



ENGINEERING DIVISION
PUBLIC WORKS
CITY OF SURPRISE
16000 N. CIVIC CENTER PLAZA
SURPRISE, AZ 85374
T. 623-222-6150

FINANCIAL ASSURANCE

APPLICATION PACKET

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FINANCIAL ASSURANCE SUBMITTAL REQUIREMENTS

Following is the process for Financial Assurance submittals. City code requires developers to secure a **PERFORMANCE BOND, FUNDS IN ESCROW, LETTER OF CREDIT or CASH** to ensure completion of required infrastructure improvements. Samples of each are included in this packet.

While the two processes may occur concurrently, Financial Assurance must be approved and filed with the City Clerk **prior to recording** the Final Plat.

STEP ONE – FINANCIAL ASSURANCE SUBMITTAL

All Financial Assurance submittals require interdepartmental approval. The applicant must submit the following packet of information. An incomplete submittal may be returned to the applicant.

1. Certified Engineers construction cost estimate for all offsite improvements and/or improvements within easements to be dedicated for use by the City of Surprise similar to Figure 1 below. In lieu of a sealed engineer's cost estimate, a copy of the contractor's official bid will also be accepted.

Project Cost Estimate (EXAMPLE)						
Project Name:	Surprise Residential	Engineer/Contractor Name:	Engineering, Inc.			
City Project No (FS#):	15-555	Engineer/Contractor Address:	1555 Engineering Row, Phoenix, AZ 85021			
Date:	11/30/2016	Engineer/Contractor Phone:	602-555-1234			
Permit Type	Description	Quantity	Unit	Unit Price	Total	
Concrete						
City Concrete	6" Vertical Curb & Gutter, MAG 220-1, Type 'A'	7,542	LF	\$7.00	\$52,829.00	
	4" Roll Curb; MAG 220-1, Type 'C'	5,843	LF	\$7.00	\$40,901.00	
	Valley Gutter & Apron; MAG 240	10,425	SF	\$5.50	\$57,337.50	
	Curb Transition	22	EA	\$50.00	\$1,100.00	
	Sidewalk; MAG 230	40,182	SF	\$2.00	\$80,364.00	
	Sidewalk Ramp	28	EA	\$450.00	\$12,600.00	
	Survey Monument; MAG 120	17	EA	\$100.00	\$1,700.00	
Total					\$246,831.50	
Drainage						
Drywell	Maxwell Plus E Drill	6	EA	\$10,500.00	\$63,000.00	
Total					\$63,000.00	
Storm Drain	12" PVC (Type G)	137	LF	\$24.00	\$3,288.00	
	Curb Basin; MAG 537 (Type G)	1	EA	\$1,800.00	\$1,800.00	
	Scrubber; MAG 206	4	EA	\$2,500.00	\$10,000.00	
	Infiltration; MAG 120	455	SF	\$35.00	\$15,925.00	
Total					\$31,013.00	
Grading						
Grading	Clear & Grub	21	AC	\$350.00	\$7,350.00	
	Earthwork	47,455	CY	\$3.00	\$142,365.00	
Total					\$149,715.00	
Paving						
City Paving	3" AC/10" ABC	385	SY	\$26.00	\$10,010.00	
	3" AC/8" ABC	11,575	SY	\$25.00	\$289,375.00	
	2.5" AC/8" ABC	5,100	SY	\$22.70	\$115,770.00	

FIGURE 1

STEP TWO - APPROVAL

Applicant will be notified upon department approval of the cost estimate and must then submit the appropriate financial assurance in the amount of (125%) of the approved estimate (i.e. bond, letter of credit, funds in escrow or cash.) The approved Final Plat will then be recorded.

STEP THREE – WARRANTY

Upon completion of infrastructure, improvements are inspected by the city. The developer is required to secure Financial Assurance for a two-year maintenance guarantee (or Warranty Assurance) after which City Council conditionally accepts dedication of the improvements to the city pending the successful fulfillment of the warranty period.

Financial Assurance for warranty is required within ten (10) business days of Conditional Council Acceptance. The warranty assurance shall be in the amount of ten percent (10%) of the actual cost to construct and install the improvements. The developer must provide written documentation reconciling the line item cost to the certified engineer's cost estimates. Additionally, the developer must make available to the city (upon request) receipts, statements or contracts of actual improvement cost. Required submittal items are:

- A copy of the Public Works - Engineering Services letter of satisfactory acceptance.
- A copy of invoices or contracts verifying actual cost to construct and install water, sewer, paving, concrete, dry wells, storm drains, and utility trenching improvements.
- A line item reconciliation of actual cost to the previously submitted engineer's cost estimate.
- A map delineating the location of the improvement and the infrastructure type.
- A copy of the financial assurance documents submitted to guarantee completion of improvement.
- Lien releases or a current title report for the improvements.
- As-built plans for paving, water lines and sewer lines must be submitted to the Public Works - Engineering Services.
- Test reports for paving, water lines and sewer lines must be submitted to the Public Works - Engineering Services.
- A letter of final acceptance for water and sewer from the applicable utility provider.
- All right-of-way landscaping must be completed.
- The installation of all street signs and traffic lane striping pursuant to the City of Surprise and Maricopa Association of Governments (MAG) standards.

