



**Date:** July 31, 2012

**To:** Mark Cotter, Director of Public Works  
Mike Cooper, Director of Planning and Building Services  
Jeff Schmitt, Chief Planning and Zoning Official  
Matt Carlson, Carl V. Carlson Company  
Scott Hofer, Hancock Concrete Products  
Tim Galbraith, MidAmerican Energy  
Bill Kemmis, Midcontinent Communications

**From:** Chad J. Huwe, City Engineer

**Subject:** INFRASTRUCTURE REVIEW ADVISORY BOARD (IRAB) MEETING

IRAB will meet on **Wednesday, August 1, 2012 at 8:30 a.m., at the Water Purification Plant located at 2100 N Minnesota Ave.**

**AGENDA**

1. Business

a. Subdivision Construction Agreement

cc: Mayor Huether  
Clerk of Records  
Julie Terrell, Home Builders Association

**NOTE:** If you or your alternate are unable to attend this meeting, please call Amanda Mullinix at 367-8606 or e-mail at [amullinix@siouxfalls.org](mailto:amullinix@siouxfalls.org) as soon as possible.

# **BOND AGREEMENT**

**SUBDIVISION IMPROVEMENTS****PERFORMANCE BOND****KNOW ALL MEN BY THESE PRESENTS:**

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, a corporation, duly licensed to conduct a general surety business in the state of South Dakota, as Surety, are held and firmly bound unto the CITY OF SIOUX FALLS, a Municipal Corporation, as Obligee, in the penal sum of \_\_\_\_\_ Dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

WHEREAS, Principal and Obligee have entered into a Subdivision Construction Agreement for completion and warranty of subdivision improvements (the Agreement) which is hereby incorporated by reference and attached hereto as Exhibit A, dated, whereby Principal has agreed to install and complete certain designated Public Improvements, as a condition to approval of a Final Plat which Agreement is hereby referred to and made a part hereof; and

WHEREAS, Principal is required under the terms of the Agreement to furnish a Performance Security and Warranty Security for the faithful performance and warranty of Public Improvements, which the Obligee has determined must be completed once work has commenced and are described as more fully set forth in the Agreement. It is agreed that capitalized terms herein shall have the meaning ascribed to them under the Agreement.

NOW, THEREFORE, if Principal shall well and truly, at its own cost and expense, at or within the time required under the Agreement, faithfully install and complete the Public Improvements, in substantial compliance with the plans and specifications for such improvements, then this obligation shall be void, otherwise to remain in full force and effect, subject to the following conditions.

1. In the event Principal shall fail to complete the Public Improvements within the time allowed by the Agreement, or any extension thereof, as may be granted by the Obligee, then the Surety shall complete the Public Improvements and deliver them to the Obligee for approval or, at the election of Obligee, Surety shall tender to Obligee the amount necessary, in no event to exceed the penal sum hereof, based upon estimates provided by the Obligee, to carry out completion and/or repair or replacement of the Public Improvements, it being further understood that upon completion, any unexpended funds shall be returned to Surety.
2. This bond shall be continuous in effect and shall remain in full force and effect until (a) the Public Improvements have been installed and accepted by Obligee and the Warranty Period is complete, or (b) the release and surrender of this

bond, including the portion provided for under 3 below, by Obligee; whichever shall first occur.

3. It is further understood that ten percent (10%) of the Engineer's Estimate shall remain in effect and continue after completion and acceptance of the improvements by the Obligee during the Warranty Period to guarantee the improvements against any defective work or labor done, or defective materials furnished, in the performance of the improvements as more fully delineated in the Agreement.
4. Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed there under, or to the specifications relating to the Public Improvements shall, in any way, affect its obligation on this bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work or to the specifications.
5. As part of the obligation secured hereby and in addition to the penal sum specified hereunder, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgment of record.
6. No right of action shall accrue hereunder to or for the use of any persons, firm, or corporation, other than Obligee. The rights and obligations under this bond are for the exclusive benefit of Obligee and may not be assigned, hypothecated or transferred for any purpose, unless consented to, in writing, executed by Principal and Surety.
7. Surety waives any defense related to the impossibility, illegality, incapacity, bankruptcy, or receivership of Principal in connection with the obligation of Principal hereunder and Surety further expressly waives any defense to the extent that it may require the creditor to proceed against the Principal as a condition precedent to any claim or demand hereon.
8. Payment Bond. The parties hereto agree this shall include a Payment Bond \_\_\_\_\_

