

BOND AGREEMENT: IRREVOCABLE LETTER OF CREDIT
FOR COMPLETION OF IMPROVEMENTS

All property owners on record with Tooele County MUST be listed as Applicants. They must each sign and have their signatures notarized. Only those listed on County records as owners of the property can enter into an Irrevocable Letter of Credit Bond Agreement. For purposes of this Agreement, a lender with no other ownership interest is not an owner.

[BOND AGREEMENT FORM BEHIND THIS PAGE]

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BOND AGREEMENT: IRREVOCABLE LETTER OF CREDIT

THIS BOND AGREEMENT, (herein "Agreement"), is entered into by the Parties this ____ day of _____, 20____.

PARTIES

Applicant _____

is the following type of business entity (check the applicable business entity):

- corporation
- partnership
- limited liability company
- individual
- other business entity: _____

Applicant business address: _____

Applicant business telephone: (____) _____

Applicant business facsimile: (____) _____

City: Tooele City Corporation, a municipal corporation of the State of Utah,

City address: 90 North Main Street, Tooele, UT 84074

City telephone: (435) 843-2120

City facsimile: (435) 843-2129

RECITALS

WHEREAS, Applicant has applied for, and desires approval of, the following land use(s) (check all that apply)

- residential subdivision
- commercial subdivision
- condominium subdivision
- site plan
- building permit
- other: _____

from the City for the Project named and located as follows:

Project name: _____

Project street address: _____;

and,

WHEREAS, the Tooele City Code requires land use applicants, including Applicant, to pay, as a condition of land use approval, and prior to the actual issuance of approval, a public improvement inspection fee in the amount of 4% of the estimated cost of installing the Project's public improvements, in the amount of \$_____; and,

WHEREAS, Tooele City requires the payment of a Bond Administration Fee in the amount of **\$250**, intended to cover the costs of preparing and administering this Agreement and the bond matters associated with this Agreement; and,

WHEREAS, under the land use approval for the Project, Applicant is required to construct the following public infrastructure improvements, (herein the "Improvements"):

1. those public improvements specified in a Bond and Fee Calculation Sheet prepared by the City, which Bond and Fee Calculation Sheet is attached as **Exhibit A**, and which includes an estimate of the cost of constructing the Improvements; and,
2. those public improvements specified in the land use approval documents, including Project construction drawings on file with the City, incorporated herein by this reference as **Exhibit B**;

and,

WHEREAS, under the Tooele City Code, the Improvements must be completed, inspected, and accepted prior to the issuance of a building permit for the land use approval or prior to the recordation of a subdivision final plat, as the case may be, except that a subdivision final plat may be recorded prior to the completion, inspection, and acceptance of the Improvements where the Applicant has completed a bond agreement and provided an associated bond; and,

WHEREAS, under the Tooele City Code, the City will not allow the Project's infrastructure systems to be connected to the City's infrastructure systems without a bond agreement and bond in place for the portion of the Improvements being constructed within existing City rights-of-way; and,

WHEREAS, the Improvements shall be constructed in accordance with the specifications of the City:

NOW, THEREFORE, in consideration of the promises and other valuable consideration contained herein, the Parties agree as follows:

TERMS AND CONDITIONS

1. ADDITIONAL DEFINITIONS.

- 1.1. "Applicant" and "City," as used in this Agreement, shall also refer to all heirs, executors, administrators, successors, and/or assigns of Applicant and the City, respectively.

1.2. "Bond Amount," as used in this Agreement, shall include Applicant's estimated cost to construct the Improvements, together with a reasonable contingency of 20% of said cost, intended to cover the costs of inflation and unforeseen conditions or other circumstances. The term Bond Amount includes the terms Warranty Amount and Amended Warranty Amount.

1.3. "Incidental Costs," as used in this Agreement, shall mean engineering and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic or materialmen liens, and any other costs, and interest thereon, incurred by the City, occasioned by Applicant's failure to perform any or all obligations under this Agreement, to any degree.

2. **PURPOSE OF AGREEMENT.** The Parties expressly acknowledge that the purposes of this Agreement include both to guarantee the proper and timely completion of the Improvements, and also, among other things, to eliminate and avoid the harmful effects of subdivisions and other approved land uses that may leave land possessing incomplete underground or above-ground improvements, undeveloped, unproductive, or cluttered with construction debris and waste items.