The options for warranty guarantees are a warranty bond, letter of credit, funds in escrow or cash. The developer may select the method of warranty assurance.

STEP FOUR – FINANCIAL ASSURANCE RELEASE

Upon construction completion, a final walk-out will be scheduled with the City of Surprise civil inspector for conditional acceptance. A punch list of any deficiencies will be marked and corrected, prior to conditional acceptance. The conditional acceptance inspection process may include a series of re-inspections prior to passing the conditional acceptance inspection.

Once all terms and conditions of conditional acceptance have been met, a Notice of Completion letter is generated and sent to the applicant. This letter will outline next steps required to move the project forward to City Council for conditional acceptance. A copy of the notification is sent to applicable departments.

A Conditional Acceptance letter will be provided once the infrastructure has been accepted by City Council. The date of conditional acceptance by City Council will mark the beginning of the warranty period.

STEP FIVE - RELEASE OF WARRANTY FINANCIAL ASSURANCE

Two months prior to the end of the warranty period, the developer must submit a written request for release of warranty assurance documents and schedule the final acceptance inspection walk-out with the Public Works - Engineering Services Inspection Division. During this walk, a punch list of any deficiencies will be marked and corrected, prior to final acceptance. The final acceptance inspection process may include a series of re-inspections prior to passing the final acceptance inspection.

Upon final clearance from the Inspections Division, a Final Acceptance letter is generated and sent to the applicant. At this time, original assurance documents are retrieved from the City Clerk and forwarded to the customer within 3-5 business days.

GUIDELINES FOR IRREVOCABLE LETTERS OF CREDIT

Pursuant to the Surprise Municipal Code, a developer may use an Irrevocable Letter of Credit as a method of financial assurance to ensure completion of infrastructure improvements (streets, sidewalks, water & sewer lines, etc.). The Financial Assurance is required *prior to* recording the Final Plat.

The Letter of Credit is a financial instrument issued by a bank at the request of their customer. The City of Surprise will accept Letters of Credit, however because the instrument is essentially a loan product, the issuing financial institution must be rated "A" or better by *MOODY'S* or *STANDARD & POOR*.

The Letter of Credit is customarily maintained in a standard format. The bank and format will need to be reviewed by the city prior to acceptance. In addition, the document will need to be approved by several departments. Please allow 15 business days for departmental distribution and final approval.

Following are guidelines for the Letter of Credit format. This information is intended to assist developers in securing the document in the correct form.

The **BENEFICIARY** must be the City of Surprise, Arizona.

The **AMOUNT** must be equal to 100% of the cost of constructing and installing the required improvements. A certified engineer's estimated breakdown of construction cost will be utilized to verify total improvement cost.

The **PRINCIPAL** must be the developer who is required to construct the improvements.

The **BANK NAME & ADDRESS** upon which payment would be drawn must be clearly stated on the face of the document.

The **TEXT** identifying the improvements required must be detailed and reflect the specific improvement type along with the address or location.

The **EXPIRATION DEADLINE** will be a minimum of two years, with notice of 45 days.

The **PRESENTATION OF DRAFT** requirement will be drawn on a local branch or presentable at a correspondent bank within the Phoenix metropolitan area.

The text must contain a **PARTIAL DRAFT CLAUSE** that clearly indicates partial draft draws are permissible.

The **BANK OR FINANCIAL INSTITUTION** must be a licensed lender in the State of Arizona

In addition to the standard "Uniform Customs and Practice for Documentary Credits (1993 Revision)" footnote, the Letter of Credit must reference the following "The liability of the issuer, and any dispute, controversy, claim or cause of action arising out of or related to this Letter of Credit shall be governed by Arizona law. Any dispute, controversy, claim or cause of action may be settled by submission with the consent of both parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, and judgment upon any award rendered by the arbitrators may be entered in the Superior Court of Maricopa County, or any such dispute, controversy, claim or cause of action may be litigated in a court of competent jurisdiction. The venue for any such dispute shall be Maricopa County, Arizona, and each party waives the right to object to venue in Maricopa County for any reason."

