

## **Instructions for Completing Letter Of Credit Agreement**

1. Insert the name of the “Developer” and “Bank” in the first paragraph. (Planning staff will fill in the information describing the approved plan and Line Item 1 – improvements to be completed and covered by this Agreement.)
2. The Developer will complete the attached Construction Estimate Form detailing the cost breakdown for each improvement.
3. Line Item 3 – Insert the estimated completion date of the project.
4. Signature Lines – The developer and the authorized agent of the bank must sign the Agreement before two witnesses.
5. Letter of Credit – The bank shall attach to the City’s Agreement form a separate, formal Letter of Credit outlining the terms of the Letter. **PLEASE NOTE:** The expiration date noted in the Bank’s official letter of credit cannot be any sooner than one year (for site plans) OR two years (for subdivisions) from the date specified by the developer as the estimated project completion date.
6. The executed Agreement and attachments should be submitted to the Planning & Zoning Department where they will be reviewed for completeness and forwarded to the Chief Administrative Officer for signature. Once that is done, copies will be made and distributed to all parties.

**\*\*\*PLEASE NOTE: COST ESTIMATE FORM MUST BE SIGNED BY PROJECT ENGINEER AND APPROVED BY THE CITY ENGINEER BEFORE ITS SUBMITTAL.**

**CITY OF BURLINGTON  
LETTER OF CREDIT AGREEMENT**

**THIS AGREEMENT**, in triplicate, by and among \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as “Developer”, the  
CITY OF BURLINGTON, VERMONT, hereinafter referred to as “Municipality”, and \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as “Bank”.

**WITNESSETH:**

**WHEREAS**, Developer has received certificate of appropriateness (site plan/subdivision) approval from the Municipality’s Development Review Board by permit # \_\_\_\_\_, dated \_\_\_\_\_, which is hereby incorporated in this Agreement by reference, for the development of \_\_\_\_\_, as depicted on a site/subdivision plan entitled, “ \_\_\_\_\_ ”, dated \_\_\_\_\_, by \_\_\_\_\_ (“Approval”); and

**WHEREAS**, Developer is required by the Approval, at its expense to complete certain public improvements (“Improvements”); and,

**WHEREAS**, the parties to this Agreement wish to establish a mechanism to secure the obligations of the Developer as set forth above; and

**WHEREAS**, the Bank executes this Agreement solely in the capacity of issuer of the Letter of Credit hereinafter specified.

**NOW, THEREFORE**, the parties hereby covenant and agree as follows:

1. Developer will at its own expense complete the following Improvements in connection with its development:

- |                                      |                                    |
|--------------------------------------|------------------------------------|
| <input type="checkbox"/> Landscaping | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Drainage    | <input type="checkbox"/> Other     |
| <input type="checkbox"/> Paving      | <input type="checkbox"/> Roads     |
| <input type="checkbox"/> Curbing     | <input type="checkbox"/> Septic    |

Note: See attached Construction Estimate Form for associated costs and breakdown of expenses.

2. Developer will convey to the Municipality by properly executed Warranty Deed, free and clear of all encumbrances, the roadways, easements and other Improvements required to be transferred to the Municipality by the Approval prior to the issuance of any certificates of occupancy for the subject development.

3. The Developer shall notify the Municipality in writing immediately upon completion of the Improvements, which shall be no later than \_\_\_\_\_. The Municipality shall within twenty (20) days of receipt of such notice, inspect the Improvements and in turn advise the Developer in writing whether the Improvements are completed to its satisfaction or whether there remains work to be completed. If the Municipality does not notify the Developer of its inspection results within twenty-five (25) days of its receipt of the Developer's notice of completion, the Improvements shall be deemed completed to the satisfaction of the Municipality.

4. The Developer shall repair or replace any faulty or defective work or material which may appear in the Improvements within two (2) years [subdivision] / one (1) year [site plan] of completion of all the Improvements. Completion shall be deemed to be the date of the Municipality's notice to the Developer pursuant to paragraph 3, indicating the Improvements have been completed to its satisfaction, or if the Municipality fails to notify the Developer, as set forth in paragraph 3, the date of completion shall be deemed to be twenty-five (25) days after the Municipality receives the Developer's notice of

completion.

