



**City of Henderson
Department of Public Works,
Parks and Recreation
New Development**

To insure development plans meet applicable public works standards and to provide floodplain management services.

**Agreement in Lieu of Bond
Off-site Improvements**

SUBMITTAL INSTRUCTIONS:

The following items are required when submitting the Agreement in Lieu of Bond for Off-site Improvements:

1. Three original Agreement(s) in Lieu of Bond for Off-site Improvements, signed and notarized by the same person/company listed on the Off-site Improvement Agreement and by a representative of the Financial Institution maintain the account.
2. A Public Works Ownership Disclosure Form if the owner is not a single individual owner (includes trusts, general and limited partnerships, corporations, home owner's associations, limited liability companies and partnerships, and joint ventures). The form can be obtained at www.cityofhenderson.com >Departments>Public Works>Forms.
3. A printout of the current Corporate Officers from the Nevada Secretary of State web-site (www.sos.state.nv.us >Online Services>Business Entity Search), if the application is signed by an Officer of a Corporation or LLC. If the agreements are not being signed by a Corporate Officer listed on the printout from the Secretary of State, a letter of authorization from an Officer listed on the form must be included with the submittal. Authorization forms can also be obtained from the Public Works web-site listed above.



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THIS AGREEMENT made and entered into this ____ day of _____, 20__, by and between _____

hereinafter referred to as the SUBDIVIDER, and the CITY OF HENDERSON, Clark County, Nevada, a municipal corporation, hereinafter referred to as CITY, and _____

hereinafter referred to as the FINANCIAL INSTITUTION:

W I T N E S E T H

WHEREAS, the SUBDIVIDER has agreed to do and perform certain work consisting of the construction of off-site improvements in:

(Name of Project)

as currently required by the Henderson Municipal Code, including but not limited to preliminary earthmoving, sidewalks, street improvements, water and sewer systems, street lighting, and electrical and telephone systems, in accordance with the certain Off-site Improvement Agreement between the DEVELOPER and the CITY marked Exhibit "A", attached hereto and by this reference made a part hereof; and

WHEREAS, in said Off-site Improvement Agreement the DEVELOPER agreed to execute a Surety or Performance Bond in favor of all of the terms and conditions thereof on the DEVELOPER'S part to be performed; and

WHEREAS, Henderson Municipal Code 18.20.040(D) of the CITY provides that in lieu of said Surety or Performance Bond, which would otherwise be required, that DEVELOPER may provide an Agreement in Lieu of Bond which shall be entered into by and between the DEVELOPER, the CITY, and the FINANCIAL INSTITUTION; and

WHEREAS, the DEVELOPER desires to enter into such an agreement and the CITY is willing to accept such an agreement on certain terms and conditions in satisfaction of the SUBDIVIDER'S obligation to provide such bond.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. The DEVELOPER hereby represents that it has established with the FINANCIAL INSTITUTION a separate account, designated:

(Name of Development)

(Account Number)

OFF-SITE IMPROVEMENT ACCOUNT and has deposited therein the sum of:

(Figures: _____) (Written Amount: _____)

_____)
as security for the faithful performance of all of the terms and conditions of the Off-site Improvement Agreement on the DEVELOPER'S part to be performed, said sum to be received, held, and disbursed by the FINANCIAL INSTITUTION in accordance with the terms of this Agreement. By its execution hereof, the FINANCIAL INSTITUTION hereby verifies that said account has been established and that the aforesaid sum has been deposited therein.

2. Funds deposited in said account may be withdrawn only upon drafts or requests for withdrawal signed jointly by the Director of Public Works of the CITY and by some person designated by the DEVELOPER.
3. It is agreed that progress payments will be made to the DEVELOPER from time to time out of said account as the work on said improvements progresses, and the Director of Public Works of the CITY, upon written notice from the Quality Control Division of the CITY stating the percentage of the work completed and the amount to be paid therefore, shall sign a request to the above FINANCIAL INSTITUTION for disbursements of funds in the amount stated in such notice; provided, however, that there shall be at all times a ten percent (10%) retention of said funds in said account until all of the off-site improvements called for in said Off-site Improvement Agreement have been completed and final acceptance by the CITY has occurred.
4. In the event said off-site improvements are not completed to the satisfaction of the CITY within the time prescribed in said Off-Site Improvement Agreement and the CITY desires to complete said improvements, the CITY shall serve upon the DEVELOPER and upon the FINANCIAL INSTITUTION written notice of such default and the CITY'S intention to complete the improvements, and thereafter drafts on said account or requests for the withdrawal of funds there from shall be valid and binding and shall be honored by the FINANCIAL INSTITUTION upon the sole signature of the Director of Public Works of the CITY.
5. It is acknowledged by the DEVELOPER that the sum provided for in paragraph 1 above is based upon the estimated cost of the improvements called for in said Off-site Improvement Agreement. It is understood and agreed that, in the event the actual cost of

said improvements shall exceed such sum, the DEVELOPER is in no way relieved by this Agreement from the obligation of paying the amount of excess.

6. Neither FINANCIAL INSTITUTION, by executing this Agreement, nor any of its affiliates, make any representation, warranty, or commitment whatsoever to be a guarantor, surety or principal, or to be otherwise directly or indirectly responsible for the construction, financing, or payment of the off-site improvements, except as set forth in this Agreement.
7. It is expressly understood and agreed that FINANCIAL INSTITUTION: (i) does not assume any of the duties of the DEVELOPER, the architect or the contractor with respect to the off-site improvements under the Agreement or otherwise, (ii) is not required to make any inspections of the off-site improvements, (iii) does not represent that the amount of the funds is sufficient to complete the off-site improvements, (iv) does not make any assurances regarding the quality of the labor or materials to be used to complete the off-site improvement or that the off-site improvements will be completed in accordance with the plans and specifications for the off-site improvements, or (v) is not bound to complete the off-site improvements with FINANCIAL INSTITUTION'S own funds if the funds are not sufficient for that purpose or if the DEVELOPER does not complete the off-site improvements in accordance with the Agreement.
8. FINANCIAL INSTITUTION and DEVELOPER agree to permit CITY to audit the OFF-SITE IMPROVEMENTS ACCOUNT established pursuant to this Agreement for the purpose of determining compliance with the terms and conditions of this Agreement and the requirements of Henderson Municipal Code 18.20.040(D).

Written notice of CITY'S intent to conduct an audit of the account must be given to all parties at least twenty-four (24) hours in advance and shall be conducted during normal business hours of the FINANCIAL INSTITUTION.

9. It is understood and agreed that the money deposited, as herein provided, is a security interest and that the CITY'S claim to said funds shall be prior to that of any creditor, referee, receiver, or trustee in the event of insolvency or bankruptcy; and that in such event, said funds shall not be administered by any receiver, referee, or trustee, but shall be paid and distributed according to the terms of this Agreement as permitted under applicable statute or laws.
10. Upon written notification to the FINANCIAL INSTITUTION and DEVELOPER of final acceptance by the CITY of all of the off-site improvements called for in said Off-site Improvement Agreement, this Agreement shall become null and void and of no further force or effect, and all funds remaining in said account shall be released to the DEVELOPER.

