

BILL NO. 2300

ORDINANCE NO. 2123

AN ORDINANCE AMENDING ORDINANCE NO. 2060 OF THE CITY OF CHESTERFIELD BY ATTACHING NEW FORMS OF THE IRREVOCABLE LETTER OF CREDIT (SUBDIVISION REGULATIONS/P.Z. 35-2003)

WHEREAS, the City of Chesterfield has amended its Subdivision Code and in accordance, thereto, has provided for the use of Irrevocable Letters of Credit; and

WHEREAS, it is determined that the new form of Letters of Credit shall be used by those who wish to use this form of credit for infrastructure improvements.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

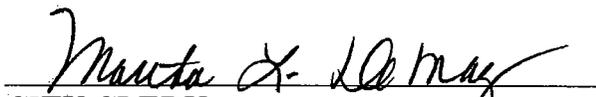
Section 1. The following Letters of Credit are hereby approved by the City of Chesterfield and replace those as previously approved in Ordinance No. 2060.

Section 2. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 8th day of September, 2004.


MAYOR

ATTEST:


CITY CLERK

FORM OF LETTER OF CREDIT

NAME OF ISSUING BANK

Bank Address

_____ 200__

IRREVOCABLE LETTER OF CREDIT NO. _____

City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017

Dear Sir:

We hereby establish in favor of the CITY OF CHESTERFIELD, upon the application of and for the account of ***Account Party***, ***Account Party Address*** (the "Account Party") our transferable irrevocable standby letter of credit (the "Letter of Credit") in the amount of \$_____ (the "Maximum Available Credit"), subject to the reduction as hereinafter set forth.

For information only: This letter of credit is issued with respect to a subdivision of land in the City of Chesterfield, Missouri, known as _____ Subdivision Plat _____ dated _____ issued by you for the benefit of the Account Party (the "Plat Approval").

Subject to all of the terms and conditions of this Letter of Credit, the Maximum Available Credit shall be made available by your draft(s) at sight drawn on us accompanied by this Letter of Credit and any amendments thereto for presentation and by the following documents:

1. Your signed certificate, in the form attached hereto as Exhibit A, dated not more than ten days prior to its presentation to us; or
2. Your signed certificate, in the form attached hereto as Exhibit B, dated not more than ten days prior to its presentation to us.

*No draft will be paid if the amount thereof is in excess of the Maximum available Credit hereunder as of the date such draft is to be paid.

Multiple drawings may be presented under this Letter of Credit, which, in the aggregate and subject to the limitations set forth herein, shall not exceed the Maximum Available Credit then in effect and each such drawing honored by us hereunder shall reduce the Maximum Available Credit by the amount of such drawing. The draft(s) drawn under this Letter of Credit must be drawn and presented to our offices at ***Bank Address*** Attention: _____ (or such other officer, department or address designated in writing by us to you at your address shown above or at such other address as you shall advise us of in writing) by hand delivery or by

delivery by courier between 9:00 a.m. and 4:30 p.m. (St. Louis, Missouri time) on a Business day (as defined below). As used in this Letter of Credit, "Business day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of Missouri are authorized or required by law to close.

We hereby agree that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored by us upon delivery of any of the certificate(s) specified above and if presented at our aforesaid office on or before the Expiration date (as defined below).

If demand for payment is made hereunder in strict conformity with the terms and conditions of this Letter of Credit before 11:00 a.m. (St. Louis, Missouri time) on any Business day, payment of the amount demanded shall be made in immediately available funds not later than 1:00 p.m. (St. Louis, Missouri time) on the next succeeding Business day.

Payment under this Letter of Credit to you shall be made by wire transfer or as agreed by the Chesterfield Department of Finance of immediately available funds per your instructions.

Only you or a transferee may make drawings under this Letter of Credit. Upon payment as provided above of the amount specified in a sight draft drawn hereunder, the Maximum Available Credit of the Letter of Credit shall be reduced by the amount of the payment.

If demand for payment does not conform to the terms and conditions of this Letter of Credit, we will promptly notify you thereof and of the reasons thereof, such notice to be promptly confirmed in writing to you, and we shall hold all documents at your disposal or return the same to you, if directed by you.

