

CORPORATE POLICY

POLICY TITLE: LETTER OF CREDIT

POLICY NO.: 12.C.04

Section:	Finance & Budgets		
Effective Date:	November 19, 2019	Date of Last Review:	Click or tap to enter a date.
Approval Authority: Council	Policy Owner: DCM, Corporate Services & CFO		

POLICY STATEMENT

The City of Vaughan (hereinafter referred to as the “City”) may require securities to be submitted to secure financial and/or performance obligations through various development approval processes and agreements between the City and an outside party seeking approval from the City. 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 interest of the City.

A Letter of Credit is a document issued by a financial institution on behalf of its customer authorizing a third party, in this case the City, to receive a value up to the amount stipulated in the letter of credit in the event the customer defaults on their contractual obligations to the City.

All Letters of Credit and other allowable forms of security shall be forwarded to Financial Planning and Development Finance staff for review and approval/refusal.

PURPOSE

To define the requirements for the use of a Letter of Credit, including:

1. Acceptable Letter of Credit format;
2. Issuing financial institution requirements;
3. Acceptable security alternatives;
4. City staff responsibilities and approval authorities; and
5. Process and treatment of Unclaimed Securities

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SCOPE

This policy applies to all Letters of Credit and other allowable forms of security received by the City, with the exception of securities required and collected by Recreation Services and electronic bonds collected by Procurement Services.

LEGISLATIVE REQUIREMENTS

None.

DEFINITIONS

1. **Agreement:** Any type of document requiring Letters of Credit or other allowable forms of securities to secure financial and/or performance obligations, including but not limited to all types of development agreements, letters of undertaking, and notes to file.
2. **Applicant:** The party that has tendered a Letter of Credit or Cash Security to the City to secure the obligations of an Agreement with the City. The Applicant should be the same as the Counterparty of an Agreement.
3. **Automatic Renewal:** The condition which states that the Letter of Credit will be automatically extended without formal amendment for a specified period beyond the stated expiry date. Written notification must be received by the City prior to the expiration if automatic renewal is terminated.
4. **Beneficiary:** The party to whom the proceeds of the Letter of Credit will be paid in the event of a Draw. For the purpose of this Policy, the City is always the Beneficiary.
5. **Cash Security:** Allowable forms of securities as provided in this Policy other than a Letter of Credit.
6. **City:** The Corporation of the City of Vaughan.
7. **Counterparty:** Other party or parties to an Agreement with the City. The counterparty should be the same as the Applicant of a Letter of Credit or Cash Security.
8. **Department Head:** The Director of a department responsible for the secured works requiring a Letter of Credit, or his/her designate.
9. **Director:** The Director responsible for Financial Planning and Development Finance, or his/her designate.

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- 10. Draw:** When the Beneficiary (the City) makes a written demand to an issuing bank to release all or part of a Letter of Credit due to default fully or in part by an Applicant on their contractual obligations to the Beneficiary.
- 11. Irrevocable:** That the Letter of Credit may not be revoked or amended without the mutual consent of the issuing financial institution and the Beneficiary (the City).
- 12. Letter of Credit:** A form of financial security issued by a financial institution on behalf of their client (the Applicant) that guarantees payment from the Applicant to the beneficiary (the City).
- 13. Schedule I Banks:** Domestic banks and are authorized under the *Bank Act* to accept deposits.
- 14. Schedule II Banks:** Foreign bank branches of foreign institutions that have been authorized under the *Bank Act* to do banking business in Canada.
- 15. Standby:** A form of Letter of Credit that guarantees payment or performance by one or more counterparties to the Beneficiary (the City) enabling the Beneficiary to draw upon the security up to the specified total in the event of default or non-delivery provided the presentation of payment request complies with the terms of the Letter of Credit.
- 16. Treasurer:** The Treasurer of the City of Vaughan, or his/her designate.
- 17. Unclaimed Cash Security:** Cash Securities that are no longer required by the City, but which have not been released by the City because the owner cannot be located, or which are outstanding where the owner has not come forward to request release.
- 18. Unconditional:** The Letter of Credit is payable on demand to the Beneficiary (the City) without further documentary evidence of obligation, without enquiry by the issuing financial institution as to the Beneficiary's right to make the demand, and without recognizing any claim of the Applicant.

