



BY-LAW

NO. 2024 – 063

Being a By-law to Adopt a Letter of Credit Policy for The Corporation of the Municipality of Kincardine

Whereas pursuant to the said Municipal Act, Sections 8 and 9 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas Section 270 (1) of the Municipal Act 2001, S.O. 2001, c. 25, as amended, requires a municipality to adopt and maintain a policy with respect to the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public; and

Whereas the Council of the Corporation of the Municipality of Kincardine desires to adopt a new Letter of Credit Policy; now therefore be it

Resolved that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That the Letter of Credit Policy for The Municipality of Kincardine, attached hereto as Schedule 'A' and forming part of this By-law be adopted.
2. That this By-law shall come into full force and effect upon its final passing.
3. That all other Policies passed by By-law and Resolution inconsistent with this By-law, be repealed.
4. That By-law may be cited as the "Letter of Credit Policy By-law".

Read a First, Second and Third Time and Finally passed this 24th day of April, 2024.

Mayor

Clerk

Schedule 'A'

Policy No.: FIN.05

Section: Your Government and People

Policy Title: Letter of Credit Policy

Adopted Date: April 24, 2024

By-law No.: 2024 - 063

Revision Date:

1. Purpose

The Municipality of Kincardine may require securities to be submitted to secure financial and/or performance obligations through various development approval processes and in accordance with agreements between the Municipality and a third-party seeking approval from the Municipality.

This policy establishes the minimum standards for the acceptance, custody, and administration of Letters of Credit and other acceptable forms of security to protect the financial interests of the Municipality.

This policy defines the requirements for the use of a Letter of Credit, including:

- a) Acceptable letter format and content;
- b) Issuing financial institution requirements;
- c) Acceptable security alternatives; and
- d) Staff responsibilities

2. Scope

This policy applies to the acquisition, evaluation, management and administration of all letters of credit and other accepted forms of security by or on behalf of the Municipality.

3. Definitions

“Agreement” shall mean all agreements or contracts involving the Municipality that may require a letter of credit to be issued to provide assurance that certain financial or performance obligations are met by the countersigning party, including, without limitation those referenced in Section 5 of this policy.

“Automatic Renewal” shall mean a condition which states that a letter of credit shall be automatically extended without formal amendment for a specified period beyond the stated expiration date. Written notification must be received by the Municipality prior to expiration if automatic renewal is to be terminated.

“Counterparty” shall mean the other party or parties to an agreement with the Municipality.

“Credit Union” shall mean a corporation incorporated or continued as a credit union or caisse populaire under the *Credit Unions and Caisses Populaires Act, 2020*.

“Irrevocable” shall mean a form of letter of credit that may not be revoked or amended without the mutual consent of the issuing bank and the beneficiary (the Municipality).

“Letter of Credit” shall mean a form of financial security issued by a financial institution that guarantees payment or performance by one or more counterparties to a beneficiary (the Municipality). At any time, the beneficiary reserves the right to draw upon the security up to a specified total in the event of default or non-delivery.

“Schedule I Banks” shall mean domestic banks authorized under Schedule I of the *Bank Act* to accept deposits.

“Schedule II Banks” shall mean foreign bank subsidiaries authorized under Schedule II of the *Bank Act* to accept deposits. Foreign bank subsidiaries are controlled by eligible foreign institutions.

“Schedule III Banks” shall mean foreign bank subsidiaries authorized under Schedule III of the *Bank Act* to offer banking services to Canadian clients.

4. Responsibility

4.1. Treasurer/Director of Corporate Services:

- a) Maintains administrative authority and responsibility for the Letter of Credit Policy;
- b) Responsible for the implementation of, and adherence to, this Policy;
- c) Reviews and, if deemed appropriate, approves deviations or exceptions to this Policy, including Letters of Credit submitted from financial institutions that do not meet the minimum requirements described herein; and
- d) Obtains legal advice from external legal counsel pertaining to the administration, custody, and application of this Policy.

4.2. All staff involved in the acquisition, evaluation and administration of Letters of Credit:

- a) Read and abide by the requirements set out in this Policy; and
- b) Forward any Letters of Credit received or retained at the department level to the Treasurer/Director of Corporate Services, and/or designate (as directed).