This Letter of Credit is effective immediately and expires on the earliest of (i) 4:00 p.m. (St. Louis, Missouri time) on _____, _____, except that unless such date may be extended as hereinafter provided, this letter of credit shall automatically and immediately be paid by wire transfer the balance of the Maximum Available Credit to the City of Chesterfield at the following account: _____, or (ii) when you have drawn and we have paid to you the Maximum Available Credit of this Letter of Credit or (iii) the day on which this Letter of Credit is surrendered to us for cancellation (collectively, the "Expiration Date"); provided, however, notwithstanding the termination by expiration of this Letter of Credit, our payment obligation shall survive such expiration with respect to any sight drafts accompanied by a certificate in the form of Exhibits A, or B, as the case may be, presented to us for payment prior to the expiration of this Letter of Credit; **and/or further provided that upon such expiration, or if automatically extended upon expiration of the last extension, we shall automatically and immediately transfer the balance of the Maximum Available Credit to the City of Chesterfield at the account set forth above** or such other account subsequently designated by you, unless you authorize in writing a release of our obligations under this Letter of Credit or authorize a replacement of the Letter of Credit. It is a condition of this Letter of Credit that it shall be deemed automatically extended, without amendment, for one year (or such other date as the City and Account Party may agree in writing) from the present or any future Expiration date hereof, unless at least 75 days prior to any such date, we shall send you, in the form attached hereto as Exhibit C, notice that we elect not to consider this Letter of Credit renewed for such additional one-year period. Notwithstanding any automatic extensions, this letter of credit shall expire fully and finally not later than _____

Upon our receipt, from time to time, from you of a written reduction certificate in the form attached as Exhibit D, we are authorized to reduce the Maximum Available Credit hereunder by the amount stated in such certificate, any such reduction to be effective only at our close of business on the date on which we receive such written reduction certificate. Final reduction / release of the Letter of Credit shall be effective at our close of business on the date on which we receive a certificate in the form attached as Exhibit E.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Commission Publication No. 500, but excluding the provisions of Article 41 thereof (the "UCPDC").

Any communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at ***Bank Address***. Attention: _____, specifically referring thereon to Irrevocable Letter of Credit No. _____

You may transfer your rights under this Letter of Credit in their entirety (but not in part) to any transferee. Transfer of your rights under this Letter of Credit to any such transferee shall be effected only upon the presentation to us of this Letter of Credit accompanied by a transfer letter in the form attached hereto as Exhibit F, and we consent to such transfer without charges or fees of any kind. Upon such transfer, the transferee shall have no further rights to transfer this Letter of Credit.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Plot Approval, but excluding the UCPDC), and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. Exhibits A, B, C, D, E, and F attached hereto are incorporated herein by reference as an integral part of this Letter of Credit.

Very truly yours,

NAME OF ISSUING BANK

By:

EXHIBIT A
TO LETTER OF CREDIT
FORM OF CERTIFICATE FOR "A" DRAWING

Date

Name of Issuing Bank

Bank Address

Attention: _____

Re: Your Letter of Credit No. _____
In Favor of City of Chesterfield, Missouri

Gentlemen:

The undersigned, a duly authorized official of City of Chesterfield, Missouri (the "Beneficiary"), hereby certifies to ***Name of Issuing Bank*** (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. The Account Party has failed to complete all improvements or fulfill all obligations required by the City Codes, Improvement plans, or any Deposit Agreement.
2. The draft in the sum of \$_____ accompanying this Certificate is not in excess of the Maximum Available Credit under the Letter of Credit and shall result in a reduction of the Maximum Available Credit under the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Chesterfield, Missouri to

[INSERT BANK Account #_____,], Attention: Director of Finance.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate this _____ day of _____, 20__.

CITY OF CHESTERFIELD, MISSOURI

By: _____, Director of Public Works

EXHIBIT B
TO LETTER OF CREDIT
FORM OF CERTIFICATE FOR "B" DRAWING

Date

Name of Issuing Bank

Bank Address

Attention:

Re: Your Letter of Credit No. _____ in Favor of City of Chesterfield,
Missouri

Gentlemen:

The undersigned, a duly authorized official of City of Chesterfield, Missouri (the "Beneficiary"), hereby certifies to ***Name of Issuing Bank*** (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; any capitalized terms used herein and not defined shall have their respective meanings as set forth in the said Letter of Credit) issued by the Bank in favor of the Beneficiary, that:

1. Funds in the amount of the accompanying draft are now due for deposit in a special transit account for the payment per Escrow completion.
2. The draft in the sum of \$_____ accompanying this Certificate is not in excess of the Maximum Available Credit under the Letter of Credit and shall result in a reduction of the Maximum Available Credit under the Letter of Credit.