3. **UNRELATED OBLIGATIONS OF APPLICANT.** The benefits and protections provided by this Agreement shall inure solely to the Parties and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. The City shall not be liable to claimants or others for obligations of Applicant under this Agreement. The City shall have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement.

4. **AGREEMENT DOCUMENTS.** All data that is used by the City to compute the cost of, or otherwise govern the design and installation of, the Improvements is hereby made a part of this Agreement, and is incorporated herein by this reference as part of **Exhibit B**.

5. **IMPROVEMENTS COMPLETION DATE.** Applicant shall complete the Improvements within a period of one year from the date of the City land use approval for the Project.

6. **SPECIFIC ENFORCEMENT.** Applicant has entered into this Agreement with the City for the purposes set forth herein. The City shall be entitled to specifically enforce Applicant's obligations under this Agreement, including to construct and to install the Improvements in a manner that is proper, timely, and satisfactory to the City.

7. **APPLICANT'S INDEPENDENT OBLIGATION.** Applicant expressly acknowledges, understands, and agrees that its obligations under this Agreement are independent of any obligation or responsibility of the City, either express or implied. Applicant agrees that its obligations under this Agreement are not and shall not be conditioned upon the commencement of actual construction work pursuant to the land use approval or the sale of any lots or parts of the land subject to the land use approval. Applicant further acknowledges the following: (a) that its contractual obligations under this Agreement are independent of any remedy available to the City to secure proper and timely completion of the Improvements; (b) that Applicant may not assert as a defense that the City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Applicant of all or a portion of its duty to perform as outlined in this Agreement or to preclude the City from requiring Applicant's performance under this Agreement; and, (c) that Applicant has a legal obligation pursuant to the Tooele City Code, independent of this Agreement, to properly and timely complete and pay for the Improvements (see particularly Tooele City Code §7-19-12 and §7-19-32).

8. **APPLICANT'S OBLIGATION FOR COSTS.** Should Applicant fail to perform any of its obligations under this Agreement in any degree, Applicant agrees to compensate the City for all its costs, including Incidental Costs, related to the Applicant's failure to perform its obligations to the extent that such costs are not adequately covered by the Bond Amount, as set forth below.

9. **PERFORMANCE GUARANTEE.** Applicant hereby files with the City, as an independent guarantee with the City for the purpose of insuring proper and timely construction and installation of the Improvements, an Irrevocable Letter of Credit for the Bond Amount of \$_____. A copy of the Letter of Credit shall be attached hereto as **Exhibit C**, as applicable. The Letter of Credit shall comply with the most recent Uniform Customs and Practices for Documentary Credits published by the International Chamber of Commerce, and shall be for a term of at least one year. The original Letter of Credit shall be maintained in the files of the Tooele City Recorder.

10. **REDUCTION OF THE BOND AMOUNT.** As elements of the Improvements (e.g., roads) are completed by Applicant and inspected by the City, the Bond Amount may be reduced upon Applicant's written request. Such requests may be made no more frequently than once every 30 days. The amount of any requested reduction shall be determined in the sole discretion of the City. No reduction shall be authorized until such time as the City has inspected the Improvements and found them to be in compliance with City standards. Completion of Improvements, even if verified by the City, shall not automatically entitle Applicant to a reduction of any part of the Bond Amount. Any reduction in the Bond Amount must be evidenced by a City Certificate of Completion of Public Works, and must be approved in writing by the City Attorney. Applicant may substitute the original Letter of Credit with new Letters of Credit reflecting the reduced Bond Amount.

11. **ACCEPTANCE OF IMPROVEMENTS.** Notwithstanding the fact that the Bond Amount may be reduced upon partial completion of the Improvements, neither shall any partial reduction nor shall any full reduction of the Bond Amount constitute final acceptance ("Acceptance") of the Improvements by the City. Acceptance of the Improvements must be by Resolution of the City Council, pursuant to Tooele City Code §7-19-32.

