



AUDIT, FINANCE AND ADMINISTRATION COMMITTEE REPORT 24-015

9:30 a.m.

September 5, 2024

Council Chambers

Hamilton City Hall

Present: Councillors T. Hwang (Chair), J. Beattie (virtually), B. Clark, C. Kroetsch, M. Tadeson, A. Wilson, and M. Wilson (virtually)

Absent with

Regrets: Councillor M. Spadafora – Personal

THE FOLLOWING ITEMS WERE REFERRED TO COUNCIL FOR CONSIDERATION:

1. CONSENT ITEMS (Items 9.1-9.3)

That the following Consent Items, be received:

- (a) Annual Employee Absence Report 2023 (HUR24005) (City Wide) (Item 9.1)
- (b) Community Benefits Charges Reserve Status Report as of December 31, 2023 (FCS24007) (City Wide) (Item 9.2)
- (c) Development Charges Reserves Status Report as of December 31, 2023 (FCS24043) (City Wide) (Item 9.3)

2. Development Agreement Surety Bonds (FCS21056(b)) (City Wide) (Outstanding Business List Item) (Item 10.1)

- (a) That the Development Agreement Surety Bond Policy (FPAP-DA-001) and the accompanying Development Agreement Surety Bond Language Template, attached as Appendix “A” to Audit, Finance and Administration Committee Report , be amended as identified;
- (b) That staff be directed to allow developments which provided security prior to June 9, 2021, currently secured with a letter of credit or cash security, to replace the existing security with a surety bond, provided:
 - (i) The applicant submits an application form (Appendix “B”) and a non-refundable application fee;

- (ii) The applicant agrees to pay any third-party costs related to the approval of the application (e.g., legal fees, registration fee, title search);
 - (iii) The application is subject to joint approval by the General Manager of Planning and Economic Development (or designate) and the City Solicitor (or designate);
- (c) That the application fee applicable to allow developments currently secured with a letter of credit or cash security which provided security prior to June 9, 2021, to replace the existing security with a surety bond be:
- (i) Established as \$300 for the 2024 calendar year;
 - (ii) Referred to the annual user fee by-law for 2025 and future years;
 - (iii) Credited to the Development Engineering Administration (45408 812015).

3. Fencing at 42 Mary Street (Ontario Aboriginal Housing Services) (Ward 2) (Item 11.1)

WHEREAS, the management of 42 Mary Street was transferred from the City of Hamilton in partnership with Urban Native Homes to Ontario Aboriginal Housing Services in 2016;

WHEREAS, Ontario Aboriginal Housing Services receives financial support from the City of Hamilton through the Commercial Rent Supplement Program;

WHEREAS, Ontario Aboriginal Housing Services, as an affordable housing provider, does not have sufficient funding to take on emerging capital improvements;

WHEREAS, residents at 42 Mary Street have an outdoor seating area for gathering at the corner of Mary Street and King William Street;

WHEREAS, the outdoor seating area is frequently used as a shortcut, which makes it difficult for residents to enjoy;

WHEREAS, Ontario Aboriginal Housing Services hired Davis Fences to provide a quote to install a fence along the property line at 42 Mary Street, which was quoted at \$15,243.70, inclusive of HST.

THEREFORE, BE IT RESOLVED

- (a) That costs associated with installing a fence at 42 Mary Street be funded from the Ward 2 Special Capital Reinvestment Reserve 108052 at an upset limit, including contingency, not to exceed \$16,000; and

- (b) That the Mayor and City Clerk be authorized and directed to execute any required agreement(s) and ancillary documents, with such terms and conditions in a form satisfactory to the City Solicitor.

4. Financial Support for CityHousing Hamilton Capital Projects (Ward 2) (Item 11.2)

WHEREAS, CityHousing Hamilton (CHH) does not have sufficient funding to take on emerging capital updates and repairs to their many buildings in Ward 2;

WHEREAS, CityHousing Hamilton owns the following properties in Ward 2:

- (i) 95 Hess Street South, a 291-unit singles building built in 1968;
- (ii) 181 Jackson Street West, a 265-unit singles building built in 1968;
- (iii) 206 Jackson Street East, a 30-unit mixed singles/family building built in 1974;
- (iv) 226 Rebecca Street, a 199-unit seniors building built in 1971;
- (v) 55 Hess Street South/181 Main Street West, a commercial mall and office space connecting 200 Jackson Street West and 191 Main Street West, a 467-unit seniors complex built in 1973; and,
- (vi) 185 Jackson Street East, a 50-unit one and two bedroom building built in 1991

WHEREAS, CityHousing Hamilton recognizes that its tenants, both residential and commercial, deserve structural and cosmetic upgrades to improve the overall quality of life for all by promoting well-being, safety, and community engagement;

WHEREAS, CityHousing Hamilton staff obtained the following quotes and estimates for necessary capital updates and repairs:

