

Letter of Credit Policy

Approved By: Council
Approved On: February 23, 2023

Policy Statement

A letter of credit may be requested as a condition of a contract, development charge agreement or planning approval to help ensure that financial and/or performance obligations are met. In conjunction with the Region's investment, planning and purchasing policies, this Policy establishes minimum standards for letters of credit in order to protect the financial interests of the Region.

Application

This Policy applies to the acquisition, evaluation and administration of all letters of credit by or on behalf of the Region.

Purpose

To define requirements for the use of a letter of credit, including:

- Acceptable letter format and content;
- Issuing financial institution requirements (including minimum credit rating expectations);
- Acceptable security alternatives; and,
- Regional staff responsibilities.

Definitions

Automatic Renewal: 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 Region prior to expiration if automatic renewal is to be terminated.

Counterparty: the other party or parties to an agreement with the Region.

Counterparty Risk: the likelihood that a counterparty will default or not fulfill its obligations in accordance with terms set out in a contract.

Irrevocable: 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 Region).

Letter of Credit: a form of financial security issued by a financial institution that guarantees payment or performance by one or more counterparties to a beneficiary (the Region). 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: domestic banks authorized under Schedule I of the *Bank Act* to accept deposits.

Schedule II Banks: 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: foreign bank branches of foreign institutions that have been authorized under Schedule III of the *Bank Act* to do banking business in Canada.

Standby: a form of letter of credit which only requires the presentation of an appropriate payment request to the issuing bank from the beneficiary (the Region) without further documentary evidence of obligation.

Surety Bond: A financial instrument that provides a guarantee to the owner (Region) that a contractor will meet performance and/or payment obligations under a contract.

Warranty: an express or implied term in a contract, such as an undertaking that goods or services contracted shall meet specified requirements as to design, quality or performance.

York Region: The Regional Municipality of York (“the Region”).

Description:

Agreements or contracts involving the Region 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:

- The purchase of goods and/or delivery of services, by or on behalf of the Region;
- Subdivision/development agreements, including development charge agreements; and,
- Site alterations/site plan approvals.

Format

The Region shall employ the standard format for irrevocable letters of credit attached as **Appendix A**.

The submitted letter of credit must:

- be printed on letterhead from the issuing financial institution;
- be submitted in either paper or electronic format;
- comply with the International Standby Practices (ISP98) or its successor as published by the International Chamber of Commerce;
- be denominated in Canadian dollars in an amount requested by the Region;
- include an automatic renewal provision where the agreement is to be in place for more than one year;
- indicate that the Region will be given 30 days notice by registered mail if the counterparty does not intend to renew;
- refer to a renewal schedule described in the agreement where the value of any letter of credit renewals or extensions are subject to changes from the original letter of credit amount; and,
- conform to the intent of the standard format provided in Appendix A. Any deviation from the standard format will be subject to review by the Region and may be refused for non-compliance.

A letter of guarantee or confirmation may be requested from time to time as evidence of capacity to secure a letter of credit. However, at no time shall a letter of guarantee or confirmation serve as an acceptable alternative to a letter of credit. Letters of guarantee or confirmation must indicate that the financial institution is willing to provide a letter of credit in a format and within a time period deemed acceptable to the Region.

Financial Institutions

Unless otherwise directed by Council, letters of credit conforming to the intent of the standard format requirements provided in **Appendix A** will only be accepted by the Region from Schedule I and II banks maintaining minimum credit ratings described in the Region's Investment Policy, as amended from time to time. Letters of credit from trust companies, credit unions and Schedule III banks will generally not be accepted. In exceptional circumstances, they may be accepted subject to the review and approval of the Director, Treasury Office, Finance Department.

Where an eligible financial institution fails to maintain a credit rating position that meets the minimum credit requirements described in this Policy, the Region shall forward a replacement request to the counterparty to provide a substituting letter of credit from a financial institution that meets the minimum requirements set out in this Policy. If a replacement letter of credit is not provided within 30 days of receiving the Region's replacement request, the Region reserves the right to immediately draw upon the original letter of credit. The financial institution issuing the letter of credit shall not be party to the terms of any agreement or agreements that are related to the provision of security.