12. **WARRANTY OF IMPROVEMENTS.** Following Acceptance of the Improvements by the City Council, the Applicant shall warrant that the Improvements shall remain free from defects or damage, as determined by the City, such that the Improvements continue to meet City standards for one year after Acceptance. Applicant also warrants for a period of one year after Acceptance that rights-of-way, vacant lots, and other areas within the Project site or subdivision that are accessible to Applicant or within Applicant's control shall be kept reasonably clean and free from any construction debris, waste items, and mounds of soil, rocks, concrete, asphalt, and other debris. To secure the warranty, Applicant shall provide a new or amended Irrevocable Letter of Credit for the warranty period and for the Warranty Amount, as provided and defined below.

13. **WARRANTY AMOUNT.** Applicant expressly agrees that, notwithstanding any partial reduction in the Bond Amount requested by Applicant and granted by the City, the City shall not reduce the Bond Amount below 90% of the Bond Amount. The amount maintained shall be the Warranty Amount, which for purposes of this Agreement shall be \$_____. The Warranty Amount shall be maintained for a period of one year following Acceptance of the Improvements. The Warranty Amount shall be maintained to insure that the Improvements are free from defects and damage, as determined by City, such that the Improvements continue to meet City standards for one year after Acceptance. The Warranty Amount shall also be maintained to insure that rights-of-way, vacant lots, and other areas within the Project site or subdivision that are accessible to Applicant or within Applicant's control are kept reasonably clean and free of any construction debris, waste items, and mounds of soil, rocks, concrete, asphalt, and other debris. Notwithstanding the Warranty Amount, Applicant shall be responsible for any substandard, defective, or damaged Improvements if the Warranty Amount is inadequate to repair or replace any such Improvements. At the request of Applicant, the Warranty Amount or any part thereof may be replaced with a performance bond of a type and form approved by the City, together with a new or amended bond agreement. Applicant, or the person providing the replacement bond, shall be responsible for any substandard or defective Improvements if the amount of the replacement bond (the "Amended Warranty Amount") is inadequate to cover any such Improvements.

14. **APPLICANT INDEMNIFICATION.** Applicant agrees to indemnify, defend, and save harmless the City, its officers, employees, and agents from and against any and all liability which may arise as a result of the installation of the Improvements prior to the City's Acceptance of the Improvements, and from and against any and all liability which may arise as a result of any Improvements which are found to be defective or damaged

during the one-year warranty period. With respect to Applicant's agreement to defend the City, the City shall have the option to either provide its own defense, with all costs for such being borne by Applicant, or require that Applicant undertake the defense of the City.

15. **USE OF THE BOND AMOUNT.** In the event the Improvements are not properly and timely constructed, to the satisfaction of the City, pursuant to this Agreement and Tooele City ordinances, within the above stated time period(s), and/or Applicant fails to perform any obligation under this Agreement or Tooele City ordinances, the City may use and expend all the Bond Amount or such lesser amount as may be estimated or required by the City to be necessary to complete the Improvements. The City is under no contractual obligation under this Agreement to complete the Improvements.

16. **INADEQUATE PROCEEDS.** If the Bond Amount is inadequate to pay the cost of the completion of the Improvements according to City standards, for whatever reason, including previous reductions, or any other item for which the Bond Amount may be utilized, the Applicant shall be responsible for the deficiency independent of the performance guarantees set forth in this Agreement. Additionally, no further land use applications or other permits or licenses shall be issued by the City until the Improvements are completed or until a new bond and bond agreement acceptable to the City have been executed to insure proper completion of the remaining Improvements. Furthermore, the cost of completion of the Improvements shall include reimbursement to the City for all costs, including construction costs and any Incidental Costs incurred by the City, in completing the Improvements and/or obtaining the Bond Amount.

17. **INCIDENTAL COSTS.** If for any reason outside the control of the City the Bond Amount is not remitted or otherwise made available to the City within 30 days of any failure to perform by Applicant, then the City's costs of obtaining the Bond Amount, including the City Attorney's Office costs or outside attorney's fees and court costs, shall be added to the amount due to the City from Applicant and shall be added to the Bond Amount sums remitted to the City.

18. **ACCESS TO PROPERTY.** Should the City elect to use the Bond Amount to complete the Improvements, Applicant hereby expressly grants to the City, and any agent of City, the right of access to the Project property to inspect and complete the Improvements.

19. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard, defective, or damaged, in the perspective of the City, within the one year warranty period set forth above, the City shall notify Applicant in writing of such substandard, defective, or damaged Improvements. Applicant shall then have 15 days from the date of the City notice to commence repair of the Improvements, and a reasonable amount of time, as determined by the City, which shall be specified in the notice, to complete repair of the Improvements. Should Applicant fail to either

commence or complete repair of the Improvements within the required time periods, the City may exercise its option to remedy the defects and repair the damage, and also to demand payment for such from Applicant should the Bond Amount be insufficient to cover the costs incurred by the City.

20. **INSURANCE.** At all times during the construction of the Improvements, including through the end of the one-year warranty period, Applicant shall maintain an insurance policy covering any liability, damage, loss, judgment, or injury to any person or property, including, but not limited to, damage to Applicant or its Project property as a result of the work of any contractor or agent hired by the City to construct the Improvements, including the repair of damage or defect. The City shall be named an additional insured on this policy. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by the City. Applicant shall indemnify, defend, and hold harmless the City, its officers, employees, and agents for any liability which exceeds the insurance policy limit. The City, at its option, may collect and expend the Bond Amount to make the premium payments should Applicant fail to pay the premium. No further land use applications or other permits or licenses shall be issued by the City, and any existing approvals, permits, or licenses shall be suspended, until said premium is initially paid and a bond is in place to cover subsequent payments. Applicant further expressly agrees to indemnify, defend, and hold harmless the City, its officers, agents, and employees for and from any damage or loss suffered or any judgment resulting from the work of any contractor or agent hired by the City to install, complete, or remedy any defect in or damage to the Improvements.

21. **NOTICE.** Notice to Applicant or the City shall be mailed or delivered to the addresses shown in this Agreement. The date notice is received at the address shown in this Agreement shall be the date of actual notice, however accomplished. Notice sent by U.S. mail shall be considered received three days after mailing. Applicant's address may be changed by written notification from the Applicant.

22. **MECHANIC/MATERIALMEN LIENS.** Should the City elect to complete or remedy the Improvements, Applicant shall indemnify, defend, and hold harmless the City from and against any liability which exceeds the Bond Amount for the payment of any labor or material lien as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by City or which may arise due to either a defect in or failure of this Agreement or insufficient Bond Amount to cover such costs.

23. **FAILURE TO PERFORM.** In addition to those events described herein, the following shall be considered a failure to perform on the part of Applicant, the occurrence of which shall entitle the City to invoke any and all remedies outlined in this Agreement or any and all remedies it may have in equity or at law: Applicant's abandonment of the project, as determined by City; Applicant's insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; the commencement of a foreclosure

proceeding against the Project property; the Project property being conveyed in lieu of foreclosure.

24. **WAIVER.** The failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term, or condition. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring failure to perform.

25. **ATTORNEYS FEES.** In the event there is a failure to perform under this Agreement 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), either with or without litigation, the party prevailing in a controversy before a court of competent jurisdiction shall be entitled to recover reasonable attorneys fees and such reasonable costs and expenses as are incurred as a result of the failure to perform or in otherwise enforcing this Agreement.

28. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement. In case either party fails to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity or law.

29. **GOVERNING LAW.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by Tooele City ordinances in effect at the time of the execution of this Agreement. However, the Parties expressly acknowledge that any land use ordinances or regulations enacted after the execution of this Agreement, which are reasonably necessary to protect the health, safety, and welfare of the citizens of the City, shall also apply to the Project, the land use approval, and the Improvements that are the subject of this Agreement.

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

30.1. The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.

30.2. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter herein.

- 30.3. This Agreement may be amended or modified only by an instrument of equal formality signed by the respective Parties.
- 30.4. The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, amend, or described the scope, content, or intent of any part or parts of this Agreement.
- 30.5. If any portion of this Agreement 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.

SAMPLE

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

Applicant

Name and Title: _____
(Signature must be notarized on following page.)
(Attach additional signature pages for multiple owners, as necessary.)

City

Mayor

ATTEST:

City Recorder

Approved as to Form:

City Attorney

Exhibit A

Tooele City Bond and Fee Calculation Sheet with Improvements construction estimate

SAMPLE

Exhibit B

Project construction drawings
Project approval documents
Other Project-related documents and data

(attached only by reference)

Exhibit C

Original Irrevocable Letter of Credit

SAMPLE