

## **NEGOTIABLE INSTRUMENTS IN LIEU OF BONDS**

As a statement of policy for the City of Fontana the following shall be binding for using negotiable instruments other than bonds for performance and or maintenance agreements:

### **CASH**

Deposited in the City's general checking account. Recorded as a liability on the City's general ledger. All interest earned on funds deposited are retained by the City.

### **PASSBOOK/CERTIFICATE OF DEPOSIT**

Set up by the developer with the financial institution of their choice, the account should be established in joint tenancy, in the name of the City of Fontana and the developer, requiring two signatures to withdraw any amounts. An example of how the joint tenancy should read "Account Holders: City of Fontana, Custodian for (Developer's Name)."

### **LETTER OF CREDIT (SEE ATTACHED)**

The developer may establish a letter of credit with the financial institution of their choice. The letter of credit needs to contain the following:

Beneficiary: City of Fontana

#### **A statement similar to the following regarding expiration of letter of credit:**

"The expiration date of this letter of credit shall be deemed automatically extended without amendment unless (financial institution) notifies the City at least sixty (60) days prior to the present expiration date by registered mail that this letter of credit will not be renewed."

#### **A statement on how to make withdrawals from the letter of credit:**

We hereby establish the irrevocable standby letter of credit (letter of credit account number) in favor of the City of Fontana, for the account of (Developer), in the aggregate amount of \$ (Amount) (U.S. Dollars), payable upon presentation of the following document to (financial institution and their address):

"A statement dated and signed by the Mayor and City Clerk of the City of Fontana certifying (1) that (Developer) has failed to meet its obligation for (faithful performance and/or labor and materials) under (name of agreement) agreement entered into between the City of Fontana and (Developer) for (description of items covered in agreement)."

This information is provided as a guideline for establishing an alternative to a surety bond. The city reserves the right to review and condition any negotiable instruments used in lieu of bonding.

\_\_\_\_\_, 20\_\_\_\_

City of Fontana  
8353 Sierra Avenue  
Fontana, California 92335  
Telephone: (909) 350-7610  
Attention: \_\_\_\_\_

Re: Irrevocable Stand-by Letter of Credit No. \_\_\_\_\_

Dear Sirs:

At the request of \_\_\_\_\_ (the "Applicant"), \_\_\_\_\_ (the Issuer") establishes an Irrevocable Letter of Credit in favor of the Applicant, available in accordance with the terms and conditions set forth herein.

The Applicant's drafts drawn on \_\_\_\_\_ at sight which shall be negotiated on or before the expiration date (which may be automatically extended as set forth in this Letter of Credit) and each of which shall state upon its face, "Drawn under Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, of \_\_\_\_\_."

This Irrevocable Letter of Credit is a notation credit. Each draft shall be endorsed on the reverse of this Letter of Credit. Each draft or an attached writing that such notation has been made and this irrevocable Letter of Credit shall be attached to the last draft when the credit is exhausted.

The sum or sums of all sight drafts under this irrevocable Letter of Credit shall not exceed the total of \_\_\_\_\_ United States Dollars (U.S. \$\_\_\_\_\_) (the "Original issuance Amount").

The issuer shall promptly honor the sight drafts drawn on it, for all or any portion of the credit in an amount determined by the City of Fontana (the "Beneficiary") in its sole discretion. The issuer shall honor the drafts if one of the following occurs: (1) the Beneficiary supplies the issuer with a signed statement (the "Certification") executed by a duly appointed official of the Beneficiary in the form of a letter on the City of Fontana's letterhead, stating that the Applicant has \_\_\_\_\_; or (2) the Issuer's rating is downgraded to a rating below A-3, as determined by Moody's Investors Corporation Service or the equivalent, as set forth in this Letter of Credit.

The issuer shall be deemed to have received notice of a signed statement as set forth in this Letter of Credit when the statement is actually received by the issuer.

If the Beneficiary presents a statement to the issuer at or before \_\_\_\_\_.m. (California time) on a Business Day and provided that such statement conforms to the terms and conditions set forth in this Letter of Credit, then the issuer shall make payment to the Beneficiary in immediately available funds on the same Business Day. If the Beneficiary presents a statement after the designated time on a Business Day and provide that such statement conforms with the terms and conditions set forth in this Letter of Credit, then the issuer shall make payments to the Beneficiary in immediately available funds not later than the next succeeding Business Day. If demand for payment does not conform with the terms and conditions of this irrevocable Letter of Credit, then the issuer shall give the Beneficiary written notice, including an explanation of such noncompliance. The term "Business Day" after receiving such notification, may attempt to correct any nonconforming demand for payment. The term "Business Day" for purposes of this paragraph, shall mean any day on which national banks located in the State of California are not required or authorized to be closed.

If the rating of the issuer of this Letter of Credit is downgraded to a rating lower than A-3 by Moody's Investor's Corporation Service or the equivalent by Standard and Poor's Corporation, then the City of Fontana (the "Beneficiary") shall have the right to draw the entire amount of this Letter of Credit. The Beneficiary's right to draw the entire amount of this Letter of Credit shall occur immediately following the downgrading of the issuer's rating. Provided, however, the Applicant shall first have the opportunity to provide the Beneficiary with a replacement letter of credit meeting all of the requirements of this Letter of Credit prior to the date of such draw.