POLICY

1. Standard Letter of Credit Format

A copy of the City's Standard Letter of Credit Format is included in Appendix A of this policy and is also available on the City's website. The submitted Letter of Credit must:

- 1.1. Be printed on letterhead from the issuing financial institution;

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- 1.2. Comply with the International Standby Practices (ISP98) or its successor as published by the International Chamber of Commerce;
- 1.3. Be issued in Canadian dollars in the amount requested by the City;
- 1.4. Be issued in favour of The Corporation of the City of Vaughan at the address as it appears on the standard format in Appendix A. No department name or person's name can be added;
- 1.5. State the date of issue;
- 1.6. State that it is unconditional and irrevocable;
- 1.7. Describe the purpose for which the Letter of Credit is being provided i.e. agreement, property, legal description, City file number or building permit number;
- 1.8. Include the clause "partial drawings are permitted";
- 1.9. State the expiration date which must be at least one year from date of issue;
- 1.10. Include an automatic renewal clause for the expiry;
- 1.11. Indicate that the City will be given 30 days' notice by registered mail if the Letter of Credit is not intended to be renewed; and,
- 1.12. 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 City and may be refused for non-compliance.

At the time of the passing of this policy, any Letters of Credit currently held by the City and not meeting the standard Letter of Credit format requirements will continue to be held and automatically renewed annually. If any of these Letters of Credit are being reduced or exchanged, the City shall review and require amendment to bring them into compliance with this Policy.

2. Financial Institutions

Letters of Credit conforming to the standard format requirements provided in Appendix A shall only be accepted by the City from any of the following Schedule 1 Canadian Chartered Banks having a credit rating of a R-1 (Mid) or higher as provided by Dominion Bond Rating Service (DBRS), or an equivalent rating by the rating agencies Moody's Investor Service (Moody's) or Standard and Poor's (S&P):

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- Bank of Montreal;
- Bank of Nova Scotia;
- Canadian Imperial Bank of Commerce;
- Royal Bank of Canada;
- TD Canada Trust;
- National Bank.

2.1. Schedule II Banks and other Schedule I Banks to the *Bank Act* (Canada) having a credit rating of a R-1 (Mid) or higher as provided by DBRS, or an equivalent rating by the rating agencies Moody's or S&P may only be accepted on the approval of the Director of Financial Planning and Development Finance.

2.2. Where an eligible financial institution fails to maintain the minimum credit rating described in this policy, the City shall forward a replacement request to the Applicant and Counterparty, where different, to provide a substitute Letter of Credit from a financial institution that meets the minimum requirement as set out in this Policy. If a replacement Letter of Credit is not provided within 30 days of such demand, the City reserves the right to draw upon the original Letter of Credit and hold the non-interest-bearing Cash Security in the same manner as the Letter of Credit. The financial institution issuing the Letter of Credit will not be party to the terms of any Agreement(s) that are related to the provision of the security.

3. Other Allowable Forms of Security

Cash Security in an equal amount to the Letter of Credit may be accepted, to the satisfaction of the Manager, Development Finance, in the form of:

- certified cheque
- money order or
- bank draft

to be deposited to the City's bank account and no interest shall accrue to the benefit of the Applicant.

3.1. When the financial and/or performance obligations have been met pursuant to this Policy and to the satisfaction of the City, the City will return the Cash Security deposit to the Applicant without any interest.

3.2. A Letter of Guarantee shall not be accepted in lieu of a Letter of Credit, since Letters of Guarantee are less liquid and do not provide the same advantages as Letters of Credit.

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4. Exchanges of Letters of Credit and Other Cash Securities

4.1. At any time, upon written request from the Applicant and the payment of the applicable fees in accordance with the City's Fees By-Law, as amended from time to time, the City may exchange a Letter of Credit or other allowable form of security for an alternate financial security, provided the replacement conforms to this Policy, to the satisfaction of the Manager, Development Finance.

4.2. The Applicant shall provide the satisfactory replacement security prior to the release of the previous security. The City will review the replacement security for conformity to this Policy and release the previous security only if the replacement security has been deemed acceptable.

