

MAPLETON CITY

BONDING AGREEMENT FORM

****PLEASE READ ALL INFORMATION CAREFULLY****

Note: Twenty percent (20%) of any bond shall be posted in the form of cash.

Subdivision Bond Amount \$ _____ Bond Expiration Date 13 months after recording

Durability Bond Amount (10%) \$ _____ Total Bond Amount _____

Irrevocable Letter of Credit Amount \$ _____ Cash Amount (min. 20%) \$ _____

PROJECT NAME _____ Phase or Plat _____

Address of Project _____

Name of Developer _____ Developer's Address _____

City _____ Zip _____ Phone # (____) _____

Financial Institution (if different from above) _____

Address _____ City _____ State _____ Zip _____ Phone #(____) _____

Bond Provided For: Please check the appropriate box(es)

- Engineering requirements for on and off site improvements (See Attached Bond Estimate form)
- Landscaping, parking or other similar on site improvements
- Improvement Guarantee for building permit
- Subdivision or Development Plat Recording
- Occupancy Permit or Temporary Occupation Permit
- Business License
- Building Renovation - Building Expansion or Project Expansion:
- Required by Planning Department (Specify) _____
- Driveway Installation
- Street Trees
- Project Plan Approval for Occupancy
- Permanent Electrical Hook-Up
- Building Permit (# _____)
- Other (please specify) _____

IMPORTANT: Included herein is the Bond Agreement in its entirety. Make sure the entire document is filled out correctly. Missing or incomplete information will result in the rejection of the Bond Agreement. This Agreement must be signed and notarized by the applicant. It will also need to be signed and notarized by the financial institution (bank) if a letter of credit accompanies this Agreement. Again, failure to complete this form in its entirety will cause the rejection of the Bond Agreement, and no bond release can be issued.

THIS AGREEMENT entered into this ____ day of _____, _____, by and between Mapleton City, a Municipal Corporation of Utah (hereinafter referred to as CITY), and _____, (hereinafter referred to as APPLICANT), a CORPORATION, PARTNERSHIP, INDIVIDUAL (line out those which do not apply. APPLICANT is located currently at (mailing address) _____, and the telephone number is (_____)_____.

WITNESSETH:

WHEREAS, APPLICANT desires from CITY _____;

(Describe what you are requesting. i.e building permit, subdivision, etc)

WHEREAS, CITY will not grant said permit(s)/approval until adequate provision has been made to guarantee installation of the improvements, if any, which are estimated to cost \$_____, based on City Engineering Bond formulation or a City approved estimate as outlined by Chapter 17.20 which is as follows:

This section contains provisions for subdivision bonds, which shall apply to all land development which is subject to regulation by Mapleton City:

Bonding shall be required for any street improvements that must be installed at the time of development approval or with the issuance of a building permit.

Bonding for street improvements shall be established by the City Engineer or his/her designee.

All other bonding relating to site development such as landscaping, driveway installation, early occupancy and similar matters shall be established by the Planning Department.

A bond shall be posted with Mapleton City in a principal amount of one hundred twenty percent (120%) of the total estimated cost of any performance which is promised to the City.

The estimated cost for street improvements shall be based on the average cost paid by the City for the same type of performance.

The estimated cost of other improvements shall be based on a review of actual bids for the improvement, except as follows:

1. There landscaping is required, the developer submits at least two bids from landscaping companies to be considered.
2. For all new single family residential units, an improvement protection bond in the amount of one thousand dollars (\$2,000) shall be required to be paid at the issuance of said building permit.
3. If when the bond is first posted, or at any time thereafter, it is foreseeable that the promised performance will take more than one year to perform, the principal amount of the bond shall be increased by not less than ten percent (10%) for each additional year of performance. The original bond amount shall be adjusted to conform with the increased bond amount. A bond may be extended only if special circumstances warrant an extension, as determined by the City.