In the event the Beneficiary deems it necessary to present this Letter of Credit, the Beneficiary shall provide the issuer with the draft and the necessary Certification as set forth above.

The Irrevocable Letter of Credit shall expire on \_\_\_\_\_, 20\_\_\_\_. The expiration date of this Irrevocable Letter of Credit shall be deemed automatically extended without amendment, unless the issuer provides the Beneficiary with written notice at least sixty (60) days prior to the present expiration date by registered mail that this irrevocable Letter of Credit will not be renewed. If the Irrevocable Letter of Credit is extended automatically, then the issuer may thereafter terminate this Irrevocable Letter of Credit at any time upon providing the Beneficiary with written notice at least sixty (60) days prior to such termination.

All communications to the Applicant, the Beneficiary of the issuer concerning this Letter of Credit shall be in writing and shall be delivered to the addresses set forth in this Letter of Credit. The parties may change the address set forth by providing written notice of such change to the other parties.

Applicant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Issuer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Beneficiary:

City of Fontana

Attn: \_\_\_\_\_

8353 Sierra Avenue

Fontana, California 92335

The issuer of this irrevocable Letter of Credit agrees with the drawers, endorsers and good faith holders of drafts drawn and negotiated in compliance with the terms of this Letter of Credit, that such drafts shall be duly honored upon due presentation of the issuer.

This Irrevocable Letter of Credit sets forth the terms of the Issuer's undertaking to the Applicant. References in this Letter of Credit to other documents or instruments are for identification purposes only and such reference shall not modify or affect the terms or cause such documents or instruments to be deemed incorporated herein.

This Irrevocable Letter of Credit, except as otherwise expressly provided, shall be governed by the Uniform Customs and Practice for Documentary Credits (1994 Revision), International Chamber of Commerce, Publication No. 500 (hereinafter the "UCP") in effect at issuance date. Notwithstanding Article 17 of the UCP, if this Letter of Credit expires during an interruption of business as described in Article 17 of the UCP, the Issuer agrees to effect payment of this Letter of Credit is drawn against within sixty (60) days after the resumption of business. To the extent consistent with the UCP or issues not expressly addressed in the UCP, the laws of the State of California shall govern.

BY:

\_\_\_\_\_

AUTHORIZED OFFICIAL:

\_\_\_\_\_

TITLE:

\_\_\_\_\_

**ALL MATERIAL IN BOLD DENOTES INFORMATION WHICH MUST BE COMPLETED BY THE APPLICANT, ISSUER AND/OR BENEFICIARY; INSTRUCTIONS ARE ALSO DENOTED IN BOLD.**

City of Fontana  
8353 Sierra Avenue  
Fontana, California 92335  
Telephone: (909) 350-7614  
Attention: **City Engineer**

Re: Sample Irrevocable Letter of Credit Instructions

Dear Sirs:

At the request of **Smith & Jones Constriction Co.** (the "Applicant"), **Bank of City of Fontana** (the "Issuer")<sup>1</sup> establishes an Irrevocable Letter of Credit in favor of the Applicant, available in accordance with the terms and conditions set forth herein.

- <sup>1</sup> **[INSTRUCTION: The financial institution must be a California financial institution preferably with an office in the City of Fontana, but no further than 100 miles from the City limit; authorized to make payments under this Letter of Credit. Any out-of-state financial institution desiring to issue a letter of credit with the city as Beneficiary is required to obtain a co-guarantee by a California institution for the original insurance amount. The City Attorney should review the co-guarantee to ensure its sufficiency.]**

The Applicant's drafts drawn on **Bank of Fontana** at sight which shall be negotiated on or before the expiration date (which may be automatically extended as set forth in this Letter of Credit) and each of which shall state upon its face, "Drawn under Letter of Credit No. **91-1**, dated **November 21, 1991**, of **collateral for street, sewer, storm drain, traffic signal and landscaping improvements and for performance, labor and materials purposes pursuant to that certain Subdivision Improvement Agreement dated January 1, 1997, between Applicant and Beneficiary.**"<sup>2</sup>

- <sup>2</sup> **[INSTRUCTION: This provision requires that the Applicant specify the purpose for the acquisition of the letter of credit.]**

This Irrevocable Letter of Credit is a notation credit. Each draft shall be endorsed on the reverse of this Letter of Credit. Each draft or an attached writing shall indicate that such notation has been made and this irrevocable Letter of Credit shall be attached to the last draft when the credit is exhausted.

The sum or sums of all sight drafts drawn under this irrevocable Letter of Credit shall not exceed the total of **One Hundred Thousand** United States Dollars (U.S. **\$100,000**) (the "Original issuance Amount").