The parties hereto agree that this shall not be a Payment Bond \_\_\_\_\_

*(Initial Only One)*

If the parties agree this is also a Payment Bond it is agreed as follows:

A further condition of this bond is that in the event the Principal fails to pay all just claims and demands on the part of any employee, person, firm or corporation for labor and materials furnished for or used in connection with the prosecution of the work under the Agreement, or fails to pay any tax which may accrue to the

State of South Dakota under the provisions of the "Use Tax Act of 1939 and the Excise Tax on Realty Improvements under SDCL 10-46A," and Sections 5-21-3 and 5-21-4 of the South Dakota Codified Laws, this bond and the surety thereon shall be responsible to such person, firm or corporation, and to the City of Sioux Falls for the full payment of the value of such labor and materials so furnished, including payment of South Dakota use and excise taxes on realty improvements.

- 9. Surety represents and warrants that its credit rating is A- or better.

Dated: \_\_\_\_\_

Principal \_\_\_\_\_

Dated: \_\_\_\_\_

Surety \_\_\_\_\_

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Exhibit A

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# **ESCROW AGREEMENT**

(PERFORMANCE SECURITY)

**ESCROW AND DISBURSEMENT AGREEMENT**  
(PERFORMANCE SECURITY)

This Escrow and Disbursement Agreement (this “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the City of Sioux Falls, a municipal corporation (hereinafter referred to as “**City**”), Developer, and \_\_\_\_\_ (hereinafter referred to as “**Disbursing Agent**”).

**WHEREAS**, Developer is subject to the terms of certain ordinances of the City of Sioux Falls and a Subdivision Construction Agreement attached hereto as Exhibit A and hereby incorporated by reference (hereinafter referred to as “**SCA**”) as from time to time adopted and amended by the City of Sioux Falls, for the purpose of the design, development, and construction of certain Public Improvements to be dedicated to the City; and

**WHEREAS**, Pursuant to the terms of the SCA, it is anticipated that prior to acceptance of any Final Plat by the City the Developer will deposit specified sums of money (hereinafter referred to as the “**Escrow Funds**”) with Disbursing Agent for the payment of the costs associated with the construction of the Public Improvements as the same become necessary; and

**WHEREAS**, Developer has requested that Disbursing Agent maintain and disburse the Escrow Funds under the SCA and in accordance with the terms thereof and of this Agreement.

**NOW, THEREFORE**, in consideration of the understandings and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer, City, and Disbursing Agent agree as follows:

1. **Definitions.** All capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in the SCA.

2. **Amount of Escrow Funds.** Prior to approval of any Final Plat, Developer shall deposit Escrow Funds in the amount of the Performance Security per the SCA into an escrow account (“Escrow”).

3. **Amount of Disbursements.** Disbursements to the Developer may be made only to the extent allowed under the SCA as evidenced by the written approval by the City Engineer and delivered to the Disbursing Agent upon request by the Developer.

4. **Deposit of Escrow Funds and Advances through Disbursing Agent.** The City and Developer agree that prior to acceptance of any Final Plat all Escrow Funds for the Public Improvements shall be deposited into the Escrow. All Disbursements shall be made by and through Disbursing Agent in accordance with the terms of the SCA and of this Agreement. If at any time Disbursing Agent determines that the amount of the Escrow Funds is insufficient to make approved Disbursements, Disbursing Agent shall notify the City and Developer of such deficiency, in writing. At such time Developer shall pay in additional Escrow Funds in the same proportion as

Developer is liable for the payment of the costs of the Public Improvements as calculated pursuant to the SCA. If upon completion of the Public Improvements and the SCA, including the Warranty Period thereunder or upon a separate security being taken to cover the Warranty Period after the completion of the Public Improvements, there remain undisbursed Escrow Funds, Disbursing Agent shall return said undisbursed Escrow Funds to the Developer. The parties agree that the Disbursing Agent shall be a bank that is an official depository of the City or title company licensed and registered under the laws of the State of South Dakota and verification of the same, and pre-approval by the City, shall be required hereunder.