5. For the guaranty of Developer's performance of all requirements set forth in this Agreement, Developer has caused Bank to issue its Irrevocable Letter of Credit in favor of the Municipality, the original of which is attached to the Municipality's copy of this Agreement, and copies of which are attached to the Developer's and Bank's copy.
6. Upon the Developer's default of any obligations under this Agreement, the Municipality shall send to the Developer, by certified mail, return receipt requested, a notice setting forth what items are in default (Notice of Default).
7. Should the developer fail to remedy the items set forth in the Notice of Default within sixty (60) days of the date of said Notice, the Municipality may file a written statement with the Bank indicating that the Developer is in default under the terms of this Agreement. The Municipality's statement shall include a certification that the Municipality has complied with the notice requirements set forth in paragraph "6". Upon receipt of the Municipality's statement, the Bank shall make payments to the Municipality under the Irrevocable Letter of Credit in amounts not to exceed the total certified by the Municipality to be reasonably required to complete the items in default. The Municipality shall, upon sending any statement to the Bank under this paragraph, simultaneously send a copy thereof to the Developer by certified mail, return receipt requested.
8. The Bank shall incur no liability to the Developer on account of making payments to the Municipality, nor shall the Bank be required to inquire into the propriety of any default claim by the Municipality, or into the use of such funds by the Municipality in completing the Improvements.
9. All funds paid to the Municipality pursuant to the Irrevocable Letter of Credit shall be used by the Municipality solely for the purpose of performing obligations in which the Developer is in default under this Agreement. Any work to be performed by the

Municipality may be accomplished in such manner as the Municipality in its discretion deems appropriate.

10. If payments are made by the Bank to the Municipality pursuant to the Irrevocable Letter of Credit, and it shall later develop that a portion of the released monies are surplus to the Municipality's need, such surplus shall be refunded by the Municipality to the Bank to be held and distributed by the Bank pursuant to the terms of the Agreement.
11. The Bank will not refuse or delay to make payments to the Municipality in accordance with the Irrevocable Letter of Credit when proper application is made by the Municipality. The Developer's consent to payments shall not be required and the Developer will not interfere with or hinder the Bank in making payments.
12. This Agreement shall terminate and shall be of no force or effect upon performance of all requirements contemplated hereby and the completion of the warranty period set forth in paragraph "4".
13. Upon request of the Developer, but only at the sole discretion of the Municipality, the Municipality may agree in writing to reduce the amount of the Irrevocable Letter of Credit if the Municipality believes, because of partial completion of the Improvements, that the full amount is no longer necessary to protect its interests.
14. Notwithstanding the provisions of paragraph "13" the amount of the Irrevocable Letter of Credit shall not be reduced to less than 10% of the total amount escrowed until certification to the Bank by the Municipality of the completion of the warranty period set forth in paragraph "4".
15. The Bank may not reduce the amount of, or terminate the Irrevocable Letter of Credit, without first receiving written consent of the Municipality.

16. This agreement shall not only be binding upon the parties hereto, but also their respective heirs, executors, administrators, successors and assigns.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**IN THE PRESENCE OF:**

(Developer)

By: \_\_\_\_\_  
Its Duly Authorized Agent

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

City of Burlington

By: \_\_\_\_\_  
Its Duly Authorized Agent

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

(Bank)

By: \_\_\_\_\_  
Its Duly Authorized Agent

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**City of Burlington – Planning & Zoning Department  
Construction Estimate Form**

**Project Name:** \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**Section:** \_\_\_\_\_ **Phase:** \_\_\_\_\_ **Roadway Lgth.** \_\_\_\_\_

**Owner's Name/Address:** \_\_\_\_\_

\_\_\_\_\_

**Name & Address of Person Responsible for Preparation of Estimate:**

\_\_\_\_\_

\_\_\_\_\_

**Date:** \_\_\_\_\_ **Project Engineer's Signature:** \_\_\_\_\_

**City Representative Approving Estimate:** \_\_\_\_\_

ITEM	EST. QTY.	UNIT OF MEAS.	UNIT PRICE	TOTAL PRICE
Clearing/Grubbing		Lump Sum		
Erosion Control		Lump Sum		
Rough Grading		Lump Sum		
Stabilization Fabric		Square Yards		
Rock/Ledge Excavation		Cubic Yards		
Fill		Cubic Yards		
Sand Cushion		Cubic Yards		
Bank Run Gravel		Cubic Yards		
Crusher Run-Plant Mix (Fine)		Cubic Yards		
Crusher Run-Plant Mix (Course)		Cubic Yards		
Dense Graded Stone		Cubic Yards		
Paving: Base Course		Tons		
Paving: Top Course		Tons		
Paving: Driveway Aprons		Tons		
Sidewalks		Linear Feet		
Guard Rail		Linear Feet		
Underdrain		Linear Feet		
Curbs		Linear Feet		
Storm Drainage:				