5. Procedure/Policy

Agreements or contracts involving the Municipality may require a letter of credit to be issued to provide assurance that certain financial or performance obligations are met. This could include, but is not limited to:

- a) The purchase of goods and/or delivery of services, by or on behalf of the Municipality;
- b) Subdivision/development agreements, including subdivision agreements;
- c) Site alterations/site plan approvals; and
- d) Front-ending and/or cost sharing agreements.

The Municipality shall employ the standard format for irrevocable letters of credit attached to this policy as **Schedule A**.

The submitted letter of credit must:

- a) be printed on letterhead from the issuing financial institution;
- b) specify that the letter of credit is irrevocable;
- c) specify that the beneficiary is the Municipality of Kincardine;
- d) be submitted in either paper or electronic format;
- e) be denominated in Canadian dollars in an amount requested by the Municipality;
- f) include an automatic renewal provision where the agreement is to be in place for a minimum guaranteed period of at least one (1) year;
- g) indicate that the Municipality will be given at least thirty (30) days notice by registered mail if the counterparty does not intend to renew the Letter of Credit;
- h) refer to a renewal schedule described in the subject Agreement where the value of any letter of credit renewals or extensions are subject to changes from the original letter of credit amount; and,
- i) conform to the intent of the standard format provided in **Schedule A**. Any deviation from the standard format will be subject to review by the Municipality and may be refused for non-compliance.

6. Financial Institutions

6.1. Letters of Credit conforming to the intent of the standard format requirements provided in **Schedule A** will only be accepted by the Municipality from Schedule I Canadian Chartered Banks, or Credit Unions subject to the conditions set out under 6.3 below.

6.2. Letters of credit from any other institutions, including Schedule II, Schedule III Banks, and trust companies will not be accepted.

6.3. Letters of credit will be accepted from Credit Unions, provided that all of the following criteria are met:

- a) The Credit Union is verified as a member of *Central 1*;
- b) The Credit Union has its Head Office in Ontario;
- c) The Credit Union is listed on the annual and quarterly reports list for the largest 100 Credit Unions based on asset size issued by the Canadian Credit Union Association; and

The developer posting the letter of credit is responsible for supplying to the Municipality documented proof of the Credit Union's standing.

Notwithstanding the foregoing, the Municipality 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 Treasurer/Director of Corporate Services, there is reason to believe the Credit Union will no longer satisfy the above criteria in the near or medium term.

7. Other Allowable Forms of Security

Cash security in an equal amount to the Letter of Credit may be accepted, to the satisfaction of the Treasurer/Director of Corporate Services, in the following forms:

- a) Certified cheque;
- b) Bank draft; or
- c) Money order.

The cash security shall be deposited in the Municipality's bank account and no interest shall accrue to the benefit of the Applicant.

7.1. When the financial and/or performance obligations have been met and/or completed in accordance with the subject Agreement and to the satisfaction of the Municipality, the Municipality will return the cash security deposit to the Applicant without any interest.

7.2. Letters of Guarantee or Surety Bonds shall not be accepted in lieu of a Letter of Credit, since these are less liquid and do not provide the same advantages, benefits and security as a Letter of Credit.

8. Drawing Upon a Letter of Credit

If an Applicant defaults on their contractual obligation to the Municipality, the Municipality reserves the right to draw upon the associated Letter of Credit fully or partially, at any time, after providing written demand to the financial institution from which the Letter of Credit was issued.

9. Attachments

Schedule A – Standard Format for Letters of Credit

10. Related Documents/Legislation

Bank Act (SC 1991, c.46)

Schedule A
IRREVOCABLE STANDBY LETTER OF CREDIT TEMPLATE – SITE PLAN AGREEMENTS
DRAFT ONLY – USE FINANCIAL INSTITUTION LETTERHEAD

Address of Bank: _____

Standby Letter of Credit Number: _____ Irrevocable
Issue: _____ Date of

Applicant: (Name, Address, Postal Code)

Beneficiary: The Corporation of the Municipality of Kincardine
1475 Concession 5
Kincardine, Ontario N2Z 2X6
Attention: Treasurer/Director of Corporate Services

We hereby authorize the above noted Beneficiary to draw on (Name of Bank, Address, Postal Code) for the account of (Name of Applicant, Address, Postal Code) up to an aggregate amount of (Amount written out in full) Canadian Dollars (\$ Amount) available on demand.