**5. Conditions of Each Advance to Developer.** Prior to any Disbursement to Developer, Disbursing Agent shall be furnished with written authorization by the City Engineer specifying the amount of such Disbursement and to whom it should be made. Such authorization shall be granted in accordance with the SCA upon the request of the Developer, but Disbursing Agent shall not release any such advance without the written consent of the City Engineer.

**6. Conditions for Advance to the City.** The City Engineer may request a disbursement of all or any portion of the Escrow Funds to pay any Costs for the construction of the Public Improvements pursuant to the SCA. Notice of said request shall be provided the Developer and Disbursing Agent shall honor the same.

**7. Conditions for Final Advance.** At the time of submission of a final disbursement request, which shall not be submitted until completion of the construction of the Public Improvements and running of the Warranty Period as set forth in the SCA (unless Warranty Security is otherwise provided for), Disbursing Agent shall be provided final written approval of Disbursement by the City Engineer indicating the amount and to whom such Disbursement should be made. Disbursing Agent shall not release any such final advance without such approval by the City Engineer.

**8. Disbursing Agent's Records.** The Disbursing Agent shall keep records showing the names of all payees to whom Disbursements are made by the Disbursing Agent, the date of each Disbursement, and the amount of each Disbursement, which records may be inspected by Developer and the City Engineer.

**9. Inspections of Project.** City shall be responsible for making inspections during the course of the construction of the Public Improvements and shall determine to its own satisfaction that the work done or material supplied by the Developer to whom Disbursements are to be made has been properly done or supplied in accordance with the City's requirements. Disbursing Agent shall not be required to conduct any inspections.

**10. Disbursing Agent's Liability.** It is expressly understood and agreed that Disbursing Agent assumes no liability or responsibility for the satisfactory completion of the construction of the Public Improvements, for the adequacy of funds advanced or disbursed pursuant to this Agreement and the SCA, for inspections during construction, or for any acts on the part of Developer or the City to be performed in the construction of the Public Improvements. Disbursing Agent shall not be liable to any party for

payment of interest in the event any Escrow Funds are held, but not disbursed, pending the resolution of any dispute.

**11. Notices.** Any notice required or permitted to be given by any party hereto to any other party hereto under the terms of this Agreement shall be deemed to have been given on the date the same is deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the party to which the notice is to be given at the address set forth opposite its name below, or at any other address specified in a notice given by such party to the other parties not less than ten (10) days prior to the effective date of the address change:

City: City of Sioux Falls  
City Engineering Office  
224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402

Copy to:

Developer:

Copy to:

Disbursing Agent:

**12. Approval of Documents.** All documents required to be delivered pursuant to this Agreement shall be in form and content acceptable to the City.

**13. Fees.** Developer agrees to be responsible for the payment of the fees of Disbursing Agent.

**14. General Provisions.**

**a. Waivers.** No waiver of any breach of this Agreement shall constitute a waiver of any other breach of the same or other provisions of this Agreement, and no waiver shall be effective unless made in writing.

**b. Entire Agreement; Amendments.** This Agreement comprises the entire Agreement between the parties hereto with respect to the subject matter hereof. Any amendment to this Agreement or to the Exhibit attached hereto, shall be in writing only, and shall be signed by all parties.

c. **Severability.** In the event that any term, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding or holdings shall not invalidate or make unenforceable any other term, condition, or provision of this Agreement. The remaining terms, conditions, and provisions shall be fully severable, and the remaining terms, conditions, and provisions shall be construed and enforced as if such term, condition, or provision held invalid had never been inserted in this Agreement.

d. **Governing Law.** The laws of the state of South Dakota (without giving effect to its conflicts of laws principles) govern all matters arising out of or relating to this Agreement and the transaction it contemplates, including without limitation, its interpretation, construction, performance and enforcement. Any suit arising hereunder shall be venued in the Circuit Court for the County of Minnehaha, State of South Dakota.

e. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Developer and Disbursing Agent, and their respective successors and assigns.