- (i) Community Room flooring replacement at 226 Rebecca Street for \$12,311.35;
- (ii) Community Room upgrades at 226 Rebecca Street for \$24,916.37;
- (iii) Balcony and railing replacement at 181 Jackson Street West for \$500,000;
- (iv) Lobby floor replacement at 181 Jackson Street West for \$11,526.00;
- (v) Community garden upgrades at 181 Jackson Street West for \$12,062.75;
- (vi) Pigeon netting at 181 Jackson Street West and 95 Hess Street South for \$166,800;
- (vii) Metal out handrail replacement at 95 Hess Street South for \$1,506.04;
- (viii) Community Room floor replacement at 185 Jackson Street East for \$11,300;
- (ix) Hallway flooring replacement at 206 Jackson Street East for \$11,100;

THEREFORE, BE IT RESOLVED:

- (a) That the CityHousing Hamilton Capital Funding be funded from the Ward 2 Capital Re-Investment Reserve #108052 at an upset limit, including contingency, not to exceed \$850,000; and
- (b) That the Mayor and City Clerk be authorized and directed to execute any required agreement(s) and ancillary documents, with such terms and conditions in a form satisfactory to the City Solicitor.

FOR INFORMATION:

(a) CHANGES TO THE AGENDA (Item 2)

The Committee Clerk advised of the following changes to the agenda:

6. DELEGATION REQUESTS

- 6.1 Michelle Diplock, West End Home Builders' Association, respecting Development Agreement Surety Bonds (for today's meeting)

The agenda for the September 5, 2024 Audit, Finance and Administration Committee meeting, was approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 3)

There were no declarations of interest.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 4)

(i) Approval of Minutes of Previous Meetings (Items 4.1-4.2)

The following Minutes were approved, as presented:

- (1) July 11, 2024
- (2) August 21, 2024 (Special – Development Charges Hearing)

(d) DELEGATION REQUESTS (Item 6)

(i) Michelle Diplock, West End Home Builders' Association, respecting Development Agreement Surety Bonds (for today's meeting) (Added Item 6.1)

The Delegation Request from Michelle Diplock, West End Home Builders' Association, respecting Development Agreement Surety Bonds, was approved for today's meeting.

(e) DELEGATIONS (Item 7)

(i) Michelle Diplock, West End Home Builders' Association, respecting Development Agreement Surety Bonds (for today's meeting) (Added Item 6.1)

Michelle Diplock, West End Home Builders' Association, addressed Committee respecting Development Agreement Surety Bonds.

The Delegation from Michelle Diplock, West End Home Builders' Association, respecting Development Agreement Surety Bonds, was received and referred to the consideration of Report FCS21056(b), respecting Development Agreement Surety Bonds (City Wide) (Outstanding Business List Item).

(f) GENERAL INFORMATION / OTHER BUSINESS (Item 13)

(i) Amendments to the Outstanding Business List (Item 13.1)

The following amendments to the Outstanding Business List, were approved:

(1) Items Requiring a New Due Date:

(a) Feasibility of a Bring Your Own Device Policy

Added: March 23, 2023

Current Due Date: January 1, 2024

New Due Date: March 31, 2025 (Q1 2025)

(2) Items Considered Completed and to be Removed:

(a) Development Agreement Surety Bonds (FCS21056(a)) (City Wide) (Outstanding Business List Item) - REVISED

Added: August 17, 2023

Addressed as Item 10.1 on today's agenda

(b) 2024 Development Charges Background Study and By-law Update - Open House Feedback (FCS23103(a))

Added: March 27, 2024

Addressed as Item 6.1 and 6.1(a) on the April 4, 2024 (Special) agenda

(g) ADJOURNMENT (Item 15)

(Tadeson/M. Wilson)

There being no further business, the Audit, Finance and Administration Committee, was adjourned at 10:45 a.m.

Respectfully submitted,

Councillor Tammy Hwang, Chair
Audit, Finance and Administration
Committee

Tamara Bates
Legislative Coordinator
Office of the City Clerk

Surety Bond Policy		
FPAP-DA-001		FCS21056/LS21021 at AF&A
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Development Agreement Surety Bond Policy	
POLICY STATEMENT	This Policy outlines the requirements of a surety bond to be an acceptable form of security for Development Agreements.
SCOPE	<p>This Policy is applicable, in all cases, in which a Surety Bond is being provided as security for a Development Agreement.</p> <p>Surety Bonds may be provided 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.</p>
PURPOSE (GUIDING PRINCIPLES)	To ensure the equitable and transparent administration of the use of Surety Bonds for Development Agreements.
RELATED LEGISLATION	Development Agreements are entered into under the <i>Planning Act, 1990</i> , as amended, and the required security that this Surety Bond Policy applies to is outlined in each of the respective Development Agreements.
TRANSPARENCY	This Policy, inclusive of Appendix A, is available publicly.
DEFINITIONS	<p>“Development Agreement” Refers to any agreement entered into between the City of Hamilton and a land owner to regulate the provision of on-site and municipal works required to service land under development applications. Includes, but is not limited to, Plan of Subdivision, Site Plan, External Works Agreement, Joint Service Agreement and Consent Agreement.</p> <p>“Security” An amount required to be provided under a Development Agreement which will ultimately be returned to the developer after the terms of the Development Agreement have been executed to the City’s satisfaction.</p> <p>“Surety Bond” A demand worded bond which guarantees the assumption of responsibility for payment of security in the event of default of a Development Agreement.</p>

