

**APPLICATION FOR REIMBURSEMENT**

**THIS REIMBURSEMENT APPLICATION**, (herein "Application"), is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**PARTIES**

**"APPLICANT(S)"<sup>a</sup>**: \_\_\_\_\_  
a(n) \_\_\_\_\_ (corporation, partnership, individual),  
address: \_\_\_\_\_,  
telephone: ( \_\_\_\_\_ ) \_\_\_\_\_, facsimile: ( \_\_\_\_\_ ) \_\_\_\_\_;

**"CITY"**: Tooele City, a municipal corporation of the State of Utah,  
address: 90 North Main Street, Tooele City, Utah 84074,  
telephone: (801) 843-2100 facsimile: (801) 843-2129.

**RECITALS**

**WHEREAS**, APPLICANT desires to receive reimbursement for a pro-rata share of the Construction Cost of Eligible Public Improvements, as authorized by and defined in Tooele City Code § 7-19-13, for \_\_\_\_\_ (description or name of the Prior Developer's development), located at \_\_\_\_\_ (approximate development address);

**WHEREAS**, on \_\_\_\_\_, APPLICANT paid the \$200 Application administrative; and,

**WHEREAS**, CITY's obligations herein are conditioned upon the timely and complete filing of this Application; and,

**WHEREAS**, to receive reimbursement, APPLICANT must demonstrate that (a) the Construction Cost of the Eligible Public Improvements required by the City as a condition of development approval exceeds the Construction Cost of the City's required minimum standards and specifications for the Eligible Public Improvements by ten percent (10%) or more (i.e., the Cost Differential), (b) the Cost Differential exceeds \$5,000, (c) the Eligible Public Improvements are constructed within the Tooele City corporate limit, and (d) a Subsequent Developer did not share in the Construction Cost of the Eligible Public Improvements.

**NOW, THEREFORE**, in consideration of the premises and other valuable consideration, the parties agree as follows:

\* \* \* \* \* **TERMS AND CONDITIONS** \* \* \* \* \*

**1 DEFINITIONS.**

1.1. "APPLICANT" and "CITY," as used in this Application, shall also refer to all heirs, executors, administrators, successors, and/or assigns of APPLICANT and CITY, respectively.

1.2. "Application for Reimbursement" means a completed application for reimbursement filed pursuant to

<sup>a</sup> Applicants include all persons with an ownership interest in the development for which the Eligible Public Improvements are being installed.

Tooele City Code §7-19-13.

- 1.3. "Benefit Area" means that area of property, including the Development Parcel, which benefits from the Eligible Public Improvements that are the subject of this Application.
- 1.4. "Construction Cost" means the actual costs of construction, including mobilization, equipment, labor, materials, and other typical construction contract costs, but not including design, engineering, surveying, financing, third-party administration, and other indirect costs typically associated with construction contracts.
- 1.5. "Cost Differential" means the difference between the Construction Cost of the City's required minimum standards and specifications for the Eligible Public Improvements, and the Construction Cost of the Eligible Public Improvements required by the City as a condition of development approval.
- 1.6. "Depreciation Value" means the Construction Cost minus a per annum depreciation of the Construction Cost of five percent (5%) for roads and two percent (2%) for water, sewer, secondary water, and storm water utilities, beginning one (1) year after the date of development approval.
- 1.7. "Developer" means the owner(s) or authorized agent(s) of land proposed to be subdivided or developed or who is responsible for any undertaking that requires City review and/or approval pursuant to this Code.
- 1.8. "Development Parcel" means the real property subject to a development application (for purposes of this definition, the "Subject Property"), plus other adjacent properties with a logical nexus to the property subject to the development application, as determined by the City in light of the following factors, among others: Land ownership relationships between the Subject Property and adjacent properties;
  - 1.8.1. Zoning of the Subject Property and adjacent properties;
  - 1.8.2. Proposed density, use, configuration, and public utility services demands on the Subject Property, including development phasing;
  - 1.8.3. Proposed or anticipated development on the adjacent properties, and the density, use, configuration, and public utility services demands of the proposed or anticipated development;
  - 1.8.4. City-approved planning documents, including the general plan and its constituent master plans;
  - 1.8.5. Proximity of the Subject Property to existing utilities, and the capacity and condition of those utility infrastructures;
  - 1.8.6. The size of the Subject Property in relation to adjacent properties.
- 1.9. "Eligible Public Improvements" means roads and water, sewer, publicly-owned secondary water, and storm water utilities that are required by the City and that exceed the City's required minimum standards and specifications for a particular development. Eligible Public Improvements do not include street signs, regulatory signs (e.g., stop signs), street lights, sidewalk, curb & gutter, monuments and markers, landscaping, privately-owned utilities (e.g., telephone, gas, power, cable television, fiber optics), and other similar improvements, as well as features desired by the Developer but not required by the City. Eligible Public Improvements also do not include Public Improvements required as a condition of annexation. The minimum required standards and specifications shall be based on the infrastructure needs of the Development Parcel, as determined by the City.
- 1.10. "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean, in addition to those acts specified previously, the non-performance in a timely manner by a party to this Agreement of any obligation, in whole or in part, required of such party by the terms of this Agreement or required by Tooele City ordinance or other applicable law. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available pursuant to the terms of this Agreement.
- 1.11. "Prior Developer" means a Developer that constructs Eligible Public Improvements.
- 1.12. "Public Improvements" means all public utility infrastructure improvements, whether on- or off-site, including as defined in §4-1-5 of the Tooele City Code, and including all sewer, storm water,

