

**FARMINGTON CITY  
STORM WATER BOND AGREEMENT  
(CASH FORM)**

**THIS AGREEMENT** is made by and between \_\_\_\_\_,  
a \_\_\_\_\_ (hereinafter "Builder"), whose address is \_\_\_\_\_, and  
Farmington City Corporation, a municipal corporation of the State of Utah, (hereinafter  
"City"), whose address is 130 North Main, P.O. Box 160, Farmington, Utah, 84025-0160.

**WHEREAS**, Builder desires to subdivide and/or develop certain property located  
at approximately \_\_\_\_\_ within Farmington City; and

**WHEREAS**, Builder is required to obtain a Storm Water Permit from the City  
prior to development of the project or any construction activity associated therewith; and

**WHEREAS**, the City will not issue a Storm Water Permit for the project or  
development activity until and unless Builder enters into a bond agreement with the City  
to insure completion of, compliance with, and performance under the terms and  
conditions of Title 16 of the Farmington City Ordinances regarding storm water pollution  
prevention as more particularly provided herein.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein,  
and for other good and valuable consideration, the receipt and sufficiency of which are  
hereby acknowledged, the parties agree as follows:

1. **Storm Water Ordinance Compliance.** The Builder agrees to comply  
with Farmington City Ordinance Title 16 Storm Water Ordinance, as amended (the  
"Ordinance"), the Storm Water Permit for the project as issued by the Storm Water  
Official, the SWPPP for the project, and the Farmington City Storm Water Ordinance  
Enforcement Policy, as amended (the "Policy"), which is more particularly set forth in  
**Exhibit "A,"** attached hereto and incorporated herein by this reference. Builder further  
agrees to pay the total cost of complying with the Ordinance, the Permit, the SWPPP, and  
the Policy. The provisions of this Agreement and the security set forth herein is in  
addition to any other bonds required for the project or construction activity.

2. **Cash Deposit.** The Builder has delivered to the City cash or a cashier's  
check in the aggregate amount of \$ 1000 \_\_\_\_\_ for deposit with the City in  
its accounts (the "Deposit"), which the Builder and the City stipulate to be reasonable  
security for compliance and performance in accordance with Farmington City Ordinance  
16-03-055, as amended.

3. **Withdrawal of Deposit Funds.** The City shall have the right to use the  
Deposit funds in the event the Builder fails to comply with the terms and conditions of  
this Bond Agreement. The Builder agrees that funds may and will be withdrawn by the  
City in the amount of any costs incurred by the City for Builder's failure to comply with  
any of the terms and conditions of this Bond Agreement, including, but not limited to,

costs of providing, installing, or maintaining Best Management Practices (BMPs), administrative costs, and fines associated with violations of the Storm Water Ordinance, the Storm Water Permit or SWPPP which was issued for this project. In the event the City is required to use the Deposit funds, the City shall be entitled to an additional fifteen percent (15%) of the Deposit funds withdrawn, or \$150, whichever is greater, to cover administrative costs incurred by the City in obtaining compliance or completion of the improvements.

4. **Replenishment of Bond Funds.** The Builder agrees that the balance of the funds in the Deposit must be replenished by the Builder to the original amount if the balance falls below \$250.00. It is understood that a Stop Work Notice preventing further work will be placed on the project until the Deposit balance has been replenished.

5. **Refund.** Any funds not expended during construction of the project or construction activities associated therewith shall be refunded to Builder after issuance of the Occupancy Permit or Final Inspection, as applicable.

6. **Final Release.** Upon full performance of all of Builder's obligations pursuant to this Bond Agreement, the City shall notify the Builder in writing of the final release of the Deposit. After giving such notice, the City shall relinquish all claims and rights in the Deposit.

7. **Non-Release of Builder's Obligations.** It is understood and agreed between the parties that the establishment and availability to the City of the Deposit as herein provided, and any withdrawals from the Deposit by the City shall not constitute a waiver or estoppel against the City and shall not release or relieve the Builder from its obligations, and the right of the City to withdraw from the Deposit shall not affect any rights and remedies of the City against the Builder for breach of any covenant herein, including the covenants of paragraph 1 of this Agreement. Further, the Builder agrees that if the City withdraws from the Deposit and performs or causes to be performed the installation or any other work required of the Builder hereunder, then any and all costs incurred by the City in so doing which are not collected by the City by withdrawing from the Deposit shall be paid by the Builder, including administrative, engineering, legal and procurement fees and costs. If the bond proceeds are inadequate to pay the cost of completion of, compliance with, and performance under the terms and conditions of this Bond Agreement, Builder shall be responsible for the deficiency and no further construction or development activities shall be conducted on the project until and unless the deficiency is paid or remedied and a new Deposit, satisfactory to the City, is executed and delivered to the City.

8. **Inspection.** The Builder agrees to allow inspections by the City throughout the life of the project to determine whether there are any violations of the commitments in paragraph 1.

9. **Amendment.** Any amendment, modification, termination, or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

10. **Successors.** No party shall assign or transfer any rights under this Agreement without the prior written consent of the other first obtained, which consent shall not be unreasonably withheld. When validly assigned or transferred, this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

11. **Notices.** Any notice required or desired to be given hereunder shall be deemed sufficient if posted on the site or sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble.

12. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as is this Agreement had been executed with the invalid portions eliminated.

13. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

14. **Counterparts.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instruments, and each such counterpart shall be deemed an original.

15. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

16. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

17. **Integration.** This Agreement, together with its exhibits and the approved plans and specifications referred to, contains the entire and integrated agreement of the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

18. **Attorney's Fees.** In the event either party hereto defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

19. **Other Bonds.** This Agreement and the Deposit do not alter the obligation of Builder to provide other bonds under applicable ordinances or rules of any other governmental entity having jurisdiction over Builder. The furnishing of security in

compliance with the requirements of the ordinances or rules of other jurisdictions shall not adversely affect the ability of the City to draw on the Deposit as provided herein.

20. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.

21. **Exhibits.** Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**CITY:**

**BUILDER:**

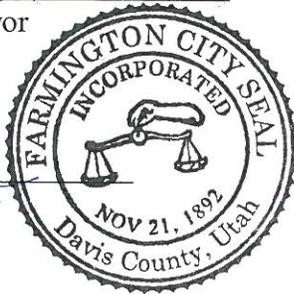
FARMINGTON CITY CORPORATION

By: *H. Jim Talbot*  
H. Jim Talbot, Mayor

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

*Holly Gadd*  
Holly Gadd, City Recorder



## Attachment A

### Farmington City Storm Water Ordinance Enforcement Policy

This Storm Water Ordinance Enforcement Policy (“Enforcement Policy”) is intended to provide guidelines and procedures for the enforcement of the provisions of Farmington City Storm Water Ordinance, as more particularly set forth in Title 16 of the Farmington City Municipal Code (“Storm Water Ordinance”). The intent of this Enforcement Policy is to encourage builders and developers in Farmington to police their construction sites and to ensure compliance with the provisions of the Storm Water Ordinance. This self-policing is intended to help ensure that there are fewer incidences of contamination of the City’s storm water system which could be violations of the City’s Utah Pollutant Discharge Elimination System (UPDES) permit.

#### Storm Water Ordinance Enforcement Policy:

1. In accordance with applicable provisions of the Storm Water Ordinance, at the time of Building Permit application, the applicant shall submit an application for a Storm Water (Land Disturbance) Permit with its associated fee, an approved UPDES Permit from the State of Utah (this can be obtained on-line at <https://secure.utah.gov/stormwater/>) and a copy of the Storm Water Pollution Prevention Plan (SWPPP) that has been prepared in conjunction with the UPDES Permit or a copy of the contract transferring responsibility for the Developer’s SWPPP to the applicant. For lots that are part of a common plan of development, the Common Plan of Development SWPPP shall be used ([http://www.farmington.utah.gov/index.php?module=ibcms&fxn=community\\_development.storm\\_water](http://www.farmington.utah.gov/index.php?module=ibcms&fxn=community_development.storm_water)).
2. Pursuant to authority set forth in Section 16-03-055 of the Storm Water Ordinance, at the time of Building Permit issuance, the applicant shall post a \$1,000 cash bond to ensure completion of, compliance with, and performance under the terms and conditions of the Storm Water Ordinance, including use of the bond proceeds to remedy violations, cover costs incurred by the City, and for payment of civil penalties imposed in accordance with applicable City Ordinances.
3. If violations of the Storm Water Ordinance are identified, the Storm Water Official may proceed with enforcement actions and remedies as more particularly set forth in Title 16, Chapter 5, regarding violations and enforcement under the Storm Water Ordinance. Such enforcement actions and remedies may include, but are not limited to, testing and monitoring requirements, order to remove obstructions, stop work order, revocation of permit(s), notice of violation, order of compliance, criminal citations and penalties, civil citations and penalties, nuisance claims, damages, and any other remedy or relief provided by ordinance or law.
4. If the Storm Water Official determines that the violation(s) are not dangerous to persons or property, the Storm Water Official may provide the applicant with a Stop Work Notice to be posted at the location of the violation providing 24 hours for the violation to be addressed, and warning that a Stop Work Order will follow if the violation is not remedied within the required time frame. The Storm Water Official may issue a Stop

Work Order immediately if determined necessary to eliminate any danger to persons or property and to leave the site in a safe condition.

5. If a Stop Work Notice is posted at the site, a photo to document the violation(s) will be taken and kept in the building permit file
6. To reinstate a Building Permit once a Stop Work Order has been issued, the permit holder must notify Farmington City the violation has been eliminated and request an inspection of the site. All other provisions of Section 16-05-050 shall be applicable and in compliance.
7. In addition to or instead of a Stop Work Order, the Storm Water Official may issue a civil citation for violations of the Storm Water Ordinance. The issuance of such civil citations shall be pursued in accordance with Title 1, Chapter 15, of the Farmington City Municipal Code. A civil citation may be immediately issued if the violation involves storm drainage, repeat violations, or for any other reason as listed in Section 1-15-100 regarding immediate enforcement.
8. Civil penalties imposed under a civil citation shall be deducted from the bond. The amount of the civil penalty shall be in accordance with the City's civil penalty fee schedule.
9. Each violation of the Storm Water Ordinance will be subject to enforcement action and applicable fines and penalties for each day the violation exists.
10. If the bond amount remaining drops below \$250, a Stop Work Order will be posted at the site preventing work from continuing until the balance of the bond has been increased back up to \$1,000.
11. After the final inspection of the project by the Storm Water Official or his/her designee, the balance of the bond to be released will be computed, and the bond will be released to the applicant.
12. Failure to comply with a Stop Work Order may result in the issuance of a criminal or civil citation, resulting in additional fines or penalties.
13. Criminal or civil citations may be issued to individuals or subcontractors who are identified committing violations of the Storm Water Ordinance, as well as the builder.
14. The Stop Work Order and civil penalties provisions and remedies set forth herein are in addition to all other remedies and enforcement procedures set forth in the Storm Water Ordinance, Title 1 civil penalties provisions, and other applicable provisions of law.
15. A person who contests a civil penalty imposed against him or her under provisions of the Policy is entitled to an administrative hearing that provides for the person's rights of due process in accordance with the provisions of Title 1, Chapter 15, of the Farmington Municipal Code.