SAMPLE DOCUMENT

**ESCROW ACCOUNT AGREEMENT
AND INSTRUCTIONS**

Date: _____, 20__

Escrow Officer: John Doe, of XYZ Bank of Arizona

The CITY OF SURPRISE, ARIZONA, a municipal corporation (the “City”) whose address is 16000 N Civic Center Plaza, Surprise, AZ 85374, and XYZ DEVELOPMENT Company, L.L.C., an Arizona Limited Liability Corporation (“XYZ” or the “Developer” interchangeably), whose address is XYZ Road, XYZ, AZ 85304, hereby employ XYZ Bank of Arizona, as Escrow Agent in connection with the development of a XYZ know as XYZ Project at XYZ Avenue to XYZ Avenue and XYZ Road, Surprise, Maricopa County, Arizona

RECITALS

A. **WHEREAS**, the developer has agreed pursuant to that certain Development Agreement dated as of _____, 20__ and recorded in the Official Records of Maricopa County, Arizona on _____, 20__, as Instrument No. _____ (the “**Development Agreement**”) to undertake the construction and installation of the city improvements in accordance with the plans (each of the foregoing terms, as defined in the Development Agreement) approved by the city;
Whereas,;

B. **WHEREAS**, pursuant to the City of Surprise Municipal Code (“Subdivision Ordinance”) the developer must provide assurances for the construction of the required public improvements and an escrow account is a permissible form of assurance under the Subdivision Ordinance;

C. **WHEREAS**, developer has agreed to establish an escrow account for the purposes of assuring completion of the public improvements in accordance with the terms and provisions of this agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the parties agree as follows:

GENERAL PROVISIONS

1. **Incorporation of Recitals.** The recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.

2. **Incorporation of Exhibits.** The following documents are referred to in this escrow account agreement and instructions ("Escrow Agreement") and are attached hereto and made a part of this escrow agreement by this reference.

Exhibits

A - Final Plat or Site Plan Approved/Signed _____

B - Letter from XYZ Bank acknowledging an account in the name of the City of Surprise, Surety Deposit for XYZ Project in the amount of \$_____

C. Certified Engineer's Estimate of construction cost for the required public improvements

3. **Deposit of Funds.** The developer shall deposit at XYZ Bank the amount of \$XXX, 000.00 (the "Escrow Funds") in accordance with and subject to the provisions of Section 16.24 of the Subdivision Ordinance. In part Section 16.24 requires developers to provide the city a financial guarantee to assure the completion of the required public improvements .

All funds received in the escrow account shall be deposited on or before _____, 20__, in a segregated account with XYZ Bank at _____, Phoenix, AZ 85002, said escrow account being held in the name of : City of Surprise

4. **Escrow Funds Deposit and Restrictions.** The city and developer agree that the escrow funds shall be deposited in an interest bearing account and shall be released upon completion of the required public improvements pursuant to this escrow agreement. All interest shall accrue to the developer at such times as XYZ Bank pays interest, but shall remain in trust.

The deposit of the escrow funds will be made to install the required public improvements for the _____ (Name of Project). The escrow account is evidence that funds are available to the city (or **John Doe** who is responsible for installing such required public improvements) for withdrawal by the city when it becomes necessary for the city to withdraw the funds to allow **John Doe** to construct the required public improvements. The escrow funds shall not be used or pledged by the developer for any purpose during the period the escrow account is in effect. Upon completion and acceptance of the required public improvements, as shall be determined by the City Manager or his designee in writing, any accrued interest shall be immediately released to the developer.

5. **Disbursements.** City and developer agree to the following process for payment of escrow funds.

Developer shall, promptly upon its completion of a portion of the public improvements and upon dedication and acceptance by the city of the public improvements, deliver a copy of an invoice to city and escrow agent. Within five (5) days after the date of delivery of each such invoice, city and developer shall deliver to escrow agent a draw request (“**Draw Request**”) indicating the amount of the invoice to be paid by escrow agent from the escrow funds and/or any objections either party may have to such invoice. If either party fails to deliver a draw request to escrow agent within such five (5) day period, the party(ies) failing to deliver such draw request shall be deemed to have unconditionally approved of the full amount of the invoice delivered to escrow agent and to have instructed escrow agent to pay such invoice in full

a. Escrow agent shall, within three (3) days after the delivery of the applicable draw request(s), or within three (3) days after the expiration of the foregoing five (5) day period, whichever occurs first, pay to the payee under such invoice the amount indicated in such draw request(s) and shall provide written confirmation of such payment to city and developer.