culinary water, publicly-owned secondary water, street lights and associated electrical, streets, curbs, gutters, sidewalks, alleys, easements and rights-of-way, street signs, monuments and markers, regulatory signs, landscaping (including park strip and trees), and other improvements considered public utility infrastructure improvements in the construction trade which are found within typical subdivision and site plan construction documents.

1.13. "Subsequent Developer" means a Developer whose development is not derived from the Prior Developer's development, and whose development benefits from Eligible Public Improvements constructed by the Prior Developer.

2. **PURPOSE OF APPLICATION.** The purpose of this Application is to reasonably assist APPLICANT to receive reimbursement for the pro-rata share of the Cost Differential of Eligible Public Improvements from Subsequent Developers that will benefit from the Eligible Public Improvements and did not share in their Construction Cost.

3. **UNRELATED OBLIGATIONS OF APPLICANT.** The benefits and protections provided by this Application shall inure solely to CITY and APPLICANT and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. CITY shall not be liable to claimants or others for obligations of APPLICANT. CITY shall further have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Application.

4. **APPLICATION DOCUMENTS.** All data used by CITY to compute the Construction Cost of or otherwise govern the design and installation of the Eligible Public Improvements is hereby made a part of this Application, and is incorporated herein by this reference as **Exhibit A**. If this Application covers Eligible Public Improvements required in a subdivision, this Application then incorporates herein by reference as **Exhibit B** the subdivision plat, associated construction drawings, and all other documents and information required by the Tooele City Code. Documents verifying the Construction Cost shall be submitted by APPLICANT, and shall be attached hereto as **Exhibit C**.

5. **ELIGIBLE PUBLIC IMPROVEMENTS.** APPLICANT represents that the following Eligible Public Improvements exist, or have been approved by the City Council, and will be used or will benefit a Subsequent Developer's development, as follows:

- (a) \_\_\_\_\_  
\_\_\_\_\_  
(Description of Eligible Public Improvement)
- (b) \_\_\_\_\_  
\_\_\_\_\_  
(Description of Eligible Public Improvement)
- (c) \_\_\_\_\_  
\_\_\_\_\_  
(Description of Eligible Public Improvement)
- (d) \_\_\_\_\_  
\_\_\_\_\_  
(Description of Eligible Public Improvement)

These and any additional Eligible Public Improvements are described in further detail in the attached **Exhibit D**.

6. **SUBSEQUENT DEVELOPERS.** APPLICANT represents that there exist Subsequent Developers which will use or benefit from the Eligible Public Improvements and did not share in their Construction Cost, listed as follows:

- (a) \_\_\_\_\_  
\_\_\_\_\_  
(Name of Developer; Address; Phone Number)
- (b) \_\_\_\_\_  
\_\_\_\_\_

(Name of Developer; Address; Phone Number)

7. **ADDITIONAL SUBSEQUENT DEVELOPERS.** APPLICANT shall be under an affirmative duty to notify CITY in writing of the identity of any Subsequent Developers' developments which APPLICANT has knowledge or reason to believe will use or benefit from the Eligible Public Improvements installed by APPLICANT and whether and to what extent the Subsequent Developer should share in the pro-rata share of the Cost Differential.

8. **BENEFIT AREA.** APPLICANT shall formulate a Benefit Area that shall include the Development Parcel and all other property benefited by the Eligible Public Improvements. The Benefit Area for roadways (including, but not limited to: asphalt, and curb and gutter) shall be based on right-of-way frontage lineal footage. The Benefit Area for sewer, water, secondary water, and storm water utilities shall be based on the respective utility service areas. The Benefit Area shall be approved by the Public Works Director or City Engineer, as illustrated on the attached **Exhibit D.**

9. **DETERMINATION OF PRO-RATA CONSTRUCTION COSTS.** APPLICANT agrees that the pro-rata share of the Cost Differential shall be based upon the Construction Cost of the Eligible Public Improvements, minus the Depreciation Value and the 10% City administrative fee. APPLICANT may protest the determination as provided in Tooele City Code §7-19-13.

10. **PAYMENT AND COLLECTION.**

10.1 CITY agrees to make a reasonable effort to collect from the Subsequent Developers the pro-rata share of the Cost Differential, minus the Depreciation Value and the 10% City administrative fee. CITY agrees to forward all collected amounts to APPLICANT, minus the Depreciation Value and the City administrative fee.

10.2 Notwithstanding CITY's agreement to forward collected amounts, APPLICANT acknowledges that, before making any payments to APPLICANT, CITY will make a determination whether APPLICANT has any outstanding financial obligations toward, or debts owing to, CITY. Any such obligations or debts, adequately documented, shall be satisfied prior to making payment to APPLICANT, and may be satisfied utilizing amounts collected by CITY pursuant to this Application.

