

CITY OF DRAPER
IMPROVEMENT AGREEMENT
(LETTER OF CREDIT FORM)

THIS AGREEMENT is made by and between _____
_____ (hereinafter "Developer"); whose address is _____
_____ and **CITY OF DRAPER**, a municipal corporation of
the State of Utah, (hereinafter "City"); whose address is 1020 East Pioneer Road, Draper, Utah 84020.

WHEREAS, Developer desires to establish and record a proposed platted subdivision of land and/or receive a permit to develop certain property located within City, the Development is to be known as _____ (hereinafter "Development"), located at approximately _____ in City of Draper; and

WHEREAS, City will not approve Development unless Developer promises to install and warrant certain Improvements (hereinafter "Improvements") as herein provided and security is provided for that promise in the amount of \$_____.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **Installation of Improvements.** Developer agrees to complete all Improvements required by City and those specified in the bond estimate prepared by the City Engineer for Developer's Development, precisely shown on the plans, drawings, and specifications previously reviewed and approved by City in connection with the above described Development, to the satisfaction of City and in accordance with the standards and specifications established by the City Engineer and adopted by the City Council, within a period of time not to exceed eighteen (18) months from the date this Agreement is executed. Developer further agrees to pay the total cost of obtaining and installing Improvements, including the cost of acquiring easements.

2. **Dedication.** Where dedication is required by City, Developer shall dedicate to City the areas shown on the subdivision or development plat as public streets and as public easements, provided however, that Developer shall indemnify City and its representatives from all liability, claims, costs, and expenses of every nature, including attorney's fees which may be incurred by City in connection with such public streets and public easements until the same are accepted by City following installation and final inspection of all Improvements and approval thereof by City.

3. **Letter of Credit.** Developer hereby delivers to City an irrevocable, standby Letter of Credit in the total amount of \$_____, which is attached hereto as Exhibit "A" (hereinafter "Credit"). The Developer and City stipulate that the amount of Credit is a reasonable preliminary estimate of the cost of Improvements equal to one hundred and ten percent (110%), which ten percent (10%) of such cost is to cover contingencies and to secure together with ten percent (10%) of such cost to cover contingencies and to secure the warranty of this Agreement. City may draw upon Credit to its order as provided in Paragraph 4. The Developer hereby stipulates that the funds of Credit are not subject to any adverse claim, resulting trust, lien, or setoff. The expiration date of Credit shall exceed the eighteen (18) month completion time period specified in Paragraph 1 above by at least two (2) months. The total amount of Credit may be partially reduced periodically as the work progresses as provided herein. City shall, when requested in writing, inspect the construction, review any necessary documents and information, determine if the work completed complies with City construction standards and requirements, and review the City Engineer's cost

estimate. After receiving and approving the request, City shall in writing authorize a partial reduction in the aggregate amount of Credit in the approved amount; provided that City does not agree with the request, City and Developer shall meet and Developer shall submit any additional information required by City. Except as provided in this Paragraph or in Paragraphs 4 and 5, the issuer of Credit shall not release or allow drawings from Credit.

4. **Progress Payments.** Credit may be reduced upon the written request of Developer as system improvements are completed. The amount of the reduction shall be determined by the City Engineer. Reductions shall be made only as they apply to the completion, satisfactory to the City Engineer, of entire systems. Improvements for developments are typically grouped into six system categories: culinary water, storm drainage, roadways, parks/trails and landscaping, erosion control and miscellaneous/finish items. Additional categories may be added if approved by the City Engineer. Such written reduction requests may be made only once every thirty (30) days and no reduction shall be authorized until such time as the City Engineer has inspected Improvements and found them to be in compliance with City's standards and specifications. All reductions shall be by written authorization of the City Engineer. No Credit shall be reduced below ten percent (10%) of the City Engineer's estimated cost of the improvement to be installed until final acceptance by the City Engineer following a twelve (12) month improvement assurance warranty.

