

## **Bond Agreement General Improvements (Escrow Form)**

**THIS BOND AGREEMENT** (this “*Agreement*”) is made and entered into effective \_\_\_\_\_, 2019, by and between **MILLCREEK**, a municipal corporation of the State of Utah, whose address is 3330 South 1300 East, Millcreek, Utah 84106 (the “*City*”), and the undersigned, (referred to in this Agreement as “*Contractor*”).

### **RECITALS:**

A. Contractor proposes to improve certain property in the location (the “*Location*”) that is described on exhibit “A” annexed hereto.

B. Various improvements are required by the Millcreek Code of Ordinances or the planning commission for such improvements and in lieu of actual completion of such improvements the Contractor may file a bond with the City in the form of this Agreement.

C. The City is willing to permit the Contractor to pursue development conditioned on Contractor’s promise to install the improvements and on Contractor’s deposit Contractor’s deposit into an escrow controlled by Escrow Agent of an amount equal to the estimated cost of installation of the Improvements (as defined below) as described on exhibit “B” annexed hereto.

D. The parties intend to set forth herein their entire agreement regarding the Improvements and to supersede 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. **Contractor’s Completion and Warranty Obligations.** Contractor irrevocably acknowledges its obligation to install the improvements (“Improvements”) as described on exhibit “B” in the Location without cost to the City and hereby agrees to satisfactorily complete the installation of the Improvements in a good, workmanlike, lien-free manner. For purposes hereof Improvements shall mean installation of the Improvements as described in and pursuant to City ordinances and standards or planning commission requirements. Further, Contractor hereby warrants that the Improvements will be free of defects for a period of one (1) year after all the Improvements have been installed and finally accepted by the City (the “Warranty”).

Section 2. **Repairs.** Contractor and the City agree that all responsibility for repair and maintenance of the Improvements remains with Contractor until all the Improvements has

been installed and finally accepted by the City (the Improvements and acceptance by the City collectively, “*Improvements/Acceptance*”) and the Warranty has expired.

Section 3. **Deposit.** To assure and guarantee (a) the satisfactory and timely Improvements/Acceptance of the Improvements, and (b) the Warranty (all as provided in Section 1 above), contemporaneously herewith Developer shall deposit into a segregated escrow account (the “Escrow”) controlled by Escrow Agent for the amount and in the sum of \$\_\_\_\_\_ (the “Deposit”), which is the estimated cost of the Improvements as set forth in exhibit “B.” Contractor shall pay all escrow fees and other charges charged by Escrow Agent in connection with the Escrow. Escrow Agent hereby acknowledges the Deposit and the establishment of the Escrow and hereby irrevocably agrees to hold and disburse the Deposit only in accordance with the express terms of this Agreement.

Section 4. **Assignment of Deposit.** Contractor hereby assigns, transfers, and sets over to the City all of Contractor’s right, title, and interest in and to the full proceeds of the Deposit and also hereby assigns, transfers, and sets over to the City the right to use the Deposit in the event of any default or noncompliance in the performance for which this bond is posted and filed.

Section 5. **Release of Deposit.** If Improvements has been constructed to the reasonable satisfaction of the City, then the City will release ninety percent (90%) of the Deposit that is associated with the Improvements. Further, if one (1) year after final Improvements/Acceptance of the Improvements and the Improvements are then free of defects, normal wear and tear excepted, the City will release the remaining amount of the Deposit.

Section 6. **Failure to Install Improvements/Failure of Warranty.** If (a) Improvements/Acceptance of the Improvements has not occurred on or before\_\_\_\_\_, or (b) the installed Improvements is not free of defects for one (1) year after final acceptance by the City, then the City may unilaterally (without consent or approval of any kind from Contractor) at any time thereafter use the Deposit (full or any amount). The City shall be deemed fully authorized (without further action or notice whatsoever) to use as much of the Deposit as is required (in the City’s sole opinion) to satisfactorily complete installations of the Improvements and/or to repair any defects therein, including (without limitation) the cost of any and all incidental construction, legal, administrative, or engineering fees or expenses incurred by the City to effect such work. Any balance of the Deposit remaining after payment of all such costs, fees, and expenses, and a reasonable reserve, in an amount determined by the City, shall be refunded to Contractor.

Section 7. **No Waiver or Estoppel.** This Agreement is irrevocable unless revoked by the mutual consent of Contractor and the City. Neither this Agreement nor deposit of the referenced escrow by Contractor and the acceptance of the Deposit or this Agreement by the City shall constitute a waiver or estoppel by or against the City concerning the Improvements, nor shall any such matters in any way relieve Contractor from the obligations to (a) timely achieve satisfactory Improvements/Acceptance of the Improvements or (b) fully perform under the Warranty, regardless of whether or not the Deposit is adequate to pay for the satisfactory Improvements/Acceptance of the Improvements or the satisfactory fulfillment of the Warranty. If the Deposit is inadequate to pay for the cost of Improvements for whatever reason, Contractor

agrees to pay such deficiency independent of this Agreement, which amount may include all incidental construction, legal, administrative, or engineering fees or expenses incurred by the City to affect such work. Additionally, no further permits or approvals shall be issued to the Contractor until such deficiency is cured.

Section 8. **Inspection.** The City shall have the right to inspect Improvements during construction. If Improvements involves underground Improvements, then the Contractor shall notify the City in writing when underground Improvements are ready to be backfilled and agrees not to backfill such trenches or excavations until such underground improvements have been inspected by the City.

Section 9. **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 the rights and remedies shall be exclusive of, in lieu of, or a 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, expert

witness fees, 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, 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 of the essence of this Agreement.

(l) Assignment. Contractor may not 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 City and Contractor do not by this Agreement in any way or for any purpose become partners or joint ventures with each other.

(n) Benefit of Agreement. The benefits and protection provided by this Agreement shall inure solely to the City. The City shall not be liable for any claim or obligation of Contractor. City may, in its sole and absolute discretion, interplead the Deposit (full or any amount thereof) with a court pursuant to Utah R. Civ. P. 67 and Utah Code Ann. § 76-27-4.

(o) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any such writings, shall be deemed to refer to and include the Agreement and all exhibits and writings.

**DATED** effective the date first above written.

**CONTRACTOR:**

By: \_\_\_\_\_  
Printed \_\_\_\_\_ Name: \_\_\_\_\_

Its: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Project Name: \_\_\_\_\_  
Project Address: \_\_\_\_\_

The Escrow Agent hereby acknowledges that there are funds in the amount of \$\_\_\_\_\_ that have been set aside pursuant to this Agreement for payment of the Improvements, and Escrow Agent agrees to hold such funds in trust and dispose of such funds strictly in accordance with the terms and conditions of this Agreement.

**ESCROW AGENT:**

Name of Escrow Agent: \_\_\_\_\_  
(Print Name of Escrow Agent)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**CITY:**

**MILLCREEK**

**ATTEST:**

By: \_\_\_\_\_  
Elyse Greiner, City Recorder

By: \_\_\_\_\_  
Jeff Silvestrini, Mayor

**Exhibit “A”**

**to Bond Agreement for  
Completion of Proposed Improvements**

**[description of location]**

**Exhibit “B”**

**to Bond Agreement for  
Completion of Proposed Improvements**

**[Engineer’s estimate of Improvements cost and description of the Improvements]**