

CORPORATE POLICY



Policy Title: **Security Deposits Policy**
Policy Category: **Security Deposits Policy**
Policy No.: FC-001
Department: Finance
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Author: Mirela Oltean
Related Documents/Legislation:
Staff Report – CORP2025-019
Municipal Act, 2001
Planning Act, R.S.O. 1990, c.P.13 O. Reg 461/24: Surety Bonds –
Section 70.3.1 of the Act (as amended)

Key Word(s):

POLICY STATEMENT:

This Policy guides the operating practices for the collection and use of Security Deposits as a form of financial security for development agreements.

Financial institutions must meet the City of Waterloo's credit rating criteria and provide security deposits in the required format and content.

PURPOSE:

The Security Deposits Policy aims to ensure that monies provided as security will be available to the City of Waterloo if required. This policy is designed to provide adequate protection to the City of Waterloo, be fair, reasonable, and provide flexibility to development partners.

The City of Waterloo routinely enters into agreements, such as subdivision and development agreements, where the developer is required to submit security deposits to the City to ensure that financial security is available to the City if the developer is unable or unwilling to meet their obligations under the agreement.

Traditionally, securities were in the form of cash (via bank draft or certified cheque) or Letters of Credit, however the Province introduced 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.

Mandatory Policy, *Municipal Act*: NO

Policy Administration Team, Review Date May 26, 2025

Corporate Management Team, Review Date May 21, 2025

DEFINITIONS:

Development Agreement: refers to an agreement between the City of Waterloo and a developer or landowner to regulate the provision of on-site and municipal works required to service land as a condition of land-use planning approval

Letter of Credit: a document issued by a financial institution on behalf of their client to guarantee payment to the beneficiary (The City). This security can be drawn against should the client fail to meet their obligations under an agreement

Irrevocable: cannot be revoked or amended without the agreement of all participating parties

Unconditional: payable on demand without enquiry by the financial institution as to The City's right to make the demand and without recognizing any claim of our customer

Automatically Renewing: extended automatically without amendment for one year from any present or future expiration date

Surety Bond: a form of financial guarantee that is an agreement between three parties: the Principal (developer or landowner), the Obligee (the City), and the Surety Provider (i.e. the insurer) to guarantee payment to the Obligee, on demand, if the Principal fails to satisfy the agreed upon development agreement obligation.

Bond Amount: an amount required to be provided under a Development Agreement, to secure the construction of on-site or municipal services, which will be returned to the developer or 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

Principal (alternatively "developer or landowner"): 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

Surety Provider (alternatively “Insurer”): A company legally capable of acting as the surety in the Surety Bond agreement, that meets the criteria established in the Planning Act regulations

Obligee (alternatively “The City”): The Corporation of the City of Waterloo

City Treasurer: The City Treasurer of the City of Waterloo, or delegate is responsible to authorize use of Surety Bonds, makes the determination that the Surety Bond satisfies the requirement of the Policy and determines default of the Principal’s obligations in consultation with relevant City department personnel

SCOPE:

This Security Deposit Policy Format applies to all forms of securities required by the City of Waterloo.

Any securities in the form of Letters of Credit or Cash held by the City of Waterloo prior to the approval of this Securities Deposit Policy and Standard Securities Format will remain in effect.

This policy is applicable to all internal Divisions of the City of Waterloo involved in drafting, approval and monitoring development agreements and security deposits.

POLICY COMMUNICATION:

The Security Deposits Policy will be provided by the City to any affected party required to provide the City of Waterloo with security deposit.

POLICY:**1) Credit Rating Criteria**

Letters of Credit matching the City of Waterloo’s Standard Letter of Credit Format will be accepted from Banks and Trust Companies having a credit rating of R-1 (middle) AA or higher.

Letters of Credit matching the City of Waterloo’s Standard Letter of Credit Format will be accepted from Credit Unions, provided that:

- The Credit Union is verified as a member of Central 1 Credit Union
- Central 1 Credit Union, rated R-1 (middle) A, maintains or improves upon their rating
- The Credit Union has its Head Office in Ontario

- The cumulative total of all letters of credit from each credit union does not exceed 0.5% of Tier 1 Capital as reported on each credit union's most recent audited financial statements
- The total Credit Union portfolio holdings will not exceed 20% of the total letter of credit portfolio holdings
- Notwithstanding the foregoing, the City of Waterloo reserves the right, in its sole discretion to deny the use of a Letter of Credit from an institution, if, in the opinion of the City Treasurer or delegate there is reason to believe the Credit Union will no longer satisfy the above criteria in the near or medium term

Letters of Credit from any other financial institution will not be accepted.

Surety Bonds matching the City of Waterloo Surety Bond Format will be accepted from insurers licensed under the *Insurance Act* who meet at least one of the following credit ratings or any other ratings prescribed by the *Planning Act*, as amended:

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

Surety Bonds from any other insurers will not be accepted.

Any security deposits that were previously accepted by the City in accordance with the above requirements, where the institution has since been downgraded and/or no longer meets the minimum requirements, the City may require a new acceptable form of security.

