a) is printed on letterhead from the *surety provider*;
 - (b) states the date of issuance;
 - (c) is issued in Canadian dollars in the amount required by the *City*;
 - (d) references the specific *development agreement* for which it provides *security*;
 - (e) confirms that it is cashable by the *City* on demand, without cause, regard for the equities, or the requirement for further documentary evidence of obligation;
 - (f) states that it is irrevocable by the *surety provider*, such that it may not be revoked or amended without the mutual consent of the *City*, the *owner* and the *surety provider*;
 - (g) does not contain an expiry date, or provides for automatic renewals, whereby the *surety bond* will be automatically renewed without formal amendment for a specified period beyond the stated expiry date;
 - (h) indicates that:
 - (i) the *City* will be given at least 60 days' notice by registered mail or courier if the *surety bond* is to be terminated;
 - (ii) the *surety bond* will only terminate upon the expiry of such 60-day period if the *owner* has provided *security* to the *City* in at least the

same amount as the *surety bond*, in a form acceptable to the *City*; and

(iii) if the *owner* does not provide such *security* to replace the *surety bond*, then the *surety bond* will remain in full force; and

(i) permits partial reductions and multiple demands,

and provided further that the form of *surety bond* is otherwise acceptable to the *City Treasurer*.

5.3 At any time upon the written request of an *owner*, the *City* may exchange a *surety bond* or other allowable form of *security*, provided that the replacement *surety bond* conforms to this policy or the other form of replacement *security* is to the satisfaction of the *City Treasurer*. The *owner* must provide the replacement *security* to the *City* prior to the release of the previous *security*.

6.0 Responsibilities of City Employees

6.1 The *City Treasurer* is responsible for:

- (a) administering this policy and approving any departmental operating procedures and processes under this policy;
- (b) holding and maintaining all *surety bonds* provided to the *City* pursuant to this policy; and
- (c) reviewing requests for deviations or exceptions to this policy, including *surety bonds* issued by *surety providers* that do not meet the minimum requirements of this policy, and approving and/or denying such requests, as the case may be.

In exercising its authority under this policy, the *City Treasurer* may, in their sole discretion, decline a *surety bond* for any reason.

6.2 At the request of the *City Treasurer*, the *City Solicitor* is responsible for providing advice related to this policy and the acceptance, collection, substitution or release of any *surety bond* delivered pursuant to this policy.

6.3 All *City* employees who receive *surety bonds* on behalf of the *City* are responsible for:

- (a) reading and abiding by the requirements set out in this policy; and
- (b) forwarding the *surety bonds* to the *City Treasurer* for evaluation and administration.

7.0 Administration

- 7.1 All requests for reduction or release of a *surety bond* will be administered in accordance with the *development agreement* and the *City's* standard practices and procedures.

8.0 Approval Authority

Role	Position	Date Approved
Quality Review	City Treasurer.	
Subject Matter Expert	Director, Financial Services.	
Legal Review	City Solicitor.	
Management Review	CMT.	
Final Approval	City Council.	

9.0 Revision History

Effective Date	Revision	Description of Change
[Insert date]	1	New Policy

10.0 Appendix

- 10.1 City of Kingston Development Agreement Surety Bond Template

DEVELOPMENT AGREEMENT SURETY BOND**BOND NUMBER:** Click or tap here to enter text.**AMOUNT: \$** Click or tap here to enter text.**KNOW ALL PERSONS BY THESE PRESENTS THAT**

Click or tap here to enter text.

as principal (the “**Principal**”)

-and-

Click or tap here to enter text.

(the “**Surety**”)

are held and firmly bound unto The Corporation of the City of Kingston, as obligee (the “**Obligee**”), in the amount of Click or tap here to enter text. Dollars (\$Click or tap here to enter text.), in 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 has or will be entering into a(n) Choose an item. agreement with the Obligee in respect of those lands municipally known as Click or tap here to enter text. in the City of Kingston (City of Kingston File Number Click or tap here to enter text.) (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, in the opinion of the Obligee, fully performs all of the obligations set forth in the Development Agreement in accordance with its terms and fully indemnifies the Obligee from all costs and expenses which the Obligee may suffer by reason of the Principal’s failure to do so, 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 is 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 will notify the Principal and the Surety in writing of such default and make a written demand for payment, in the form attached to this bond as Schedule “A” (the “**Demand**”).
2. Within fifteen (15) days after receiving a Demand from the Obligee, the Surety will make payments to the Obligee in the amount of the Demand.
3. Except as otherwise set out herein, this bond is irrevocable and payment will be made despite any objection by the Principal. The Demand shall be accepted by the Surety as conclusive

evidence of its obligation to make payment to the Obligee, and the Surety will 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 under the Development Agreement; 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 in accordance with the Development Agreement.

4. The Surety's liability under this bond is unconditional and will 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 the 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).
5. All payments by the Surety will be made free and clear, without deduction, set-off or withholding.
6. The Obligee may make multiple Demands under this bond.
7. The amount of this 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 will reduce the amount of this bond by the amount of such payment.
9. In no event will the Surety be liable for a greater sum than the amount specified in this bond.
10. No right of action will accrue upon or by reason hereof to or for the use or benefit of any person other than the Obligee.
11. Upon (i) completion by the Principal of all works required by the Development Agreement to the Obligee's satisfaction, (ii) the expiry of all maintenance and rectification periods contained within the Development Agreement, and (iii) the issuance by or on behalf of the Obligee of any final certificates of approval contemplated in the Development Agreement, where applicable, the Obligee will return this bond to the Surety for termination or advise the Surety in writing that this bond is terminated.
12. If the Surety at any time delivers at least 60 days' prior written notice to the Obligee and to the Principal of its intention to terminate this bond, the Principal will deliver to the Obligee, not less than 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 full force and effect.

13. Nothing in this bond shall limit the Principal's liability to the Obligee under the Development Agreement.
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 the 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, 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 written notice of the new address to the other parties in accordance with this section.

To the Surety:	To the Principal:	To the Obligee:
Click or tap here to enter text.	Click or tap here to enter text.	The Corporation of the City of Kingston 216 Ontario Street Kingston, ON K7L 2Z3 Attention: Director, Financial Services Email: FinanceDivision@cityofkingston.ca

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:

CLICK OR TAP HERE TO ENTER TEXT.

(Principal)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

CLICK OR TAP HERE TO ENTER TEXT.

(Surety)

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

Schedule "A"

DEMAND – NOTICE OF DEFAULT

Date: Click or tap here to enter text.
Name of Surety: Click or tap here to enter text.
Address: Click or tap here to enter text.
Attention: Click or tap here to enter text.

Re: Development Agreement Bond No.: Click or tap here to enter text. ("Bond")
Principal: Click or tap here to enter text. ("Principal")
Obligee: The Corporation of the City of Kingston ("Obligee")
Agreement: Click or tap here to enter text. ("Development Agreement")

To the above named Surety:

The Obligee hereby certifies to the Surety, with reference to the Bond, that the Principal is in default under the Development Agreement.

The Obligee hereby demands payment in the amount of Click or tap here to enter text. under the terms of the Bond.

Please pay the required amount in accordance with the following payment instructions no later than 15 days after your receipt of this Demand:

Payment Instructions: Click or tap here to enter text.

Yours truly,

THE CORPORATION OF THE CITY OF KINGSTON