The issuer shall promptly honor the sight drafts drawn on it, for all or any portion of the credit in an amount determined by the City of Fontana (the "Beneficiary") in its sole discretion. The issuer shall honor the drafts if one of the following occurs: (1) the Beneficiary supplies the issuer with a signed statement (the "Certification") executed by a duly appointed official of the Beneficiary in the form of a letter on the City of Fontana's letterhead, stating that the Applicant has **failed to conform with the terms of the Agreement, dated November 1, 1991, pursuant to which this Letter of Credit was required by the Beneficiary;** or (2) the issuer's rating is downgraded to a rating below A-3, as determined by Moody's Investors Corporation Service or the equivalent, as set forth in this Letter of Credit.

The issuer shall be deemed to have received notice of a signed statement as set forth when the statement is actually received by the issuer.

If the Beneficiary presents a statement to the issuer at or before **1:00 p.m.**<sup>3</sup> (California time) on Business Day and provided that such statement conforms to the terms and conditions set forth in this Letter of Credit, then the issuer shall make payments to the Beneficiary in immediately available funds on the same Business Day. If the Beneficiary presents a statement after the designated time on a Business Day and provided that such statement conforms to the terms and conditions set forth in this Letter of Credit, then the issuer shall make payment to the Beneficiary in immediate available funds not later than the next succeeding Business Day. If demand for payment does not conform with the terms and conditions of this Irrevocable Letter of Credit, then the issuer shall give the Beneficiary written notice, including an explanation, of such noncompliance. The Beneficiary, after receiving such notification, may attempt to correct any nonconforming demand for payment. The term "Business Day" for purposes of this paragraph, shall mean any day on which national banks located in the State of California are not required or authorized to be closed.

**3 [INSTRUCTION: The issuing financial institution will supply the time by which demand for payment must be made in order for it to honor the letter of credit on the same business day.]**

If the rating of the issuer of this Letter of Credit is downgraded to a rating lower than A-3 by Moody's Investor's Corporation Service or the equivalent by Standard and Poor's Corporation, then the City of Fontana (the "Beneficiary") shall have the right to draw the entire amount of this Letter of Credit. The Beneficiary's right to draw the entire amount of this Letter of Credit shall occur immediately following the downgrading of the issuer's rating. Provided, however, the Applicant shall first have the opportunity to provide the Beneficiary with a replacement letter of credit, meeting all of the requirements of this Letter of Credit prior to the date of such draw.

In the event the Beneficiary deems it necessary to present this Letter of Credit, the Beneficiary shall provide the issuer with the draw and the necessary Certification, as set forth above.

This Irrevocable Letter of Credit shall expire on **November 20, 1992**. The expiration date of this irrevocable Letter of Credit shall be deemed automatically extended without amendment, unless the issuer provides the Beneficiary with written notice at least sixty (60) days prior to the present expiration date by registered mail that this Irrevocable Letter of Credit will not be renewed. If the Irrevocable Letter of Credit is extended automatically, then the Issuer may thereafter terminate this Irrevocable Letter of Credit at any time upon providing the Beneficiary with written notice at least sixty (60) days prior to such termination.

All communications to the Applicant, the Beneficiary or the Issuer concerning this Letter of Credit shall be in writing and shall be delivered to the addresses set forth in this Letter of Credit. The parties may change the address set forth by providing written notice of such change to the other parties.

Applicant: ***Smith & Jones Construction  
1000 Avenue of the Services  
Fontana, California 92335***

Issuer: ***Bank of City of Fontana  
1000 Avenue of the Banks  
Fontana, California 92335***

Beneficiary: City of Fontana  
Attn: ***City Engineer***  
8353 Sierra Avenue  
Fontana, California 92335

The Issuer of this Irrevocable Letter of Credit agrees with the drawers, endorsers and good faith holders of drafts drawn and negotiated in compliance with the terms of this Letter of Credit, that such drafts shall be duly honored upon due presentation to the Issuer.<sup>4</sup>

<sup>4</sup> ***[INSTRUCTION: The issuing financial institution may wish to specify a particular authorized official in this space. In addition, if a co-guarantee is made by a local bank, then the City may wish to specify that “in the event the Issuer fails to make payment on demand, the co-guarantee will duly honor the drafts upon presentation to \_\_\_\_\_ (an official of the co-guarantee).”]***

This Irrevocable Letter of Credit sets forth the terms of the Issuer’s undertaking to the Applicant. References in this Letter of Credit to other documents or instruments are for identification purposes only and such reference shall not modify or affect the terms or cause such documents or instruments to be deemed incorporated herein.

This Irrevocable Letter of Credit, except as otherwise expressly provided, shall be governed by the Uniform Customs and Practice for Documentary Credits (1994 Revision), International Chamber of Commerce, Publication No. 500 (hereinafter the “UCP”) in effect at issuance date. Notwithstanding Article 17 of the UCP, if this Letter of Credit expires during an interruption of business as described in Article 17 of the UCP, the Issuer agrees to effect payment if this Letter of Credit is drawn against within sixty (60) days after the resumption of business. To the extent consistent with the UCP or issues not expressly addressed in the UCP, the laws of the State of California shall govern.

BY: ***Bank of City of Fontana***

AUTHORIZED OFFICIAL: ***John Peters***

TITLE: ***Vice President***