b. In the event that either party disputes any portion of an invoice: (i) escrow agent shall pay all undisputed portions of such invoice within the above-indicated three (3) day period for payment; (ii) city and developer shall meet and attempt in good faith to resolve to their mutual satisfaction any objections to the proposed disbursement within five (5) days following escrow agent’s receipt of the objection; and (iii) city and developer shall instruct escrow agent as to their agreement with respect to the payment of the objected amounts within three (3) days following the expiration of the foregoing five (5) day agreement period. To be deemed timely and validly delivered to escrow agent, an objection to any invoice must include the specific reason(s) for the objection and the amount of the disbursement being objected to, together with an indication of the amount, if any, of the requested disbursement that is not being objected to. Unless a party objects to the entire amount of the proposed disbursement, even if an objection is timely made, escrow agent shall be authorized to disburse from the escrow the amount that is not the subject of the objection.

6. **Holdback** Escrow agent shall hold back from each draw request an amount equal to ten (10) percent of the request. Such amount shall remain in escrow until such time as all public improvements have been completed, dedicated and accepted pursuant to the Development Agreement and the terms of this agreement.

7. **Notices.** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or upon confirmed facsimile transmission, as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by Federal Express or similar overnight delivery system, addressed as follows:

IF TO THE CITY: City Manager, City of Surprise
16000 N Civic Center Plaza
Surprise, Arizona 85374
Facsimile No.: (623) 222-1021

WITH A COPY TO: City Attorney, City of Surprise
16000 N Civic Center Plaza
Surprise, Arizona 85374
Facsimile No.: (623) 222-1021

IF TO DEVELOPER:

WITH A COPY TO:

ESCROW AGENT

8. **Termination of Obligation.** The escrow account will terminate on XYZ Month 31, 2002 unless it is terminated sooner by the completion of the land development activities (required public improvements) described in section six (6) below. The city shall hold the escrow funds pending installation of the required public improvements as required by the Subdivision Ordinance. The city shall not and does not by entering into this escrow agreement, assume any duty to complete the required public improvements beyond the availability of the escrow funds in the escrow account. Should any escrow funds held by the city exceed the cost to install the required public improvements, the excess shall be returned after complete installation of the required public improvements to the developer.

9. **Required Improvements.** The required public improvements governed by this escrow agreement and the escrow account are set forth in the Development Agreement and further detailed in Exhibit C of this agreement:

10. **Breach and Remedy.** In the event of a breach of this escrow agreement by either party, such breach shall be corrected within seventy-two (72) hours of notice of occurrence. In the event the breach is not remedied within seventy-two (72) hours, the escrow agreement is canceled and any and all money and documents deposited with the escrow funds shall be released to the city to assure the appropriate installation of the required public improvements. Notice of a breach is considered given when sent by facsimile to the party in breach of the escrow agreement.

11. **Effective Date.** This escrow agreement shall be effective when executed by both parties and the city receives written documentation from XYZ Bank evidencing that: (1) funds in the amount of \$XYZ, 000.00 were deposited in a segregated account; (2) the account is in the name of the City of Surprise as deposit for XYZ Project's required public improvements; and (3) the deposited funds shall not be withdrawn unless approved/released by the city. The city received a letter from XYZ Bank this _____ day of _____, 20__ evidencing the above.

12. Clarification of Duties. XYZ person serves as an escrow agent/officer ONLY in conjunction with these instructions and cannot give legal advice to any party hereto.

13. Entire Agreement. This escrow agreement constitutes the entire agreement between the parties and shall not be changed or added to.

14. Headings. The description headings of the paragraphs of this escrow agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

15. Severability. If any provision of this escrow agreement is declared void or unenforceable, the provisions shall be severed from this agreement, the remainder of the agreement shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

16. Governing Law. This escrow agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

17. Authority. The developer represents and warrants to the city (1) that it is duly formed and validly existing under the laws of the State of Arizona; and (2) that the individual executing this escrow agreement on behalf of the developer is authorized and empowered to bind the developer.

THIS ESCROW AGREEMENT IN ALL PARTS APPLIES TO, INURES TO THE BENEFIT OF, AND BINDS ALL PARTIES HERETO, THEIR SUCCESSORS AND ASSIGNS.

IN WITNESS WHEREOF, the parties have executed this escrow agreement as of the day and year written above in Section three (3).

XYZ DEVELOPMENT, L.L.C.,
an Arizona Limited Liability Corporation

CITY OF SURPRISE, ARIZONA,
an Arizona municipal corporation

By: _____

By:

Its: _____

Its:

Accepted and agreed, this _____ day of _____, approved as to form:
20__.