2) Standard Securities Deposit Format

A copy of the **City of Waterloo's Standard Letter of Credit Format** is included in **Attachment 1** to this policy. A template can also be obtained from Financial Planning. **Changes or additions to the text of the Standard Letter of Credit Format will not be accepted.**

Site or agreement specific information can be added in the header (RE:) area of the Letter of Credit. This information is not to be added within the body of the document.

All Letters of Credit must be unconditional, irrevocable, automatically renewing, and permit partial drawings. All Letters of Credit must be in Canadian dollars.

A copy of the **City of Waterloo's Surety Bond Format** is included as **Attachment 2** to this policy. A template can also be obtained from Financial Planning. **If the City of Waterloo Surety Bond Template is not used, the Surety Bond provided must**

satisfy all of the criteria prescribed by legislation and any additional criteria identified in the Policy.

Surety Provider and Bond Requirements

All Surety Bonds delivered to the City must:

Be issued in Canadian dollars, by a Surety Provider licensed under the Insurance Act to write surety insurance in Ontario and be overseen by the Financial Services Regulatory Authority of Ontario.

The Surety Provider must meet the credit rating identified by applicable legislation and the Credit Rating Criteria section of this policy.

The amount of the Surety Bond should be not less than 100% of the total estimated costs of the works being secured. The amount shall be determined by the City's relevant department(s), based on the scope, scale, and risk profile of the land development project.

The Surety Bond must be unconditional, irrevocable, automatically renewing, and permit partial drawings.

The Surety Bond delivered to the City must be prepared on the City's standard template as set out in **Attachment 2** of this policy or satisfy all of the criteria prescribed by legislation and any additional criteria identified in this Policy.

The City may, in its sole discretion, accept a Surety Bond that is not on the City's standard template, if it meets the following requirements:

- Must be issued by a Surety Provider licensed under the Insurance Act to write surety insurance in Ontario, and be overseen by the Financial Services Regulatory Authority of Ontario;
- Must be issued by a Surety Provider that meets the credit rating identified in the Credit Rating Criteria section of this policy;
- The Surety Bond meets the following Terms and Conditions:
 - (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) act as standby security. It is only anticipated to be cashed in the event of a default;
- (f) confirms that it is cashable by the City on demand, without cause or regard for the equities, or the requirement for further documentary evidence of obligation;
- (g) the payment will be made within 15 business days after the demand letter was issued;
- (h) 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;
- (i) does not contain an expiry date, or provides for automatic renewals, without formal amendment for a specified period beyond the stated expiry date;
- (j) The Surety Bond must be unconditional and will not be discharged or released or be affected by any arrangements made between the Obligee and the Principal or by any dispute between the Surety and the Principal;
- (k) permits partial reductions and multiple demands; and
- (l) termination clause:
 - i. the City will be given written notice at least 90 days in advance by registered mail or courier if the surety bond is to be terminated;
 - ii. at least 30 days before the day on which the insurer intends to terminate its obligations under the bond, the principal must deliver financial security to the municipality in the amount of the bond that is acceptable to the municipality to replace the surety bond;
 - iii. if the principal does not provide such security to replace the surety bond, then the surety bond will remain in full force;

If, at any time, the Surety Provider fails to maintain the minimum requirements set out above, the City may require the principal (developer) to provide a new compliant Surety Bond, replacement Letter of Credit or Cash for the same amount as the defaulting security.

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 and is to the satisfaction of the City Treasurer or delegate and the replacement security meets the requirements imposed by applicable legislation and this Policy. The owner must provide the replacement security to the City prior to the release of the previous security and provide proof of payment of the Security Exchange Administration Fee (SEAF). The SEAF is governed by the City of Waterloo Fees and Charges By-law.

Copies of the securities templates can be obtained from the Financial Planning & Asset Management Division - Financial Planning section.

3) Other allowable Forms of Security

Security will also be accepted in the form of Letter of Credit, cash, certified cheque, money order, or bank draft, which will be deposited to the City of Waterloo's bank account. No interest will be paid to the customer on these funds.

Letters of Guarantee will not be accepted as they are less liquid and do not provide the same level of assurance as the Letters of Credit or Surety Bonds.

4) Administration

All forms of security will be forwarded to the City of Waterloo Financial Planning section. The Financial Planning section, through the City Treasurer or its designate, is responsible for approving and maintaining the security, processing reductions, and releases.

All requests for reduction or release will be initiated by the appropriate division for verification that obligations under the Development Agreement have been met.

The landowner, developer or principle, as the case may be, is responsible, at its cost, for providing all information or documentation required by the City to demonstrate that the minimum requirements set out below have been met.

COMPLIANCE:

In cases of policy violation, the City may investigate and determine appropriate corrective action.

