

RESOLUTION

of the

ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

Regarding

AMENDING THE STANDARD ORANGE COUNTY LETTER OF CREDIT FORM, CREATING A FORM OF LETTER OF CREDIT FOR PUBLIC WORKS SITE STABILIZATION PROJECTS, AND DELEGATING AUTHORITY WITH REGARD TO AUTHORIZING THE COUNTY MAYOR TO ACCEPT AND RELEASE LETTERS OF CREDIT IN CONJUNCTION WITH ORANGE COUNTY PUBLIC WORKS SITE STABILIZATION PROJECTS.

Resolution No. 2013-M-48

WHEREAS, on October 1, 1991, the Board of County Commissioners (the "Board") adopted Resolution No. 91-M-62 (the "1991 Resolution") which authorized the County Chairman [Mayor] to approve the acceptance and release of letters of credit and cash escrows for the Public Works Division in conjunction with Excavation and Fill projects, infrastructure for residential and commercial subdivisions, and certain road projects; and

WHEREAS, on February 8, 1994, the Board adopted Ordinance No. 94-4 ("Ordinance 94-4") which, among other things, amended Chapter 34 of the Orange County Code, Subdivision Regulations, and included an attachment entitled "Engineering Forms and Formulas" (the "1994 Supplement"); and

WHEREAS, the 1994 Supplement contained forms that were required to implement the provisions of Ordinance 94-4, including certain forms of letters of credit; and

WHEREAS, the forms of letters of credit contained in the 1994 Supplement included a standard "boilerplate" form along with inserts for specific types of projects which consisted of: 1. Completion of infrastructure on platted property, 2. Maintenance of accepted infrastructure, 3. Excavation and fill permits, 4. Right-of-way utilization permits, 5. Surety for payment of impact fees, 6. Security for payment of capital charges for Wastewater capacity, 7. Security for payment of capital charges for Water capacity, 8. Security for payment of costs for septic tank abandonment and Wastewater connection, 9. Surety for payment of Multi-family, Commercial,

or Industrial Water user charges, including deposits, 10. Surety for payment of Multi-family, Commercial, or Industrial Wastewater user charges, including deposits, 11. Security for maintenance of on-site Water or Wastewater facilities, and 12. Letter of credit to be applied towards the cost of repairing road damage or clean up of domestic Wastewater residual as required by the “Sludge” Ordinance; and

WHEREAS, the recent economic downturn has given rise to the need for a new letter of credit insert as security for site stabilization after mass grading work has begun; and

WHEREAS, the passage of time and updates in the law have necessitated revisions to the standard letter of credit form; and

WHEREAS, it is in the best interest of the County to approve a new letter of credit insert for site stabilization projects, as well as update the standard letter of credit form, and authorize the Mayor to approve the acceptance and release of such site stabilization letters of credit.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. Site Stabilization Insert. In addition to the specific project inserts contained in the 1994 Supplement, the Board hereby creates a Site Stabilization Insert to read as set forth on Exhibit “A” hereto, which is incorporated herein by reference.

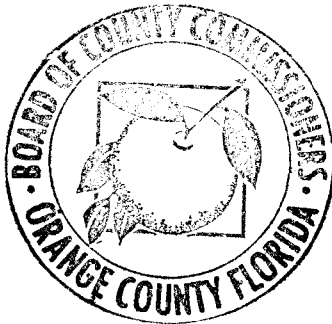
Section 2. Revised Letter of Credit Form. The Board hereby amends the standard letter of credit form as contained in the 1994 Supplement to read as set forth on Exhibit “B” hereto, which is incorporated herein by reference.

Section 3. Mayor’s Authority to Approve. The Board hereby delegates to the County Mayor the authority to accept and release, in the same fashion as set forth in the 1991 Resolution, letters of credit (or cash escrows) to provide surety for the completion of site stabilization projects.

Section 4. Effect of Amendment. Except as modified herein, the 1991 Resolution, Ordinance 94-4, and the 1994 Supplement remain unchanged and in full force and effect.

Section 5. Effective Date. This Resolution shall be effective upon adoption by the Orange County Board of County Commissioners.

ADOPTED this ____ day of NOV 05 2013, 2013.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

ATTEST; Martha O. Haynie, County Comptroller
As Clerk to the Board of County Commissioners

By: *Martha O. Haynie*
Deputy Clerk

EXHIBIT "A"
SITE STABILIZATION INSERT

“The drawing is due to the Applicant’s failure to perform the required site stabilization of all disturbed areas following the completion of grubbing, clearing, earth work, or mass grading of the site, as required by the conditions of approval associated with the _____ development plan dated “Received _____” and/or failure to maintain such stabilization for a one (1) year period following the initial site stabilization. Specifically, the notice must say that the Applicant (1) failed to initiate required site stabilization measures; (2) failed to achieve a minimum of 70% coverage of the disturbed land area; and/or (3) failed to maintain that coverage for a one (1) year period or until initiation of site development, whichever occurs first, and such condition(s) has not been corrected despite notification to Applicant.