Surety Bond Policy		
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“Surety provider”	A company legally capable of acting as the surety in the surety bond agreement.
DETAILS: USAGE AND LIMITATIONS	<p>This Policy is applicable, in all cases, in which a Surety Bond is being provided as security for a Development Agreement.</p> <p>Where financial security is required by the City, a term of any contract or as a condition of any planning approval, Development Agreement 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:</p> <ol style="list-style-type: none"> 1. The Development Agreement Surety Bond shall be issued by a Canadian surety provider having a minimum credit rating of: <ol style="list-style-type: none"> (a) “A” or higher as assessed by Dominion Bond Rating Service Limited; (b) “A-“ or higher as assessed by Fitch Ratings; (c) “A3” of higher as assessed by Moody’s Investors Services Inc.; or (d) “A-“ or higher as assessed by S&P. 2. The issuing company shall be incorporated in Canada for no less than ten (10) years and issue surety bonds in Canadian dollars. 3. The issuing surety provider must be an active institution monitored by the Office of the Superintendent of Financial Institutions (OSFI). 4. When a surety provider that has issued or has confirmed a surety bond received and held by the City, subsequently ceases, in the opinion of the City to meet all or any of the requirements of this Policy, the City may, in its discretion, and subject to Section 7 of this Policy, require a new security to its satisfaction, to be provided to the City 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 City may draw upon the original Surety Bond. 5. Where there is doubt as to the credit rating or other qualification of a surety provider, the City’s General Manager of Finance and Corporate Services shall be satisfied that the institution meets the guidelines of this Policy.

Surety Bond Policy	 Hamilton	
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	<p>6. The surety bond to be provided to the City 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 B.</p> <p>7. Notwithstanding anything in this Policy,</p> <p>(a) the City may, in its discretion, decline a surety bond for any reason;</p> <p>(b) when a surety bond has been received and is being held by the City and the City is no longer satisfied that the surety bond adequately provides adequate protection, the City may require a new security to its satisfaction, to be provided to the City 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 City may draw upon the original Surety Bond;</p> <p>8. This policy shall apply with necessary modifications to permit the City to exchange another form of security for a Surety Bond if:</p> <p>(a) The Development Agreement under which the other security was provided pre-dated this Policy, and the developer is now seeking to pursue the option to provide a Surety Bond that was formerly unavailable to it;</p> <p>(b) The ownership of the lands affected by the Development Agreement has not changed;</p> <p>and,</p> <p>(c) The Development Agreement is not in default.</p> <p>Any deviations from the said approved form of Development Agreement Bond template shall be reviewed by and are subject to approval of the General Manager of Finance and Corporate Services and the City Solicitor.</p>
POLICY OWNER	Director of Financial Planning, Administration and Policy
ADMINISTRATION	The Development Agreement Surety Bond Policy shall be administered by the Financial, Planning, Administration and Policy Division within the Corporate Services Department.

Surety Bond Policy			
FPAP-DA-001			FCS21056/LS21021 at AF&A
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RELATED POLICIES	Irrevocable Letter of Credit Policy (FCS02016)		
RELATED STANDARD OPERATING PROCEDURES	FPAP-SOP-DA-001 Development Securities Processing		

**APPENDIX A TO POLICY FPAP-DA-001
DEVELOPMENT AGREEMENT 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 _____, as Oblige, hereinafter called the "**Oblige**", 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 Oblige have entered into, or will enter into, an agreement with reference number _____ with respect to lands known as _____ in the City of Hamilton (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 Oblige 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 Oblige to be in default under the Development Agreement, and the Oblige intends to make a claim under this bond, the Oblige 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 Oblige, 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 Oblige for amounts demanded by the Oblige, up to an aggregate of the Bond Amount, within ten (10) business days after the Surety's receipt of a Demand from the Oblige at the address noted herein by hand or courier.

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 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.
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.
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. 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.
11. Nothing in this bond shall limit the Principal's liability to the Obligee under the Development Agreement.

12. 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.

13. If this Bond was issued as a replacement for other Security (including other Security that was itself replacement Security), this Bond shall nevertheless be fully retroactive in operation to the date of the Development Agreement. Without limiting the application of anything in section 3 above, the Surety shall be fully responsible under this Bond for the entire term of the Development Agreement, irrespective of the number of intermediate replacement Securities and even if any such intermediate replacement Securities were in default (whether knowingly or unknowingly and whether innocently or fraudulently concealed), when replaced by this Bond.

14. 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 Oblige:

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:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I / We have the authority to bind the Corporation.

, 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 City of Hamilton 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 CITY OF HAMILTON