Pursuant to the request of our customer, (Name of Applicant), we (Name of Bank) hereby establish and give to the Beneficiary an Irrevocable Standby Letter of Credit ("Letter of Credit") in the Beneficiary's favour in the total amount of (Amount written out in full) (CAD \$ Amount) which may be drawn on by the Beneficiary at any time and from time to time upon written demand for payment made upon us by the Beneficiary, which demand we shall honour without enquiring whether the Beneficiary has a right as between the Beneficiary and our said customer to make such demand, and without recognizing any claim of our said customer. Provided, however, that the Beneficiary is to deliver to us, at such time as a written demand for payment is made upon us, a letter confirming that monies drawn pursuant to this Letter of Credit are to be and/or have been expended pursuant to obligations incurred in connection with a Site Plan Agreement dated the ___ day of _____ 20___, between (insert Owner name on Site Plan Agreement) and the Corporation of the Municipality of Kincardine (Site Plan #).

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

This Letter of Credit will continue up to (insert Expiry Date one year from Date of Issue) and will expire on that date, and the Beneficiary may call for payment of the full amount outstanding under this Letter of Credit at any time up to the close of business on that date. It is a condition of this Letter of Credit that it shall be deemed to be automatically extended for one (1) year from the present or any future expiration date hereof, unless at least thirty (30) days prior to any such date we shall notify the Beneficiary in writing by Registered Mail or Courier that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by the Beneficiary of such notice, the Beneficiary may draw by means of the Beneficiary's demand accompanied by the Beneficiary's above written letter.

Partial drawings under this Letter of Credit are permitted.

The drawings under this Letter of Credit are to state that they are drawn under (Name of Bank, Address, Postal Code), Letter of Credit (Number).

(Signature of Authorized Signing Officer)

(Signature of Authorized Signing Officer)

**IRREVOCABLE STANDBY LETTER OF CREDIT TEMPLATE – SUBDIVISION AGREEMENTS
DRAFT ONLY – USE FINANCIAL INSTITUTION LETTERHEAD**

Address of Bank:

Standby Letter of Credit Number: _____ Irrevocable
Issue: _____ Date of
Applicant: (Name, Address, Postal Code)

Beneficiary: The Corporation of the Municipality of Kincardine
1475 Concession 5
Kincardine, Ontario N2Z 2X6
Attention: Treasurer/Director of Corporate Services

We hereby authorize the above noted Beneficiary to draw on (Name of Bank, Address, Postal Code) for the account of (Name of Applicant, Address, Postal Code) up to an aggregate amount of (Amount written out in full) Canadian Dollars (\$ Amount) available on demand.

Pursuant to the request of our customer, (Name of Applicant), we (Name of Bank) hereby establish and give to the Beneficiary an Irrevocable Standby Letter of Credit (“Letter of Credit”) in the Beneficiary’s favour in the total amount of (Amount written out in full) (CAD \$ Amount) which may be drawn on by the Beneficiary at any time and from time to time upon written demand for payment made upon us by the Beneficiary, which demand we shall honour without enquiring whether the Beneficiary has a right as between the Beneficiary and our said customer to make such demand, and without recognizing any claim of our said customer.

Provided, however, that the Beneficiary is to deliver to us, at such time as a written demand for payment is made upon us, a letter confirming that monies drawn pursuant to this Letter of Credit are to be and/or have been expended pursuant to obligations incurred in connection with a Subdivision Agreement between (insert Developer name on Subdivision Agreement) and the Corporation of the Municipality of Kincardine for the land described as being (insert Legal Description).

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

This Letter of Credit will continue up to (insert Expiry Date one year from Date of Issue) and will expire on that date, and the Beneficiary may call for payment of the full amount outstanding under this Letter of Credit at any time up to the close of business on that date. It is a condition of this Letter of Credit that it shall be deemed to be automatically extended for one (1) year from the present or any future expiration date hereof, unless at least thirty (30) days prior to any such date we shall notify the Beneficiary in writing by Registered Mail or Courier that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by the Beneficiary of such notice, the Beneficiary may draw by means of the Beneficiary’s demand accompanied by the Beneficiary’s above written letter.

Partial drawings under this Letter of Credit are permitted.

The drawings under this Letter of Credit are to state that they are drawn under (Name of Bank, Address, Postal Code), Letter of Credit (Number).
(Signature of Authorized Signing Officer) (Signature of Authorized Signing Officer)