Transfer the funds as stated above to the credit of the City of Chesterfield, Missouri to

[INSERT BANK Account #_____], Attention: Director of Finance.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this certificate this _____ day of _____, 20__.

CITY OF CHESTERFIELD, MISSOURI

By: _____, Director of Public Works

EXHIBIT C
TO LETTER OF CREDIT
FORM OF NOTICE OF EXPIRATION

Date

City of Chesterfield
690 Chesterfield Parkway W
Chesterfield, Missouri 63017

Attention: Director of Public Works

Re: Our Letter of Credit No. _____ in Favor of City of Chesterfield,
Missouri

Amount:

Expiration Date:

Gentlemen:

Please consider this letter as the Bank's notification that the Bank does not intend to renew the above-reference letter of credit and, therefore, it will expire in full and finally on the above-mentioned date. All remaining amounts under the Letter of Credit shall be transferred to the City of Chesterfield per the terms of the Letter.

Very truly yours,
NAME OF ISSUING BANK

By:
Authorized Officer

cc: ***Account Party***
Account Party Address

EXHIBIT D
TO LETTER OF CREDIT
FORM OF REDUCTION CERTIFICATE

City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017

Date

Name of Issuing Bank

Bank Address

Attention:

Re: LETTER OF CREDIT NUMBER: _____

IN ORIGINAL AMOUNT OF: \$ _____

Gentlemen:

This certificate authorizes reduction in the amount of \$ _____ of the above letter of credit. The remaining maximum available credit for this letter of credit is \$ _____.

CITY OF CHESTERFIELD, MISSOURI

By: _____

Director of Public Works

cc: Developer

EXHIBIT E

TO LETTER OF CREDIT

FORM FOR FULL REDUCTION / RELEASE OF LETTER OF CREDIT

Date

Name of Issuing Bank

Bank Address

Attention:

Re: LETTER OF CREDIT NUMBER: _____

IN ORIGINAL AMOUNT OF: \$ _____

FINAL REDUCTION

Gentlemen:

The City of Chesterfield hereby authorizes the final reduction of the letter of credit established for _____ subdivision. A summary of the reductions authorized is attached for your information. The letter of credit referenced above is hereby being surrendered.

Should you desire additional information, please contact * _____ *, at 636-537-4761.

Sincerely,

Michael O. Geisel
Director of Public Works/City Engineer

Enclosures: Summary of Releases
Letter of Credit, if applicable

cc: Teresa Price, Director of Planning
Brian McGownd, Deputy Director of Public Works/Assistant City Engineer
Bonnie Hubert, Superintendent of Engineering
Inspector, Senior Engineering Construction Inspector
Inspection File
Developer's Name, Address, City, State & Zip

EXHIBIT F
TO LETTER OF CREDIT
FORM FOR FULL TRANSFER OF LETTER OF CREDIT

Date

Name of Issuing Bank

Bank Address

Attention:

Re: Your Letter of Credit ("Letter of Credit") No. _____ in favor of City of
Chesterfield, Missouri

Gentlemen:

The undersigned, City of Chesterfield, Missouri ("Transferor") has transferred and assigned (and hereby confirms said transfer and assignment) all of its rights in and under the Letter of Credit to [name and address of Transferee] ("Transferee"). Transferor confirms that it no longer has any rights under or interest in the Letter of Credit and that you shall have no further responsibility to make payment under the Letter of Credit to Transferor.

Transferor hereby surrenders the Letter of Credit subject to the transfer to you and requests that you note the transfer of the Letter of Credit and deliver the Letter of Credit, amended or endorsed to reflect said transfer, to Transferee.

CITY OF CHESTERFIELD, MISSOURI

[NAME OF TRANSFEREE]

CITY OF CHESTERFIELD, MISSOURI

By: _____

Director of Public Works

Enclosures: Summary of Reductions
Letter of Credit, if applicable

cc: Developer