APPENDIX A

MARKHAM	*Pay-on-Demand Surety Bonds Policy*	
	Policy Category:	
	Policy No.:	**Implementing Procedure No.:**

Approving Authority: Treasurer	**Effective Date: December 4, 2024**
Approved or Last Reviewed Date:	**Next Review Year: 2030**
Area(s) this policy applies to: Development Finance *Financial Services*	**Owner Department: Development Finance** *Financial Services*

Related Policies:

- *Expenditure Control Policy*
- *Letters of Credit Policy*

Note: Questions about this Policy should be directed to the Owner Department.

1. Purpose Statement *(Outline why the organization is issuing the policy and its desired effect or outcome of the policy)*

This document establishes a Policy to guide the operating practices with respect to the delivery and use of Pay-on-Demand Surety Bonds ("Surety Bonds") and outlines the requirements for a Surety Bond to be an acceptable form of security for Development Agreements, as hereinafter defined. The Policy also establishes minimum standards and criteria to protect the financial interests of the City and ensure the equitable and transparent administration of the use of Surety Bonds for Development Agreements

This Policy will define requirements for the uses of Surety Bonds that includes:

- The terms and conditions (features) to be included for the instruments to be accepted
- Standard wording acceptable to the City of Markham
- Acceptable alternatives to Surety Bonds.
- Acceptable circumstances or agreements eligible for use of Surety Bonds

2. Applicability and Scope Statement

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

Surety Bonds may be provided for any Development Agreement where financial security for installation of municipal services 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.

3. Background *(Indicate any reasons, history, and intent that led to the creation of the policy)*

The City requires developers/landowners to secure the performance of certain obligations by providing a 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 proposed a Regulation 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 City) 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 City's standard form in accordance with Attachment A to this Policy.

4. Definitions *(If applicable, define any terminology or interpret meanings of a general term)*

Development Agreement: Refers to an agreement entered into between the City of Markham and a landowner to regulate the provision of on-site and municipal works required to service land as a condition of land-use planning approvals. These agreements include Plans of Subdivision, Site Plans and any other agreements as may be approved by the Treasurer.

Principal: A party that has entered into a Development Agreement with the City and has tendered a Surety Bond to the City 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 City's satisfaction. The Security can alternatively be drawn upon to rectify and/or complete on-site or municipal services not performed to the City'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 (alternatively "Insurer"): A company legally capable of acting as the surety in the Surety Bond agreement, that meets the criteria established in Provincial regulations.

The City (alternatively "Obligee"): The Corporation of the City of Markham (the "City")

Treasurer: The Treasurer of the City of Markham, their successor or delegate

Written Notice: Correspondence to the Principal and Surety Provider from the City Treasurer delivered by regular mail, certified mail or electronically.

5. Policy Statements *(Detail the specific regulations, requirements, or modifications to organizational behaviour to be addressed by this policy)*

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

Where financial security is required by the City as a term of any contract or as a condition of any planning approval, 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 Surety Bond shall be issued by a Canadian Surety Provider who is required to meet at least one of the following credit ratings:
   a. "A" or higher as rated by Dominion Bond Rating Service;
   b. "A-" or higher as rated by Fitch Ratings;
   c. "A3" or higher as rated by Moody's Investors Services Inc.;
   d. "A-" or higher as rated by Standard and Poor's; or
   e. "A" or higher as rated by A.M. Best Company, Inc.

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

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

4) The Surety Provider guarantees payment to the City in the event that the Principal (developer/landowner) defaults in the performance of the obligations secured by the bond. Default shall be determined at the sole discretion of the City Treasurer, in consultation with the relevant department 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 City within 15 business days of delivery of written notice of default, delivered in accordance with the provisions of the Surety Bond.

5) The Surety Bond will provide for a partial release or reduction of the Security when the City 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.

6) The Surety Provider is required to provide the City 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.

   a) Where notice of intention to terminate the Surety Bond is received, the Principal will be required to provide the City with a replacement Surety Bond or equivalent security (letter of credit or cash) within 60 days of receipt of the notice of intention to terminate.
   b) This provides the City with the assurance of continuity in the security and replicates the irrevocability feature of letters of credits.

7) If the City 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, and subject to Section 9 of this Policy, require a new Security, satisfactory to the Treasurer in their sole discretion, to be provided to the City 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 City may draw upon the original Surety Bond.

8) Where there is doubt as to the credit rating or other qualification of a Surety Provider, the City's Treasurer shall make the determination on whether the Surety Provider satisfies the requirements of this Policy.

9) 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.

Any deviations from the form in Attachment A shall be reviewed by and are subject to approval of the Treasurer and City Solicitor.

Exchanges of Surety Bonds:

At any time, upon written request from the Principal, the City 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 City. The City may also exchange Surety Bonds from one Insurer to another, subject to the approval of the replacement Surety Bond by the Treasurer.

To effect such an exchange, the Principal must provide the City with the replacement Surety Bond or alternate financial security prior to the release of the previous Surety Bond. The City 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.

6. Roles & responsibilities

The Financial Services Department shall be responsible for:

- Future review of and updates to this policy
- Ensuring that all Departments accepting Surety Bonds conform to this policy
- Confirming that Surety Bonds conform to this policy after receipt by Financial Services

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 the relevant department personnel

- Issuing notice of default to the Surety Provider

Authority to release, reduce or draw on a Surety Bond is governed by the Expenditure Control Policy.