By: _____
Escrow Agent City Attorney

STATE OF ARIZONA)
)ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20__, by _____
the _____.

of XYZ DEVELOPMENT, L.L.C., an Arizona Limited Liability Corporation, for and on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
)ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20__, by _____
the _____,
of XYZ DEVELOPMENT, L.L.C., an Arizona Limited Liability Corporation, for and on behalf thereof.

Notary Public

My Commission Expires:

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NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract regarding the construction of the improvements during the original term of said contract and any extension of the contract, with or without notice to the surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract regarding the construction of the improvements that may hereafter be made, notice of which modifications to the surety being hereby waived, then the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, and Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees as may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20_____.

PRINCIPAL SEAL

BY: _____

SURETY

BY: _____

TO BE SIGNED AFTER EXECUTION

I have reviewed this bond and certify that the amount of the bond represents the city's estimated costs to construct the improvements.

CITY OF SURPRISE ENGINEER



CITY OF SURPRISE MAINTENANCE BOND

Bond Number _____ Bond Amount \$ _____

KNOW ALL MEN BY THESE PRESENTS, **that we:** _____

_____ (hereinafter
"Principal"), as Principal and, _____

_____ (hereinafter "Surety"), a

corporation organized and existing under the laws of the State of

_____, with its principal office in the City of _____, holding a

certificate of authority to transact surety business in Arizona, as Surety, are held and firmly

bound unto the **City of Surprise, Arizona** (hereinafter "Obligee"), in the amount of:

_____ Dollars

(\$ _____), for the payment whereof, the said principal

and surety bind themselves, and their heirs, administrators, executors, successors and

assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has completed construction of the following

improvements _____

_____, and is

hereby providing the obligee with a maintenance bond in the above stated amount to

guarantee for the two year warranty period starting _____, 20____, the improvements

constructed by the principal from any defective materials or workmanship.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the

principal, at the principal's sole cost and expense, faithfully corrects any defects in the

materials or workmanship of the improvements constructed by the principal during the

warranty period and indemnifies the obligee for any loss that the obligee may sustain by

reason of any defective materials or workmanship during the

warranty period, the above obligation is void. Otherwise it remains in full force and effect.

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PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, and Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees as may be fixed by a judge of the court.

Witness our hands this _____ day of _____, 20____.

PRINCIPAL SEAL

BY: _____

SURETY

BY: _____

TO BE SIGNED AFTER EXECUTION

I have reviewed this bond and certify that the amount of the bond represents 10% of the costs to construct the improvements.

CITY OF SURPRISE ENGINEER

FREQUENTLY ASKED QUESTIONS

1. WHAT IS FINANCIAL ASSURANCE?

Financial Assurance is a financial guarantee that infrastructure improvements will be completed and maintained for a two-year period in accordance with city standards per the Surprise Municipal Code.

2. I JUST PURCHASED THE PROPERTY. DO I NEED FINANCIAL ASSURANCE?

Yes. The requirement for financial guarantee runs with the land, meaning the requirement is acquired with transfer of title or conveyance of the property.

3. I PLAN TO SELL THE PROPERTY. SHOULDN'T THE BUYER BE RESPONSIBLE FOR FINANCIAL ASSURANCE?

The owner of the property provides financial guarantee. Once the property is sold, the new owner will be required to provide assurance and the previous owner will be released from liability.

4. WHY IS A CERTIFIED ENGINEERS CONSTRUCTION COST ESTIMATE REQUIRED FOR ALL FINANCIAL ASSURANCE OPTIONS?

The document is required when ensuring completion of infrastructure improvements. The amount of financial guarantee required is 125% of the cost to construct and install the improvement. Initially, the city must use an estimate to determine cost.

5. WHY ARE FINANCIAL ASSURANCE REQUESTS REVIEWED BY SO MANY CITY DEPARTMENTS? WHAT ARE THEY APPROVING?

Typically, Engineering will verify cost for the required improvements. Legal will verify any financial guarantee where financial documents name the city as "obligee" or "beneficiary" to verify the verbiage secures the city's interest. Development Services coordinates departmental review and documents receipt of financial assurances. Water Resource Management verifies cost and quantity of water and sewer improvements. Remaining city departments review requests when applicable.

6. THE LETTER OF CREDIT GUIDELINES STATE *STANDARD & POOR* OR *MOODY* MUST RATE THE FINANCIAL INSTITUTION AN "A" OR BETTER. WHY?

The Letter of Credit is a loan product; therefore, the city must ensure that the payee financial institution has the ability to meet its financial obligations. Moody and Standard & Poor are two recognized entities that rate financial institutions.