

Bond Agreement for Completion of Proposed Improvements (Cash Form)

THIS BOND AGREEMENT (this *Agreement*) is made and entered into this ____ day of _____, 201_, by and between the **CITY OF HOLLADAY**, a municipal corporation of the State of Utah whose address is 4580 S 2300 E, Holladay, Utah 84117 (the *City*); by the undersigned owner of real property that is located within the City (*Owner*).

RECITALS :

A. Principal owns legal title to the real property (the *Property*) that is particularly described on exhibit A annexed hereto.

B. Principal has filed, or soon will file, an application (the *Application*) with the City for approval of the subdivision or other development of the Property.

C. Principal has requested the City to approve the Application prior to construction and installation of certain public improvements (the *Improvements*) required by ordinance to be placed in or adjacent to the Property in connection with such subdivision or development. The Improvements are particularly described on exhibit B annexed hereto.

D. Principal has requested that the City temporarily defer Principal's obligation to install the Improvements.

E. City is willing to defer Principal's obligation to install the Improvements conditioned on the irrevocable promise by Principal and Surety, jointly and severally, to complete, install, repair and maintain the Improvements as specified in this Agreement.

F. The parties intend to set forth herein their entire agreement regarding the subject deferral and to supercede hereby and to consolidate herein all of their prior negotiations and agreements, whether oral or written, regarding the same.

AGREEMENT :

NOW, THEREFORE, in consideration of the recitals above, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Principal's Completion and Warranty Obligations**. Principal irrevocably acknowledges its obligation to install the Improvements without cost to the City and hereby agrees, independently of Surety, to complete to the City's satisfaction the installation of the Improvements in

a good, workmanlike, lien-free manner within two (2) years after the date of this Agreement. Further, Principal hereby warrants that the Improvements will be free of defects (normal wear and tear excepted) for a period of one (1) year after all of the Improvements have been installed and finally accepted by the City. Although the parties acknowledge that the estimated cost of the Improvements currently is \$300.00, Principal shall complete and pay the full cost of installing and repairing the Improvements, whether or not such amount is adequate.

Section 2. **Repairs**. All responsibility for repair and maintenance of the Improvements shall remain with Owner until all of the Improvements have been installed and finally accepted by the City (collectively, *Installation/Acceptance*) and the warranty in section 1 above (the *Warranty*) has expired.

Section 3. **Bond**. To guarantee (a) satisfactory and timely Installation/Acceptance of the Improvements, and (b) the Warranty, (all as provided in sections 1 above), Owner here by assigns, transfers and sets over to the City all of its right, title and interest in a bond (*the Bond*) in the form of cash. The City shall not, and shall not have no obligation to, pay interest on any of the monies represented by the monies.

Section 4. **Release of Bond**. If (a) final Installation/Acceptance of the Improvements occurs within two (2) years after the date of this Agreement, and (b) the Improvements are free of defects (normal wear and tear excepted) for one (1) year after final acceptance by the City, then this Agreement shall thereafter be void and of no effect.

Section 5. **Failure to Perform**. If (a) Installation/Acceptance of the Improvements has not occurred within two (2) years after the date of this Agreement, or (b) the installed Improvements are not free of defects (normal wear and tear excepted) for one (1) year after final acceptance by the City, then the City shall within a reasonable time thereafter notify Principal and Surety in writing of Principal's failure to perform its obligations hereunder. Within thirty (30) days after such written notice by City, Principal and Surety jointly and severally shall pay to the City the sum of \$300.00 to satisfactorily complete installation of the Improvements and/or to repair any defects therein, including (without limitation) the cost of any and all incidental construction, administrative, legal or engineering expenses incurred by City to complete such work. After such improvements are satisfactorily installed or repaired, and finally accepted by the City, the City shall refund to Principal or Surety any money paid and remaining in the possession of the City pursuant to this Agreement.

Section 6. **No Waiver or Estoppel**. This Agreement shall not constitute a waiver or estoppel by or against the City concerning the Improvements, nor shall any such matters in any way relieve Principal from the obligations to (a) timely achieve satisfactory Installation/Acceptance of the Improvements, or (b) fully perform under the Warranty.

Section 7. **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.

(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.

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

(l) Assignment. Neither Principal nor Surety may assign or otherwise convey its rights or delegate its duties under this Agreement without the express written consent of the City.

(m) *No Partnership*. The parties do not by this Agreement in any way or for any purpose become partners or joint venturers with each other.

DATED effective the date first above written.

OWNER:

Signature

Print Name:

Address: _____

State of _____

County of _____

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

CITY:

CITY OF HOLLADAY

By: _____

Paul Allred

Community Development Director

ATTEST:

Stephanie Carlson, City Recorder

Exhibit A
to the Bond Agreement for
Completion of Proposed Improvements

The following-described real property located in Salt Lake County, Utah:

Project Name:

Parcel #

Project #

Address:

Exhibit B
to Bond Agreement for
Completion of Proposed Improvements

DETAILED DESCRIPTION OF IMPROVEMENTS:

Front and side yard landscaping required and street tree planting (if required)