5. **Refund or Withdrawal.** City may withdraw funds from the Credit if (1) Improvements are not completed as required by the Agreement within the time period specified in Paragraph 1, or if (2) Improvements are not installed strictly in accordance with Paragraph 1, or maintained during the warranty period provided in Paragraph 13 of this Agreement and written notice of the deficiency has been given to Developer, who has failed to remedy the deficiency within ten (10) days after the notice is sent. In either of these events, City may withdraw funds from Credit both (1) those amounts necessary to either complete Improvements as required herein or alter or repair Improvements to conform to the requirements hereof, and (2) City's cost of administration incurred in obtaining Credit, including attorney's fees and court costs, which shall be deducted from Credit. If the amount of Credit is inadequate to pay the cost of the completion of Improvements according to City's standards or specifications for whatever reason, including previous reductions, Developer shall be responsible for the deficiency and no further building permits shall be issued in the subdivision or development until Improvements are completed or, with City Council approval, a new, satisfactory security has been executed and delivered to City or other satisfactory arrangements have been made to insure completion of the remaining improvements.

6. **Preliminary Release.** At the time herein provided, City may authorize release of all funds comprising Credit, except ten percent (10%) of the estimated cost of Improvements, which shall be retained by City until final release pursuant to the next paragraph. The ten percent (10%) shall continue as security for the performance by Developer of all remaining obligations of this Agreement, including the warranty, and may be withdrawn by City as provided hereinabove for any breach of such an obligation. The release provided for in this paragraph shall occur when City certifies that Improvements are complete, which shall be when Improvements have been installed as required and fully inspected and approved by City, and after as-built drawings have been supplied as required.

7. **Release.** Upon final inspection and acceptance of all Improvements by City, City may authorize release of the balance of Credit except an amount equal to ten percent (10%) of the City Engineer's estimated cost of Improvements to insure Developer's performance of all warranty and other obligations of this Agreement. Such balance of Credit may be withdrawn by City in the event of default by Developer.

8. **Non-Release of Developer's Obligations.** It is understood and agreed between the parties that the establishment and availability to City of Credit as herein provided, and any withdrawals there from by City shall not constitute a waiver or estoppel against City and shall not release or relieve Developer from its obligation to install and fully pay for Improvements as required in Paragraph 1 above, and the right of City to withdraw from Credit shall not affect any rights and remedies of City against Developer for breach of any covenant herein, including the covenants of Paragraph 1 of this Agreement. Further, Developer agrees that if City withdraws from Credit and performs or causes to be performed the installation or warranty work required of Developer hereunder, then any and all costs incurred by City in so doing which are not collected by City by withdrawing from Credit shall be paid by Developer, including administrative, engineering, legal, labor and materials and other procurement fees and costs.

9. **Connection.** Upon performance by Developer of all obligations set forth in this Agreement and compliance with all applicable resolution, rules, and regulations of City, whether now or hereafter in force, including payment of all connection, review and inspection fees, City shall permit Developer to connect Improvements to City's water system and shall thereafter utilize and maintain such facilities to the extent and in the manner now or hereafter provided in City's regulations.

10. **Payment of Fees.** City Ordinances require payment by Developer of certain fees in specified amounts, which amounts, together with all other fees and charges required by City Ordinances, shall be paid by Developer prior to the filing of the final plat of the Subdivision in the office of the Salt Lake County Recorder.

11. **Fire Protection.** Developer will also limit the construction of buildings within the Subdivision to those lots lying within 500 feet of a fire hydrant fully charged with water under sufficient pressure to provide adequate fire protection.

12. **Inspection.** Improvements, their installation, and all other work performed by Developer or its agents pursuant to this Agreement shall be inspected at such times as City may reasonably require and prior to closing any trench or excavation containing such Improvements. City shall have a reasonable time of not less than 24 hours after notice in which to send its representatives to inspect Improvements. Any required connection and impact fees shall be paid to City by Developer prior to such inspection. In addition, all inspection fees required by ordinances and resolutions of City shall be paid to City by Developer prior to inspection.

13. **Warranty.** Developer hereby warrants that Improvements installed, and every part thereof together with the surface of the land and any Improvements thereon restored by Developer, shall remain in good condition and free from all damage arising from any defect in design, construction, materials, or workmanship during the Warranty Period, and Developer, upon notice from City, shall promptly make all repairs, corrections, and/or replacements for all defects in workmanship, materials, and equipment during the Warranty Period, without charge or cost to City. City may at any time or times during the Warranty Period inspect, photograph, or televise Improvements and notify Developer of the condition of Improvements. Developer shall thereupon immediately make any repairs or corrections required by this paragraph. "Warranty Period" means a period of twelve (12) months beginning on the date on which Improvements are certified complete by City. Also reference section 17-5-080 Warranty Period of City of Draper Municipal Code.