f. **Cooperation.** The parties hereto agree to cooperate with one another in the performance of their respective obligations and responsibilities set forth in this Agreement. The parties further agree to execute and deliver such other and additional documents and instruments as may be reasonably necessary to accomplish the purposes of this Agreement.

g. **No Joint Venture or Partnership.** The parties hereto agree that they will be independent contractors in performing their respective obligations under this Agreement. This Agreement is not intended to create, nor does it create, a relationship of partners or joint venturers between the parties hereto.

h. **Counterparts.** The parties hereto may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which constitute only one Agreement. The signatures of all the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering the Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from one party to the other parties. In approving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**City of Sioux Falls**

**Developer**

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

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

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

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

**Disbursing Agent**

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

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

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EXHIBIT A

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# **ESCROW AGREEMENT**

(PAYMENT ADDENDUM)

### ADDENDUM TO ESCROW AGREEMENT

**WHEREAS**, the City of Sioux Falls (“City”) and Developer are parties to a Subdivision Construction Agreement (Agreement) and, pursuant to said Agreement, have entered into a certain Escrow Agreement (“Escrow”) pursuant to which the Developer has provided security for the construction of Public Improvements; and

**WHEREAS**, the parties wish to enter in this Addendum to Escrow Agreement (“Addendum”) to ensure payment for the construction of said Public Improvements out of the funds held pursuant to said Escrow; and

**WHEREAS**, the Developer, by signing this Addendum, is agreeing that the City will not release monies from the Escrow until signatures from the contractors (“Contractor(s)”) have been obtained as provided herein; and

**WHEREAS**, each term herein not otherwise defined shall be as defined in the Escrow or Agreement; and

**WHEREAS**, nothing herein shall in any way modify the terms and conditions as more fully set forth in the Escrow and Agreement;

**THEREFORE**, it is agreed as follows between City, Developer, and Contractors:

1. Developer agrees and represents that the Contractors set forth in Exhibit A hereto constitute all the entities and/or persons providing services on behalf and pursuant to the Agreement.
2. Developer and City agree that each request for Performance Security reductions (“Reduction(s)”) from the escrow shall be broken down by the payment to be made to each Contractor, shall be for any and all services provided by said Contractor under the Agreement, and shall be accompanied by a lien release for all services provided by said Contractor. Said payment to each Contractor shall in no event be more than the amount itemized for such Contractor in the Engineer’s Estimate.
3. Prior to payment of each Contractor, the Developer, Contractor, and City shall each sign Exhibit B relative to each said disbursement and shall each initial the dollar amount set forth next to the same.
4. The parties agree that the City shall have no liability as to any Contractor not specifically listed in Exhibit A or any liability hereunder provided that the signatures required herein are provided.
5. The parties agree that, as to each Disbursement set forth in Exhibit B, the signature of each of the Contractors shall be procured by the Escrow Agent prior to the signing of this Addendum by the City.

- 6. It is agreed that there are no third party beneficiaries intended by this Addendum and this Addendum shall be solely for the benefit of the parties hereto. It is further agreed that nothing herein shall give the Contractor(s) any standing to enforce any terms of the Agreement or Escrow.

CITY OF SIOUX FALLS

Dated: \_\_\_\_\_

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

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

DEVELOPER

Dated: \_\_\_\_\_

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

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

CONTRACTOR

Dated: \_\_\_\_\_

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

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

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“Exhibit A”  
List of Contractors

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

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“Exhibit B”

Disbursement 1:

City \$ \_\_\_\_\_

Developer \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Disbursement 2:

City \$ \_\_\_\_\_

Developer \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Disbursement Final:

City \$ \_\_\_\_\_

Developer \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

Pd. Contractor \$ \_\_\_\_\_

# **ESCROW AGREEMENT**

(WARRANTY SECURITY)

**ESCROW AND DISBURSEMENT AGREEMENT**  
(WARRANTY SECURITY)

This Escrow and Disbursement Agreement (this “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the City of Sioux Falls, a municipal corporation (hereinafter referred to as “**City**”), Developer, and \_\_\_\_\_ (hereinafter referred to as “**Disbursing Agent**”).