A sum not to exceed \$____,____.00 (_____ THOUSAND AND 00/100 U.S. DOLLARS) [**AMOUNT SHOULD BE EQUAL TO \$3,000.00 PER ACRE OF DISTURBED LAND, OR SUCH OTHER AMOUNT AS ESTABLISHED BY THE COUNTY ENGINEER**] shall be available for partial or full draw by your drafts at sight if accompanied by a written statement as described in the preceding paragraphs.

This letter of credit shall be in full force and effect until _____, 20__ [**ONE YEAR FROM ISSUANCE OF PERMIT**] and will be automatically extended without amendment for successive periods of one-year each, not to exceed a total of three (3) such one-year periods, unless we provide the Beneficiary with written notice of our intent to terminate the credit herein extended, which notice must be provided at least thirty (30) days prior to the expiration date of the original term hereof or any extended term.”

EXHIBIT "B"
STANDARD LETTER OF CREDIT FORM

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 20__

BENEFICIARY:
ORANGE COUNTY, FLORIDA
C/O ORANGE COUNTY DEV. ENGIN.
4200 SOUTH JOHN YOUNG PKWY
ORLANDO, FLORIDA 32839
ATTN: Micah K. Massaquoi

APPLICANT:

ATTN: _____

PROJECT NAME: _____

AMOUNT: \$____.00 (____ THOUSAND AND 00/100 U.S. DOLLARS)

DATE OF EXPIRY: _____, 20__

AT THE REQUEST AND FOR THE ACCOUNT OF APPLICANT, WE, _____ ("ISSUER"), HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____, IN FAVOR OF ORANGE COUNTY, A CHARTER COUNTY AND POLITICAL SUBDIVISION OF THE STATE OF FLORIDA ("BENEFICIARY"), AND AUTHORIZE YOU TO DRAW ON ISSUER, IN THE MAXIMUM AGGREGATE AMOUNT OF \$____.00 (____ THOUSAND AND 00/100 U.S. DOLLARS), IN UNITED STATES FUNDS, WHICH IS PAYABLE AT SIGHT AGAINST PRESENTATION OF YOUR DEMAND, WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND ANY OF THE FOLLOWING DOCUMENTS:

1. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "THE PERFORMANCE OF APPLICANT'S OBLIGATION HAS NOT BEEN COMPLETED YET AND THE LETTER OF CREDIT WILL EXPIRE WITHIN 45 DAYS FROM THE DATE OF DRAWING WITHOUT BEING EXTENDED OR REPLACED TO THE COUNTY'S SATISFACTION;" OR

2. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "ISSUER[CONFIRMER] HAS LOST ITS DESIGNATION AS A "QUALIFIED PUBLIC DEPOSITORY" PURSUANT TO FLORIDA STATUTES, CHAPTER 280, AND AN ACCEPTABLE REPLACEMENT LETTER OF CREDIT HAS NOT BEEN RECEIVED BY THE COUNTY FOLLOWING NOTICE TO APPLICANT;" OR

3. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS:

[PLACE APPROPRIATE INSERT HERE]

[IF A CONFIRMING BANK IS TO BE USED, INSERT THIS LANGUAGE: ISSUER NOMINATES _____ [NAME AND ADDRESS OF NOMINATED CONFIRMING BANK] TO CONFIRM THIS STANDBY LETTER OF CREDIT.]

DRAWS MUST BE PRESENTED NO LATER THAN _____, 20__ OR ANY EXTENDED EXPIRATION DATE AND MUST BEAR THE CLAUSE: "DRAWN UNDER LETTER OF CREDIT NO. _____ OF ISSUER, DATED _____, 20__."

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED; PROVIDED, HOWEVER, THAT ANY PAYMENT MADE UNDER THIS LETTER OF CREDIT SHALL REDUCE THE AMOUNT AVAILABLE UNDER IT.

WE, ISSUER, HEREBY AGREE THAT ALL DRAWS PRESENTED UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO ISSUER[CONFIRMER] AT: (note: must have tri-county street address (Orange, Osceola, Seminole)).

THIS LETTER OF CREDIT WILL BE CONSIDERED AS CANCELLED UPON RECEIPT BY US OF THE ORIGINAL LETTER OF CREDIT OR UPON ANY PRESENT OR FUTURE EXPIRY DATE HEREUNDER, WHICHEVER SHALL OCCUR FIRST.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590) AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE ISP98 AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN FLORIDA LAW AND THE LAW OF ANY OTHER STATE OR COUNTRY SHALL ARISE, FLORIDA LAW SHALL PREVAIL.

VERY TRULY YOURS,

AUTHORIZED SIGNATURE

ISSUER

AUTHORIZED SIGNATURE

ISSUER