

**Bond Agreement Excavation Completion
(Surety 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*”), _____, (the “*Principal*”), and _____ (the “*Surety*”).

RECITALS :

A. Principal proposes to dig or excavate in a City right-of way in the location (the “*Location*”) that is described on exhibit “A” annexed hereto. Exhibit A also contains a description of the proposed project.

B. Principal has filed, or will soon file, a request for a permit (the “*Application*”) with the City for approval to dig or excavate in a City right-of-way.

C. The City is willing to permit the Principal to dig or excavate in a City right-of-way conditioned on Principal’s and Surety’s promise to restore the City right-of-way and on Principal’s and Surety’s deposit with the City of this Agreement.

D. The parties intend to set forth herein their entire agreement regarding the Restoration and to supersede hereby and to consolidate herein all their prior negotiations and agreements, whether oral or written, regarding the same.

A G R E E M E N T :

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 and Surety Completion and Warranty Obligations.** Principal and Surety jointly and severally bind themselves, their heirs, executor, administrators, successors and assigns for the performance of Principal’s obligation to restore the City right-of-way in the Location and as described in the Application without cost to the City (“*Restoration*”) and hereby agrees to satisfactorily complete the installation of the Restoration in a good, workmanlike, lien-free manner. For purposes hereof Restoration shall mean restoration of the right-of-way as described in and pursuant to City ordinances and standards. Further, Principal and Surety jointly and severally bind themselves their heirs, executor, administrators, successors and assigns that the Restoration will be free of defects (poor workmanship or materials and normal wear and tear excepted) for a period of three (3) years after all the Restorations have been installed and finally accepted by the City (the “*Warranty*”).

Section 2. **Repairs.** Principal and Surety jointly and severally agree that all responsibility for repair and maintenance of the Restoration remains with Principal and Surety

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

Section 3. **Principal’s Failure to Perform.** If Principal fails to perform Restoration obligations, Warranty obligations, or any of its obligations under the Millcreek Code of Ordinances (Restoration obligation, Warranty obligation, each obligation under a permit or the Millcreek Code of Ordinances are collectively referred to herein as a “*Performance Obligation*”), then City may notify Principal and Surety that Principal is in default and may terminate Principal right to perform the Performance Obligations. Upon terminations of Principal right to perform the Performance Obligations, Surety shall promptly and at Surety’ sole cost and expense exercise one of the following options: (a) Surety may undertake to perform the Performance Obligations, itself, through its agents, or through and independent contractor, or (b) pay and tender payment of the estimated cost to complete the Performance Obligations. The estimated cost to complete the Performance Obligations shall be an amount approved by the City.

Section 4. **Surety’s Failure to Perform.** If the City has provided notice to the Principal pursuant to Section 3 the City may declare the Surety in default by following the procedure identified in this section. The City will provide Surety an additional notice demanding that Surety perform its obligations under this Agreement. If Surety fails to accept it obligations to perform the Performance Obligations or pay and tender payment of the estimated cost to complete the Performance Obligations within 15 calendar days of the additional notice, then City may pursue any remedies available to the City and City may refuse to accept any new Bonds from Surety.

Section 5. **Surety’s Obligations and Waiver.** Surety shall not be liable to City for obligations of Principal that are unrelated to the Performance Obligations. Surety hereby waives notice of any change to Performance Obligations.

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 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. Principal 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 Principal do not by this Agreement in any way or for any purpose become partners or joint ventures with each other.

(n) 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.

(o) Termination. Surety may withdraw as surety and terminate this Agreement upon 30 day prior written notice of such withdrawal to City and Principal and this Agreement and Surety's obligation hereunder shall terminate 30 days after City's receipt of such written notice; provided, however, the Surety's obligations hereunder shall continue in full force and effect, notwithstanding such notice and termination, with respect to all projects that were

commenced before such termination.

DATED effective the date first above written.

PRINCIPAL:

By: _____
Printed Name:

Its: _____
Address: _____

PRINCIPAL:

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 Restoration**

[description of location]