10.3 Any collected funds unclaimed after one (1) year from the expiration of this Application shall be returned to the parties making payment to the CITY, minus the 10% City administrative fee. Any undeliverable funds shall be credited to the CITY enterprise fund corresponding to the Eligible Public Improvements for which the funds were collected.

11. **EFFECT AND TERM OF THIS APPLICATION.** This Application is not retroactive and does not entitle APPLICANT to reimbursement from Subsequent Developers who received a subdivision final plat approval or, in the case of a site plan, the issuance of a building permit prior to the date of this Application. The term of this Application shall be eight (8) years. Subsequent Developers of subdivision final plats approved, or, in the case of site plans, building permits issued, after the expiration of this Application shall have no reimbursement obligation.

12. **RELEASE.** APPLICANT hereby releases the City for, and waives any claim against CITY in connection with, any obligations or duties not expressly established by the Tooele City Code.

13. **WAIVER.** Any failure on the part of CITY to insist upon the strict performance of any covenant, duty, agreement, or condition of this Application shall not constitute a waiver of CITY's right to do so. Each and every APPLICANT duty contained in this Application shall continue in full force and effect despite any such CITY failure to insist.

14. **ATTORNEYS FEES.** In the event there is a failure to perform under this Application and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), the losing party to any binding arbitration or litigation shall pay the successful party's reasonable attorneys fees and costs.

16. **GOVERNING LAW AND RESERVATION.** This Application shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Application shall be further governed by Tooele City

ordinances in effect at the time of the execution of this Application. CITY expressly reserves the right to impose upon any development, including all developments that are the subject of this Application, such regulations that are deemed by CITY to be reasonably necessary to protect the health, safety, and welfare of CITY and its citizens.

**17. INDUCEMENT; INTEGRATION; MODIFICATION; CAPTIONS; SEVERABILITY.**

- 17.1. The making and execution of this Application has been induced by no representations, statements, warranties, or agreements other than those herein expressed.
- 17.2. This Application embodies the entire understanding of the parties regarding reimbursements, and there are no further or other understandings, written or oral, in effect between the parties relating to the subject matter herein.
- 17.3. Except as otherwise authorized by this Application, this instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.
- 17.4. The titles or captions of this Application are for convenience only and shall not be deemed in any way to limit, extend, or augment the scope, content, or intent of any part or parts of this Application.
- 17.5. If any portion of this Application is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

**WHEREUPON**, the Parties hereto have set their hands the day and year first above written.

**"APPLICANT"**

\_\_\_\_\_  
By:  
Title: \_\_\_\_\_  
(Signature must be notarized on following page.)

**"CITY"**

\_\_\_\_\_  
Its Mayor

\_\_\_\_\_  
Its Public Works Director or City Engineer

ATTEST:

\_\_\_\_\_  
CITY RECORDER

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Roger Baker, City Attorney

**APPLICANT NOTARY**

(Complete only if **APPLICANT** is an **Individual**.)

STATE OF )  
 :SS  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, \_\_\_\_\_  
\_\_\_\_\_, the signer(s) of the foregoing instrument who duly acknowledged to me that he/she/they  
executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

(Complete only if **APPLICANT** is a **Corporation**.)

STATE OF )  
 :SS  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, \_\_\_\_\_  
\_\_\_\_\_, who being by me duly sworn did say that he/she is the \_\_\_\_\_  
of \_\_\_\_\_, corporation, and that the foregoing instrument was signed in  
behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said  
corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

(Complete only if **APPLICANT** is a **Partnership**.)

STATE OF \_\_\_\_\_ )  
 :SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, \_\_\_\_\_  
\_\_\_\_\_, who being by me duly sworn did say that he/she/they is/are the \_\_\_\_\_  
\_\_\_\_ of \_\_\_\_\_, a partnership, and that the foregoing instrument was duly  
authorized by the partnership at a lawful meeting held or by authority of its bylaws and signed in behalf of said  
partnership.

\_\_\_\_\_  
NOTARY PUBLIC

(Complete only if **APPLICANT** is a **Limited Liability Company**.)

STATE OF \_\_\_\_\_ )  
 :SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me, \_\_\_\_\_  
\_\_\_\_\_, who being by me duly sworn did say that he/she/they is/are the \_\_\_\_\_  
\_ of \_\_\_\_\_, by authority of its members or its articles of organization, and  
he/she acknowledged to me that said limited liability company executed the same.

\_\_\_\_\_  
NOTARY PUBLIC



## Exhibit A

All Data Used by CITY to Compute the Construction Cost of or  
Otherwise Govern the Design and Installation of the Eligible  
Public Improvements:

Attached by Reference Only.

## Exhibit B

Subdivision Plat, Associated Construction Drawings, and Other Documents and Information Required by the City:

Attached by Reference Only.

Exhibit C

Documents Verifying the Construction Cost

Exhibit D

Detailed Description of the Eligible Public Improvements