14. **Developership.** Improvements shall become the property of City upon final inspection and approval of Improvements by City, and Developer shall thereafter advance no claim of right of Developership, possession, or control of Improvements.

15. **As-Built Drawings.** Developer shall furnish City one set of drawings on both mylar and a disk in AutoCAD format showing Improvements and any related structures or materials as such have actually been constructed by Developer. City shall not be obligated to release Credit until the as-built drawings have been provided to City.

16. **Binding Effect and Assignment.** This Agreement shall be binding upon, and inure to the benefit of, the heirs, officers, agents, legal representatives, successors and assigns of the parties hereto. No party shall assign or transfer any rights under this Agreement without the prior written consent of the other first obtained, which consent shall not be unreasonably withheld.

17. **Notices.** Any notice required or desired to be given hereunder as shall be deemed sufficient if sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble.

18. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

19. **Governing Law.** This Agreement and the performances hereunder shall be governed by the laws of the State of Utah.

20. **Counterparts.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instrument, and each counterpart shall be deemed an original.

21. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

22. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

23. **Entire Agreement.** This Agreement, together with its exhibits and the approved plans and specifications referred to, contains the entire and integrated Agreement of the parties with respect to the subject matter hereof, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

24. **Default.** In the event either party hereto default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

25. **Other Bonds.** This Agreement and Credit do not alter the obligation of Developer to provide other bonds under applicable ordinance of City. The furnishing of security in compliance with the requirements of other jurisdictions shall not adversely affect the ability of City to draw on Credit as provided herein.

26. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.

27. **Exhibits.** Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

28. **Liability.** Developer agrees to hold City harmless from any and all liability which may arise as a result of Improvements which are installed until such time as City certifies Improvements are complete and accepts Improvements at the end of the Warranty Period.

29. **Amendment.** Any amendment or modifications of this Agreement shall be made in writing, signed by the parties, and attached hereto.

30. **Extension.** The Bond Agreement and security may be extended one time for six (6) months. Any subsequent extension shall require approval by the City Council following a timely written request by Developer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this _____ day of _____, 20_____.

“DEVELOPER”

By: _____

Its: _____

“CITY”

ATTEST:

DRAPER CITY

City Recorder

City Engineer

DEVELOPERS ACKNOWLEDGMENT

(Complete if Developer is an Individual)

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the _____ day of _____, 20____, personally appeared before me _____, the signer(s) of the foregoing instrument who duly acknowledged that he/she/they executed the same.

NOTARY PUBLIC

(Complete if Developer is a Corporation)

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the _____ day of _____, 20____, personally appeared before me _____, who being duly sworn, did say that he/she is the _____ of _____, a corporation, and that the instrument was signed in behalf of the corporation by authority of its bylaws (or by a resolution of its Board of Directors) and _____ Acknowledged to me that the corporation executed the same.

NOTARY PUBLIC

(Complete if Developer is a Partnership)

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the _____ day of _____, 20____, personally appeared before me _____, who being duly sworn, did say that he/she is the _____ of _____, a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held by authority of its by-laws and signed in behalf of that partnership.

NOTARY PUBLIC

(Complete if Developer is a Limited Liability Company)

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the _____ day of _____, 20____, personally appeared before me _____, who being duly sworn, did say that he/she is a _____ of _____, a limited liability company, and that the foregoing instrument was duly authorized by the limited liability company at a lawful meeting held by authority of its operating agreement and signed in behalf of the limited liability company.

NOTARY PUBLIC

CITY'S ACKNOWLEDGMENT

STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

On the _____ day of _____, 20____, personally appeared before me _____, who being duly sworn, did say that he/she is the City Engineer of City of Draper, a municipal corporation, and that this instrument was signed in behalf of City by authority of its governing body and the City Engineer acknowledged to me that City executed the same.

NOTARY PUBLIC