- A. The bonds may be in the form of cash or an irrevocable letter of credit. At least 10% of the performance bond shall be in the form of cash.
- B. The durability bond shall be a minimum of ten percent (10%) of the subdivision. The durability bond shall be posted in the form of cash.
- C. When the subdivision bond is in the form of an irrevocable letter of credit, the letter shall include a provision that the bond shall expire within thirteen (13) months from the date issued and if the project has not been completed by that date, then the bond shall automatically be considered foreclosed upon. All remaining funds shall be thereafter remitted to the City as set forth in the bonding agreement.
- D. The subdivision bond may be partially released if the performance to which it relates has been satisfactorily completed, provided that beyond work completed, the ten percent (10%) durability bond will be retained to insure completion of the entire performance.
- E. The cash portion of any bond shall be the last monies released.
- F. A service charge in an amount not exceeding one hundred dollars (\$100) shall be charged to cover the actual cost of processing partial bond releases after the fourth release.
- G. The Community Development Director or his/her designee may establish procedures consistent with this section relating to the administration of performance bonds, including but not limited to fund management, default and collection.

and,

WHEREAS, provision has been made by law whereby APPLICANT may, in lieu of final completion of the improvements, file a bond acceptable to CITY in favor of CITY to secure to CITY the actual construction of the improvements and repair of any damage done to public property in a manner satisfactory to CITY;

NOW, THEREFORE, the parties agree as follows:

1. All data which are used by CITY to compute the cost of, or otherwise govern the design and installation of the improvements and any necessary repairs, is made a part of this Bond Agreement (hereinafter referred to as "Agreement") and is incorporated herein by this reference.
2. If this Agreement covers improvements required in development, this Agreement then incorporates by reference the development plan and all data required by Title 15 of the Mapleton City Code.
3. APPLICANT shall complete the improvements and any repairs required by this Agreement within the time period(s) as specified either in this agreement and/or in "**Exhibit A**" (actual bank letter) attached hereto and incorporated herein by this reference.
4. APPLICANT hereby files this bond with CITY for the purpose of guaranteeing construction and installation of the improvements in the form **Cash** and/or an **IRREVOCABLE LETTER OF CREDIT** issued by _____, Account Number _____, and in the amount of \$ _____ (which is the total estimated cost hereinafter referred to as "The proceeds"). Said Irrevocable Letter of Credit, attached hereto as "**Exhibit A**", is issued in favor of CITY to the account of _____, APPLICANT herein, and is made a part of this Agreement. APPLICANT further agrees not to make demand for the proceeds until thirty (30) days after the time period(s) stated in paragraph "3" above.

5. When the improvements are partially completed by the applicant, CITY may allow up to four (4) partial releases of the proceeds without a fee for processing each release. Any release which is more than four (4) shall be assessed. There is a one hundred dollar (\$100) minimum fee for each request. This fee shall be withdrawn by CITY prior to the final release. **All funds held in the Irrevocable Letter of Credit will be released first. Then any cash deposited with the City will be released.**
6. Notwithstanding the fact that certain of the proceeds, which are the subject of this Agreement, may be released upon partial completion of the improvements which the proceeds guarantee, any partial release shall not constitute final acceptance of the improvements by CITY. Final acceptance of the improvements shall be official only upon written notice to APPLICANT from CITY expressly acknowledging said final acceptance and that any damage done to public property during the course of said improvements has been repaired to a standard acceptable to CITY.
7. APPLICANT expressly agrees that notwithstanding any partial release of any of the proceeds requested by APPLICANT and/or granted by CITY, CITY shall only release proceeds in an amount equal to the estimated cost of completion of the improvement.
8. APPLICANT hereby files this bond with CITY for the purpose of guaranteeing improvements in the form **Cash** (10% of the performance bond) and issued by _____, Account Number _____, and in the amount of \$ _____ (which is 10% of the subdivision bond). Said Durability Bond, attached hereto as "**Exhibit B**", is issued in favor of CITY to the account of _____, APPLICANT herein, and is made a part of this Agreement.
9. The Durability Bond shall be held for a period of one year unless otherwise stipulated. The time period will begin following the final inspection approval of the subdivision.
10. APPLICANT agrees to defend, indemnify, and hold CITY, its officers, agents, and employees harmless from any and all liability which may arise as a result of the installation of the improvements and the repairing of any damage done to public property during the course of said improvements
11. In the event the improvements have been installed and any necessary repairs completed to the satisfaction of CITY, pursuant to this Agreement, and Mapleton City Ordinances within the above stated time period(s), CITY agrees to execute a written release of the proceeds of the Letter of Credit and/or cash.
12. In the event the improvements have not been installed or repairs completed to the satisfaction of CITY, and/or the fees have not been paid pursuant to this Agreement and Mapleton City Ordinances within the above stated time period(s), the CITY shall notify the developer and the entity issuing the Letter of Credit. This entity issuing the Letter of Credit shall remit to CITY, upon CITY'S written demand, the proceeds of the Letter of Credit. CITY may use and expend all the proceeds or such lesser amount as may be estimated by CITY to be necessary to complete the improvements, make necessary repairs and/or pay the fees as required herein.
13. **It is the APPLICANT's responsibility to request a final inspection for all improvements installed prior to the expiration date of said bond.**
14. If, upon written demand of CITY after expiration of the time period(s) set forth above, the proceeds are not remitted to CITY within thirty (30) days of the written demand, then CITY'S costs of obtaining the proceeds,

