

FAITHFUL PERFORMANCE
INSTRUMENT OF CREDIT
TO
GUARANTEE FAITHFUL PERFORMANCE
OF SUBDIVISION IMPROVEMENTS

This Agreement, an Instrument of Credit, wherein the undersigned, _____, Financial Institution, subject to regulation by the State and Federal Government, hereby pledges that funds in the amount of _____, are credited to the account of _____, Subdivider, and are trust funds for the purpose of guaranteeing to the CITY OF VISALIA, hereinafter referred to as the "City", the faithful performance of all required improvements in that certain subdivision known as _____ in accordance with the subdivision improvements agreement therefore, between the Subdivider and the City, dated _____, a copy of which is attached hereto and made a part hereof together with any subsequent amended agreement for the faithful performance of any changes or alterations in such work provided such changes or alterations do not exceed ten percent (10%) of the original estimated cost of the improvement.

Financial Institution will hold said funds, determined to be one hundred percent (100%) of the estimated cost of said improvements, and pay over the same in one or more installments to the persons doing said improvements in strict accordance with an order for payment executed by the Subdivider or his assignee and a certificate of approval of the City Engineer consenting thereto as to payee and the amount, subject to the following conditions:

- a. The expiration date of this instrument of credit shall be no sooner than one (1) year from and after the approval of the final map and execution of the subdivision improvements agreement.
- b. The instrument of credit shall automatically renew for an additional one (1) year term.
- c. A new instrument of credit or other form of security shall be furnished to the City at least sixty (60) days prior to expiration of the instrument of credit initially furnished, in the same amount, adjusted for any increases or reductions, including amounts paid to persons doing said improvements as approved by the City, and that if you shall fail to do so, the full amount of the instrument of credit shall be forthwith payable to the City, whereupon the proceeds shall be held in trust by the City for like security purposes. Any sum so paid the City may be deposited by it in banks or otherwise invested in the manner provided by law for trust funds in its custody, in which case the City shall be entitled to retain all interest, if any, earned thereon.
- d. Funds may not be discharged from the account for more than 90% of the value of the work completed and with authorization of the City Engineer.
- e. 10% of the amount to remain in the trust fund for one year after the date of the filing of the Notice of Completion. Said retention can be released provided that Subdivider presents substituted security satisfactory to the City.

In the event Subdivider fails to complete the improvements pursuant to the agreement attached hereto, the City shall submit a written demand to the Financial Institution to make available to

the City or its designee the remaining balance of funds on hand to complete such improvements, or pay the cost thereof, pursuant to the same payment terms set forth in this Agreement. The City's written demand shall be accompanied by a signed statement from the City Engineer or other designated officer to the effect that such improvements have not been completed to the satisfaction of the City and as required by the Subdivider pursuant to the agreement attached hereto. Upon receipt of the demand from the City, the Financial Institution shall release the funds to complete such improvements. Subdivider shall not be able to contest the demand by the City to the Financial Institution.

The City agrees that (I) all funds released to it by Financial Institution pursuant to this Agreement shall be used solely for the purpose of completing said improvements, and for no other purpose, and (II) the construction of such improvements shall, at the option of Financial Institution, be under Financial Institution direction. If Financial Institution does not exercise its option set forth in (II) above, the City further agrees after release of such funds to complete as promptly as possible said improvements as required in the event that Subdivider fails to do so, and to indemnify Financial Institution from any liability arising to it by virtue of the release of such funds to the City.

Upon completion of the improvements pursuant to the agreement attached hereto and the acceptance thereof by the City Engineer, any portion of said funds remaining shall be returned to the Subdivider or his assignee.

The funds herein above referred to shall constitute an irrevocable trust for the benefit of the Subdivider and the City and may be modified or revoked only with the consent of the Subdivider and the City.

Financial Institution acknowledges that the City shall be entitled to recover its costs and reasonable expenses, including reasonable attorney's fees, incurred in connection with the enforcement of Financial Institution's agreements herein.

The undersigned Subdivider agrees to pay all expenses in connection herewith.

The

(Name of Financial Institution)
hereby agrees to all the terms and conditions of
the foregoing instrument of credit and agrees to
be bound thereby.

(Authorized Agent)

By _____
Signature Date

Print Name: _____

Approval is hereby given to the
foregoing instrument of credit.

CITY OF VISALIA

The undersigned Subdivider hereby agrees to
all the terms and conditions of the foregoing
instrument of credit and releases the financial
institution executing said instrument of credit
from all liability except as therein specifically set
forth.

SUBDIVIDER

By _____
Douglas S. Damko for City Engineer

By _____
Signature

Print Name: _____