5. Drawing Upon a Letter of Credit

In the event that an Applicant defaults on their contractual obligation to the City, the City withholds 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.

6. Approval Authority for the Reduction or Release of Securities

6.1. All requests for reduction or release of securities will be directed to the appropriate department(s) responsible for the secured works for (a) confirmation that all applicable obligations pursuant to the Agreement have been met and (b) authorization that the securities may be reduced or released.

6.2. Authority to release, reduce, or draw on a Letter of Credit or Cash Security is governed by the following framework:

Permit Securities

6.2.1. Building Inspections:

6.2.1.1. Under \$15,000: Inspector

6.2.1.2. \$15,000 and Over: Manager

6.2.2. Grading Inspections:

6.2.2.1. Under \$10,000: Supervisor

6.2.2.2. \$10,000 and Over: Manager

6.2.3. By-Law Inspections: Inspecting By-Law Officer

6.2.4. Parks and Forestry Inspections: Manager

6.2.5. Tree Protection Securities: Urban Design Manager

6.2.6. Site Plan Securities: Urban Design and Engineering Managers

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6.2.7. Conditional Permit Securities: Building Standards Technical Manager

6.2.8. Subdivision Securities: Development Engineering Director

6.2.9. All Other Securities: Department Head

7. Unclaimed Letters of Credit and Cash Securities

7.1. On an annual basis, the Development Finance Development Clerk shall prepare and/or update a schedule identifying all outstanding securities that are 5 or more years old.

7.2. This schedule shall be forwarded to the departments requesting whether all or portion of the securities should be:

7.2.1. Continued to be held to secure obligations;

7.2.2. Drawn against to fund deficiencies and the money treated as liquidated damages for the obligations secured under the Agreement or by-law, or,

7.2.3. Release the securities in whole or in part.

7.3. Where securities are to be released, the City shall release the securities to the Applicant to their last known address.

7.4. In the event that the Applicant cannot be found, and the securities continue to be unclaimed, they shall be added to the annual list of Unclaimed Cash Securities.

7.5. Unclaimed Cash Securities that are five (5) or more years old may be deemed forfeited to the City after a ninety (90) day public notice period to invite all eligible applicants to request a claim of security deposits being held for works included in Agreements with the City.

7.6. After the public notice period has expired, a report will be brought to Council to authorize the transfer of forfeited Cash Securities into tax-funded reserves as recommended at the time of the report. A minimum of 10% of the forfeited cash securities must be transferred into the Tax Rate Stabilization Reserve.

7.7. A record of forfeited cash securities will be retained in the event that subsequent claims are made by the Applicant and the conditions of the original Agreement have been satisfied.

7.8. The Treasurer is authorized to withdraw monies from the Tax Rate Stabilization Reserve to satisfy eligible refunds.

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8. Roles and Responsibilities

Chief Financial Officer and City Treasurer

8.1. Maintains administrative authority and responsibility for the Letter of Credit Policy; and,

8.2. Approves departmental operating procedures and processes under this Policy.

Director, Financial Planning & Development Finance and Deputy City Treasurer

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

8.4. 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.

Legal Services

8.5. At the request and discretion of the Chief Financial Officer and City Treasurer, review and interpret any Agreements where securities are required to secure obligations to protect the legal interest of the City pertaining to the administration, custody, and use of Letters of Credit or other securities and provide advice on the collection, reduction or release of same.

All staff involved in the acceptance, evaluation and administration of Letters of Credit

8.6. Read and abide by the requirements set out in this Policy; and,

8.7. Forward any Letters of Credit received or retained at the department level to the Director of Financial Planning and Development Finance and/or designate.

ADMINISTRATION

Administered by the Office of the City Clerk.