Financial Alternatives

Where a letter of credit is not deemed to be suitable or where a counterparty cannot provide it in the value or format requested by the Region, security deposits in an amount equal to the letter of credit amount may also be accepted in the form of cash (certified cheque, bank draft or money order) or surety bond. In all cases, cash shall be the preferred alternative to a letter of credit.

If an alternative form of security is provided in lieu of the requested letter of credit, the funds will be received and deposited by the Region and no interest shall accrue to the benefit of the provider. When financial and/or performance obligations have been met and any warranty periods have elapsed, the Region shall return the security deposit to the provider in the amount originally delivered. The Region may also return a portion of the security deposit in accordance with a renewal schedule described in an agreement.

Responsibilities:

Commissioner of Finance and Regional Treasurer:

- Maintains administrative authority and responsibility for the Letter of Credit Policy; and,
- Approves departmental operating procedures and processes under this Policy.

Director, Treasury Office and/or designate:

- Responsible for the implementation of, and adherence to, this Policy; and,
- 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.

Director, Procurement Office, Finance Department and/or designate:

- Incorporates letter of credit requirements into Regional purchasing documents; and,
- Ensures that resources and staff are available to support the consideration of financial risk mitigation for Regional purchases.

All staff involved in the acquisition, evaluation and administration of letters of credit:

- Read and abide by the requirements set out in this Policy; and,
- Forward any letters of credit received or retained at the department level to the Director, Strategy and Transformation, and/or designate.

Non-Compliance With Policy:

Non-compliance with this Policy could lead to disciplinary action, up to and including dismissal.

Attachment:

- Appendix A: Letter of Credit Template

Contact:

Director, Treasury Office, Finance Department, ext. 71646

Approval:

Council Date: February 23, 2023	Committee Date: February 9, 2023
Council Minute Item: G.2	Committee Minute Item: I.2.1

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Accessible formats or communication supports are available upon request.

Appendix A

Letter of Credit Template

REGION OF YORK
STANDARD DOCUMENTATION FOR LETTERS OF CREDIT

(insert bank letterhead)

LETTER OF CREDIT NO. _____

DATE: _____

APPLICANT: _____

IRREVOCABLE LETTER OF CREDIT

BENEFICIARY: The Regional Municipality of York
17250 Yonge Street, Box 147
Newmarket, Ontario, Canada
L3Y 6Z1

We hereby authorize you to draw on _____
(Bank, Address, Postal Code)

for account of _____
(name of Applicant)

up to an aggregate amount of _____ Dollars (\$ _____)
available on demand as follows:

Pursuant to the request of our customer, the said _____,
(name of Applicant)

we _____
(name of Bank)

hereby establish and give to you an Irrevocable Letter of Credit in your favour in the total amount of _____ DOLLARS (\$ _____) 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 enquiring 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 us 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 retained and used to meet obligations in connection with:

Letter of Credit Policy

CONTRACT NO.	_____	} (as applicable)
MINISTRY SUBDIVISION NO:	_____	
REGION FILE OR APPROVAL NO:	_____	
SITE LOCATION:	_____	
DESCRIPTION OF WORKS:	_____	

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 you.

This Letter of Credit will expire on _____, but shall be deemed to be automatically extended without any formal amendment or notice to that effect, from year to year for successive periods of one year each from the present or any future expiration date hereof, unless not less than thirty (30) days prior to the present or any future expiration we shall notify you in writing that the bank elects not to renew this Letter of Credit for any such additional period. This notification shall be delivered by Registered Mail to the attention of:

Commissioner of Finance & Regional Treasurer
Regional Municipality of York
17250 Yonge Street, Box 147
Newmarket, Ontario, Canada
L3Y 6Z1

Upon receipt by you of such notice, you may draw by means of your demand accompanied by your above written certificate.

Partial drawings are permitted.

The drawings under this credit are to state that they are drawn under the

(Name of Bank, Address)
LETTER OF CREDIT NO. _____
(Number)

This Letter of Credit is subject to the rules set out in *International Standby Practices (ISP98)*, International Chamber of Commerce publication No.590 and engages us in accordance with the terms thereof. This Letter of Credit shall also be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada except to the extent that such laws are inconsistent with the *International Standby Practices (ISP98)*.

Authorized Signature

Authorized Signature (For Bank)