Attachment 1

CITY OF WATERLOO --- STANDARD FORMAT FOR LETTERS OF CREDIT

FINANCIAL INSTITUTION LETTERHEAD

Letter of Credit No:

Total Amount:

Date:

Branch:

To: The Corporation of the City of Waterloo

UNCONDITIONAL IRREVOCABLE LETTER OF CREDIT

RE: (Use this line for any specifics related to the Site or Agreement. Examples: Address /**Subdivision Phase & Stage / Site Servicing or Performance or Topsoil/Erosion / Site Plan #****Please note: Changes or Additions to the text of the Standard Format below this line will not be accepted)**

We hereby authorize you to draw on

_____,
_____,

for account of our
customer,up to an aggregate amount of _____, dollars
(\$_____) CAD available on demand as follows:

Pursuant to the request of our customer, the said _____, we, the
_____ hereby establish and give to you this
Unconditional Irrevocable Letter of Credit in your favour in the total amount of
_____ (\$_____) CAD which may be
drawn on by you at any time and from time to time upon written demand for payment
made upon us by you which demand we shall honour without inquiring whether you
have a right as between yourself and our said customer to make such demand and
without recognizing any claim of our said customer.

Provided, however, that you are to deliver to the _____,
_____, at such time as a written demand for payment is made upon us a
certificate signed by you agreeing and/or confirming that monies drawn pursuant to this
Letter of Credit are to be used to perform any outstanding obligations of our said
customer to you.

It is understood and agreed that the obligation of the undersigned under this Letter of Credit is an obligation to pay money only and that in no circumstances shall the undersigned be obliged to perform or cause to perform any of our customer's actual obligations to you.

The amount of this Letter of Credit shall be reduced from time to time as advised by notice in writing given to us by you from time to time.

This Letter of Credit will continue in force for one year, subject only to the conditions hereinafter set forth.

It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to the present expiration date or to any future expiration date, we notify you in writing by registered mail addressed to: City Treasurer or delegate, The Corporation of the City of Waterloo, 100 Regina Street South, PO Box 337, Stn Waterloo, Waterloo ON, N2J 4A8, that we elect not to consider this Letter of Credit to be renewable for any additional period.

Partial drawings hereunder are permitted.

Drawings must be negotiated not later than close of business on the expiry date or renewed expiry date hereunder as the case may be.

FOR: _____
(FINANCIAL INSTITUTION) _____
(AUTHORIZED
SIGNATURE) _____
(NAME(S)) _____
(TITLE(S)) _____
I(We) have the authority to bind the
corporation.

Attachment 2**CITY OF WATERLOO --- STANDARD FORMAT FOR SURETY BOND****BOND NO.:** _____ **AMOUNT: \$** _____

KNOW ALL PERSONS BY THESE PRESENTS, that _____, as Principal, hereinafter called the "**Principal**", and _____, as Surety, hereinafter called the "**Surety**", are held and firmly bound unto The Corporation of the City of Waterloo, 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 Waterloo (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, 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, registered mail or courier.
3. This Bond is irrevocable (subject only to the conditions set out in paragraph 10), 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.

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.

4. The Obligee may make multiple Demands under this bond in the prescribed form as presented in Schedule B (the "Demand").
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 conditions are met, and 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 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, 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.
10. The Surety may only terminate its obligations under the Bond if the following conditions are satisfied:
 - a. The Surety must give written notice to the Obligee and to the Principle of the Surety's intent to terminate its obligations under the Bond.
 - b. The written notice referred to in subparagraph a, must be given at least 90 days before the day on which the insurer intends to terminate its obligations under the Bond.

- c. At least 30 days before the day on which the Surety intends to terminate its obligations under the Bond, the Principle must deliver financial security to the Obligee in the amount of the Bond that is acceptable to the Obligee to replace the Bond.
11. If the replacement financial security referred to in paragraph 10(c) is not provided by the Principal or is not accepted by the Obligee, this Bond shall remain in effect.
 12. Nothing in this bond shall limit the Principal's liability to the Obligee under the Development Agreement.
 13. 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 amounts demanded.
 14. Neither this Bond nor any right or obligation under this Bond may be assigned by the Surety.
 15. 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.
 16. It is a condition of this Bond that it shall be deemed to be automatically extended for one (1) year from the date of issuance or any future expiration date, unless notice to terminate the Bond is given in accordance with paragraph 10 and all of the conditions set out in paragraph 10 are satisfied
 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 of the Principal may be changed by giving notice to the other parties setting out the new address in accordance with this section.

The Surety:		The Principal:		The Obligee:	
Name:		Name:		Name:	The Corporation of the City of Waterloo c/o City Treasurer/Designate
Address:		Address:		Address:	Waterloo City Centre, 100 Regina Street South P.O. Box 337 STN Waterloo Waterloo, Ontario, N2J 4A8
Email:		Email:		Email:	securitydeposits@waterloo.ca
Phone:		Phone:		Phone:	519 886 1550 x 78538

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.

_____;
Name, Attorney in Fact

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 City of Waterloo hereby declares a default under the Development Agreement.

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 and demand payment of \$ under the terms of the Bond.

Payment Instructions:

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Yours truly,

THE CITY OF WATERLOO