Review Schedule:	3 Years If other, specify here	Next Review Date:	November 18, 2022
Related Policy(ies):			
Related By-Law(s):			
Procedural Document:	Appendix A – Standard Format for Letters of Credit, Appendix B – Lottery License Letter of Credit		

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Revision History	
Date:	Description:
Click or tap to enter a date.	
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POLICY APPENDIX

APPENDIX TITLE: STANDARD FORMAT FOR LETTERS OF CREDIT

APPENDIX NO.: A

APPENDIX

CITY OF VAUGHAN – STANDARD FORMAT FOR LETTERS OF CREDIT

LETTER OF CREDIT FORMAT USE BANK LETTERHEAD

UNCONDITIONAL IRREVOCABLE LETTER OF CREDIT

Date of Issue: _____
Letter of Credit No. _____

TO: The Corporation of the City of Vaughan (Beneficiary name and address must be written as here
2141 Major Mackenzie Drive -no additional information)
Vaughan, Ontario
L6A 1T1

We hereby authorize you to draw on **(Bank's Name & Address)** for the account of **(Owner's Name/Applicant)** up to an aggregate amount of **(\$CDN and amount written in full)** available on demand as follows:

Pursuant to the request of our customer, the said **(Owner's Name/Applicant)**, we, **(Bank's Name)** hereby establish and give you an unconditional and irrevocable Standby Letter of Credit in your favour in the total amount of **(\$CDN and amount written in full)** which may be drawn upon 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 **(Bank's Name & Address)**, at such time as a written demand for payment is made upon us a statement signed by you stating that monies drawn under this Letter of Credit are drawn pursuant to the following:

Agreement or Site Plan Letter of Undertaking ("LOU"): *[please specify]*

Party(ies) to Agreement/LOU:

Legal Description of the Subject Lands:

Development Application No.:

Development Name and Phase:

and that the said monies will be used to fulfil the obligations of **(Owner's Name)** under the said Agreement or LOU.

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.

Any written demand for payment under this credit must bear an intimation that it has been drawn under Letter of Credit Number _____, issued by the **(Bank's Name)**, dated _____, 20__.

Partial drawings are permitted.

This Letter of Credit shall **automatically extend for one (1) year from the present or any future expiration date hereof, unless thirty (30) days prior to any such date we shall notify you in writing, by Registered Mail**, that we elect not to consider this Standby Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw hereunder by means of your demand accompanied by your written certification that the amounts drawn will be retained and used to meet obligations incurred or to be incurred in connection with the above Agreement or LOU.

We hereby covenant with drawers, drawn upon and in accordance with the terms of this credit that the same will be duly honoured if drawn and negotiated on or before _____, 20__ or any automatically extended expiry date.

For _____ (Bank's Name)

(Signature)

Attachment 3

CITY OF VAUGHAN



POLICY APPENDIX

APPENDIX TITLE: LOTTERY LICENCE LETTER OF CREDIT

APPENDIX NO.: B

APPENDIX

CITY OF VAUGHAN – STANDARD FORMAT FOR LOTTERY LICENCE LETTERS OF CREDIT

LETTER OF CREDIT FORMAT USE BANK LETTERHEAD

IRREVOCABLE LETTER OF CREDIT

Date of Issue: _____
Letter of Credit No. _____

TO: The Corporation of the City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

*(Beneficiary name and address must be written as here
-no additional information)*

We hereby authorize you to draw on [insert NAME OF BANK AND ADDRESS] for the account of [insert COMPANY'S NAME/APPLICANT], up to an aggregate amount of [insert amount in words] dollars [\$[insert amount in figures] CDN available on demand as follows:

Pursuant to the request of our customer, the said [insert COMPANY'S NAME/APPLICANT] we, [insert NAME OF BANK] hereby establish and give you an irrevocable Standby Letter of Credit in your favour in the total amount of [\$[insert amount in figures]CDN which may be drawn upon 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.

Any written demand for payment under this credit must bear an intimation that it has been drawn under Letter of Credit Number [insert LC#], issued by [insert NAME OF BANK], dated [insert date of letter of credit].

Partial drawings are permitted.

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 thirty (30) days prior to any such date we shall notify you in writing, by Registered Mail, that we elect not to consider this Standby Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw hereunder by means of your demand accompanied by your written demand for payment.

We hereby covenant with drawers, drawn upon and in accordance with the terms of this credit that the same will be duly honoured if drawn and negotiated on or before _____, 20__ or any automatically extended expiry date.

For _____ (Bank's Name)

_____ (Signature)