

**AGREEMENT WITH DEVELOPER AND BANK
IN LIEU OF A PERFORMANCE AND/OR WARRANTY BOND**

Project Name: _____

Project Number: _____

Permit Number: _____

Developer: _____

Bank: _____

Amount of Guarantee: \$_____.

Account Number: _____

Description of Work Covered by the Guarantee: *(insert brief description of the work covered by the warranty including project name and location):* _____

_____ and
all necessary infrastructure as shown on the approved set of construction plans on file with the
City of Hood River Engineering Department.

To be completed no later than _____.

This Agreement with Developer and Bank in Lieu of a Performance and/or Warranty Bond
(Agreement) is entered into by and between the City of Hood River, the Developer and the Bank,
and

Whereas, Developer applied to the City and received approval to construct the Project, and

Whereas, Developer is required to construct the improvements described above as a condition of
approval, and

Whereas, Developer is required by the Title 16 of the Hood River Municipal Code, by reference
incorporated herein, to post (check as applicable):

- A guarantee of completion in the amount of 110% of the cost of the Project's
public improvements, and/or
- A two year warranty guarantee in the amount of 10% of the cost of the Project's
public improvements, and

Whereas, the parties desire to enter into this Agreement in lieu of posting a performance or
warranty bond.

Now, therefore, the parties do hereby agree:

1. Developer and Bank do hereby assign to the City of Hood River the right to determine, at the City's sole discretion, the payment of all funds in the Account held by the Bank.
2. Bank shall hold all funds in the Account until direction for payment, demand or release is received from the City of Hood River.
3. All funds in the Account shall be renewable at maturity and at rates and terms in effect at the time of renewal. All interest shall be paid to or accrued as directed by the Developer.
4. All funds in the Account shall be retained in the Account until the date the City accepts all improvements subject to this Agreement and/or through the warranty period (24 months) following the date of acceptance of all improvements subject to this Agreement.
5. Developer, Bank and City agree that all funds in the Account shall be used only for the purpose of the completion and/or warranty repairs of the Project's public improvements unless otherwise agreed in writing by the City.
6. It is agreed that the City may draw on the Account as follows:
 - a. City shall notify the Developer and the Bank in writing of the failure to complete and/or make warranty repairs of the public improvements. Such notice shall include an engineering estimate of the cost to complete and/or repair the public improvements, including a reasonable contingency.
 - b. The Developer shall have five (5) business days from such notification to make payment of the engineering estimate to the City. If Developer fails to make such payment, the City may proceed to draw upon the Account, not to exceed the Amount of the Guarantee. Bank assures that payment shall be made to the City upon demand. Bank shall honor the demand without inquiring whether the City has a right between the City and the Developer to make such demand.
 - c. Upon completion of public improvements and/or completion of the repairs, the City shall notify Developer and Bank of the actual cost of the work. If the actual costs were greater than the payment, the Bank assures that payment of the balance of the Amount of the Guarantee, if any, shall be made to the City upon demand. If the actual costs are less than the estimated cost, any balance remaining shall be refunded to the Bank.
 - d. Request for payment under this Agreement shall be in the form of written demand for payment made by the Finance Director of the City of Hood River. The request shall be mailed to Bank. The request shall include a copy of this Agreement.
7. Should the City initiate any action to collect upon, enforce, or interpret any provision of this Agreement, the Developer and Bank, regardless of whether a law suit is filed, the prevailing party shall be entitled to an award of its reasonable costs, including attorney fees.

8. The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon and ordinances of the City of Hood River, Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Hood River County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

9. There shall be no third party beneficiaries or assignments of this Agreement except as mutually agreed upon by the parties in writing.

10. This Agreement shall bind the parties hereto and their successors and assigns

Signed and dated this ____ day of _____, 20__.

DEVELOPER

BANK

Title

Title

Date

Date

CITY OF HOOD RIVER

City Manager

Date

APPROVED AS TO FORM

City Attorney