including costs incurred by the City Attorney or by outside attorneys' fees and court costs, shall be added to the amount due CITY from APPLICANT and shall be included with the bond proceeds remitted to CITY.

15. It is expressly understood and agreed upon among the parties that this Agreement shall not relieve APPLICANT from the obligation to install and fully pay for the improvements and any necessary repairs. Should CITY demand payment pursuant to this Agreement, APPLICANT agrees to pay all the fees and to install any of the improvements or repairs, or compensate CITY for all the costs including, but not limited to, construction, engineering, and legal costs incurred by CITY to install any of the improvements or make repairs to the extent that said fees and/or costs are not adequately covered by the proceeds.
16. If the proceeds are inadequate to pay the cost of completion of the improvements or repairs according to CITY standards for whatever reason, including previous reductions, APPLICANT shall be responsible for the deficiency. Additionally, no further permits shall be issued, no business license shall be issued, and/or any existing permits or business license applicable to the location of the improvements shall be suspended until the improvements or repairs are completed or, with the approval of Mapleton City Administrator until a new bond has been executed to insure completion of the remaining improvements or repairs.
17. Upon receipt of the proceeds, after the expiration of the time period(s) set forth above, the cost of completion of the improvements or repairs shall include reimbursement to CITY for all costs including, but not limited to, construction, engineering, administration, and legal costs incurred by CITY in completing the improvements and repairing any damage done to public property during the course of said improvements.
18. CITY may use the proceeds to hire a contractor on behalf of APPLICANT to complete the improvements or make repairs. APPLICANT expressly grants to CITY, and any contractor hired by CITY on behalf of APPLICANT, its successors, and/or assigns, the right of access to the project property to complete the improvements and repair any damage done to public property during the course of said improvements.
19. Should CITY exercise its option to install or complete the improvements or repairs, APPLICANT shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or personal injury to any person or property, including, but not limited to, damage to APPLICANT or its property as a result of the work of any contractor hired by CITY on behalf of APPLICANT, its successors, and/or assigns. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by CITY. APPLICANT shall defend, indemnify, and hold harmless CITY, its officers, employees, and agents for any liability which exceeds the insurance policy limit. APPLICANT further agrees that CITY, at its option, may collect and expend the proceeds to make the premium payments should APPLICANT fail to pay said premium at the time of APPLICANT'S default on this bond as determined by CITY. No permit approval, or business license, shall be issued by CITY, and any existing permit, approval, or business license shall be suspended until said premium is initially paid and a bond is in place to cover subsequent payments should APPLICANT fail to pay such. APPLICANT further agrees to defend, indemnify, and hold harmless CITY, its officers, agents, and employees for or from any damage or loss suffered or any judgment resulting from the work of any contractor hired by CITY on behalf of APPLICANT.
20. Should CITY exercise its option to install or complete the improvements or repairs, APPLICANT shall defend, indemnify, and hold harmless CITY for any liability which exceeds the bond amount for the payment of any mechanic's or materialmen's liens as a result of any work of any contractor (including subcontractors and

materialmen of any contractor) hired by CITY on behalf of APPLICANT, or which may arise due to a defect in the payment bond.

