

**EXCAVATION BOND AGREEMENT
(Cash Form)**

THIS BOND AGREEMENT (this "Agreement") is made and entered into the __ day of _____ 200_, by _____, the undersigned ("Excavator") in favor of the **CITY OF HOLLADAY**, a municipal corporation of the State of Utah whose address is 4580 S 2300 E, Holladay, Utah 84117 (the "City").

RECITALS:

A. Excavator has filed, or soon will file, an application (the "Application") with the City for approval of an excavation in the City's right-of-way at or near _____ in the City.

B. Pursuant to *City of Holladay Code of Ordinances* (the "Code") chapter 14.16 (the *Excavation Ordinance*), Excavator is required to file with the City a bond in the amount of \$ _____ to assure Excavator's full and timely compliance with all of Excavator's obligations under the Code regarding the proposed excavation (the "Excavation").

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals above, the covenants and undertakings of the parties hereto, to induce the City to issue the requested excavation permit, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Excavator hereby agrees as follows:

Section 1. Excavator's Obligations. Excavator timely shall comply with all applicable portions of the Code regarding the Excavation, including, without limitation, the requirements specified in the Excavation Ordinance concerning repair to the portion of the City's public way affected by the Excavation.

Section 2. Bond. To assure Excavator's full and timely compliance with its obligations hereunder, Excavator hereby tenders and delivers to City the sum of \$ _____ issued by _____ as cashier's check no. _____ (the "Bond"). The City shall deposit the Bond into an account (which may include other funds of the City) pending fulfillment to the City's satisfaction of Excavator's obligations under this Agreement. The City shall not, and shall have no obligation to, pay interest on any of the monies represented by the Bond.

Section 3. Release of Bond. The Bond shall remain on deposit with, and available to, the City to assure or to effect Excavator's full and timely performance of all of its obligations under this Agreement until two (2) years after the City's final acceptance of Excavator's restoration (the "Repairs") of the portion of the City's public way affected by the Excavation. Thereafter (provided that the Repairs are then free of defects, normal wear and tear excepted), the City shall refund to Excavator such portion of the Bond as may remain after reimbursement of the City's costs and expenses included in so assuring or effecting Excavator's performance of such obligations.

Section 4. Excavator's Default. If Excavator fails to properly effect the Repairs or otherwise fails to perform any of its obligations under the Code concerning or in any way relating to the Excavation, then

the City shall be deemed fully authorized (without further action or notice whatsoever) to use as much of the Bond amount as is required (in the City's opinion) to satisfactorily (a) complete the Repairs and/or to repair any defects therein, including (without limitation) the cost of any and all incidental construction, administrative or engineering expenses incurred by City to complete such work; or (b) perform Excavator's other defaulted obligations under this Agreement.

Section 5. No Waiver or Estoppel. Neither this Agreement nor the filing of the Bond by Excavator and the acceptance of the Bond by the City shall constitute a waiver or estoppel by or against the City concerning the Excavation, nor shall any such matters in any way relieve Excavator from the obligations to (a) fully and timely comply with all applicable provisions of the Code concerning the Excavation; (b) fully and timely restore the City's public way affected by the Excavation as required by the Code and the Excavation Ordinance; or (c) guaranty the materials and workmanship of Excavator's restoration of the City's public way for a period of two years after completion and the City's acceptance of such work, reasonable wear and tear excepted.

Section 6. General Provisions. The following provisions are also an integral part of this Agreement:

- (a) *Binding Agreement.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.
- (b) *Captions.* The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.
- (c) *Counterparts.* This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.
- (d) *Severability.* The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.
- (e) *Waiver of Breach.* Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.
- (f) *Cumulative Remedies.* The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.
- (g) *Amendment.* This Agreement may not be modified except by an instrument in writing signed by the parties hereto.
- (h) *Interpretation.* This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. In the event of any conflict or inconsistency between this Agreement and the Code, the Code shall control.
- (i) *Attorneys' Fees.* In the event any action or proceeding is brought by either party regarding this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial or on appeal.

(j) *Notice.* Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective addresses set forth herein or to such other address(es) as may be supplied by a party to the other from time to time in writing. During the period of time of this Agreement, Excavator must maintain current contact information on file with City. Failure to supply said information may result in the forfeiture of the bond amount.

(k) *Time of Essence.* Time is the essence of this Agreement.

(l) *Assignment.* Excavator may not assign or otherwise convey its rights or delegate its duties under this Agreement without the express written consent of the City.

DATED effective the date first above written.

EXCAVATOR/OWNER

Signature

Print Excavator's/Owner's Name

Address: _____

Telephone: _____

Contractor's License # _____

State of Utah
County of Salt Lake

On _____, 20____, _____ personally appeared before me,

___ Who is personally known to me

___ Whose identity I proved on the basis of _____

___ Whose identity I proved on the oath/affirmation of _____ a credible
witness

to be the signer of the above document, and he/she acknowledged that he/she signed it.

Notary Public

Accepted this _____ day of _____, 20____

CITY:

By: _____
Community Development Director

Exhibit AA@
To the Bond Agreement for
Completion of Proposed Improvements

The real property located at _____, Holladay, Salt Lake County,
Utah.

Exhibit AB@
To Bond Agreement for
Completion of Proposed Improvements

DETAILED DESCRIPTION OF IMPROVEMENTS:

This Agreement covers completion of an asphalt tie-in on _____.
Prior to the date of this Agreement, Owner has caused the area in question to be excavator, filled with compacted road base and otherwise prepared for paving. This Agreement covers the final grading, sterilization and paving aspects of the Bid.