21. Wherever the term "APPLICANT" is used herein, it shall also refer to all successors and/or assigns of APPLICANT.
22. This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah.
23. The making and execution of this Agreement have been induced by no representations, statements, warranties, or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter herein. This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.
24. If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby but shall remain in full force and effect.

WHEREUPON, the parties hereto have set their hands the day and year first above written.

DEPOSITORY

Financial Institution/Bank:

By (Print Name): _____

Title: _____

Signature: _____

Date Signed: _____

APPLICANT

Subdivision Name:

By (Print Name): _____

Title: _____

ADDRESS: _____

(Address where bond release can be mailed to):

Signature: _____

APPLICANT NOTARY

(Complete only if APPLICANT is an Individual)

STATE OF _____)

COUNTY OF _____) ss.

On this ____ Day of _____, ____, personally appeared before me, _____, the signer(s) of the foregoing instrument, who duly acknowledged to me that she or he executed the same.

NOTARY PUBLIC

(Print Name): _____ My Commission Expires: _____

Signature: _____ Residing in _____ County.

“Exhibit A”

Sample Letter of Credit

Date:

Bank/Financial Institution
Address
City, State and Zip Code

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah 84664

Re: Irrevocable Letter of Credit #

Dear Sirs:

We hereby establish an Irrevocable of Credit in favor of Mapleton City for the account of (Developer’s Name and Address) in the aggregate amount of \$_____ available to Mapleton City when accompanied by a statement from Mapleton City acknowledging that the improvements covering the (Project Name), located at approximately (Project address), have not been completed or that any defects which may have developed therein have not been repaired.

We hereby acknowledge that under the terms of this Irrevocable letter of Credit document, Mapleton City Municipal Corporation exclusively, reserves the right to take the following actions:

1. Authorize a partial release of funds for work completed and inspected by Mapleton City.
2. Authorize a full release of funds for work completed and inspected by Mapleton City.
3. Foreclose on the Irrevocable Letter of Credit, and collect all funds therein for the work which has not been completed by the developer in the time required by Mapleton City.

This bond shall expire within thirteen (13) months from the date issued and if the project has not been completed by that date, then the bond shall automatically be considered foreclosed upon. All remaining funds shall be thereafter remitted to the City as set forth in the bonding agreement. We hereby agree with bona fide holders that all demands drawn under and in compliance with the terms of this Irrevocable Letter of Credit shall meet with due honor upon presentation and delivery of a demand letter.

Sincerely,

Bank President/Vice President or Designee

“Exhibit B”

Sample Letter of Cash Bond

Date:

Bank/Financial Institution
Address
City, State and Zip Code

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah 84664

Re: Performance & Durability Bond

Dear Sirs:

We hereby acknowledge and establish a cash savings account in the name of Mapleton City and (Owners Name) for the amount of _____ Dollars (\$ _____) in account No. _____. The cash portion of any bond shall be the last monies released. This cash bond is for and on behalf of the improvements covering the (Project Name) Subdivision project located at approximately (Property address) Mapleton, Utah.

A bond may be partially released if the performance to which it relates has been satisfactorily completed providing the bond work completed. Ten percent (10%) of the bond is to be retained to insure completion of the entire performance. This bond will begin on the date of the final approved release of the subdivision bond and held for a period of one year unless otherwise stipulated by the City.

Sincerely,

Bank President/Vice President or Designee