**WHEREAS**, Developer is subject to the terms of certain ordinances of the City of Sioux Falls and a Subdivision Construction Agreement attached hereto as Exhibit A and hereby incorporated by reference (hereinafter referred to as “**SCA**”) as from time to time adopted and amended by the City of Sioux Falls, for the purpose of the design, development, warranty, and construction of certain Public Improvements to be dedicated to the City; and

**WHEREAS**, Pursuant to the terms of the SCA, it is anticipated that prior to acceptance of any Final Plat by the City the Developer will deposit specified sums of money (hereinafter referred to as the “**Escrow Funds**”) with Disbursing Agent for the payment of the costs associated with the repair of the Public Improvements as the same become necessary; and

**WHEREAS**, Developer has requested that Disbursing Agent maintain and disburse the Escrow Funds under the SCA and in accordance with the terms thereof and of this Agreement.

**NOW, THEREFORE**, in consideration of the understandings and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer, City, and Disbursing Agent agree as follows:

1. **Definitions.** All capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in the SCA.

2. **Amount of Escrow Funds.** Prior to approval of any Final Plat, Developer shall deposit Escrow Funds in the amount of the Warranty Security per the SCA into an escrow account (“Escrow”).

3. **Amount of Disbursements.** Disbursements to the Developer may be made only to the extent allowed under the SCA and hereunder as evidenced by the written approval by the City Engineer and delivered to the Disbursing Agent upon request by the Developer.

4. **Deposit of Escrow Funds and Advances through Disbursing Agent.** The City and Developer agree that prior to approval of the Final Plat, or release of other Performance Security, as applicable funds for the Warranty Security shall be deposited into the Escrow. If at any time Disbursing Agent determines that the amount of the Escrow Funds is insufficient to make approved Disbursements, Disbursing Agent shall notify the City and Developer of such deficiency, in writing. At such time Developer shall pay in additional Escrow Funds in the same proportion as Developer is liable for the

payment of the costs of the Warranty Security for the Public Improvements as calculated pursuant to the SCA. If upon completion of the Warranty Period there remain undisbursed Escrow Funds, Disbursing Agent shall return said undisbursed Escrow Funds to the Developer. The parties agree that the Disbursing Agent shall be a bank that is an official depository of the City or title company licensed and registered under the laws of the State of South Dakota and verification of the same, and pre-approval by the City, shall be required hereunder.

**5. Conditions for Advance to the City.** The City Engineer may request a disbursement of all or any portion of the Escrow Funds to pay any Costs for the repair of the Public Improvements pursuant to the SCA. Notice of said request shall be provided the Developer and Disbursing Agent shall honor the same.

**6. Conditions for Final Advance.** At the time of submission of a final disbursement request, which shall not be submitted until the running of the Warranty Period as set forth in the SCA, Disbursing Agent shall be provided final written approval of Disbursement by the City Engineer indicating the amount and to whom such Disbursement should be made. Disbursing Agent shall not release any such final advance without such approval by the City Engineer.

**7. Disbursing Agent's Records.** The Disbursing Agent shall keep records showing the names of all payees to whom Disbursements are made by the Disbursing Agent, the date of each Disbursement, and the amount of each Disbursement, which records may be inspected by Developer and the City Engineer.

**8. Inspections of Project.** City shall be responsible for making inspections during the course of the construction of the Public Improvements and shall determine to its own satisfaction that the work done or material supplied by the Developer to whom Disbursements are to be made has been properly done or supplied in accordance with the City's requirements. Disbursing Agent shall not be required to conduct any inspections.

**9. Disbursing Agent's Liability.** It is expressly understood and agreed that Disbursing Agent assumes no liability or responsibility for the satisfactory completion of the construction of the Public Improvements, for the adequacy of funds advanced or disbursed pursuant to this Agreement and the SCA, for inspections during construction, or for any acts on the part of Developer or the City to be performed in the construction of the Public Improvements. Disbursing Agent shall not be liable to any party for payment of interest in the event any Escrow Funds are held, but not disbursed, pending the resolution of any dispute.

**10. Notices.** Any notice required or permitted to be given by any party hereto to any other party hereto under the terms of this Agreement shall be deemed to have been given on the date the same is deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the party to which the notice is to be given at the address set forth opposite its name below, or at any other address specified in a notice given by such party to the other parties not less than ten (10) days prior to the effective date of the address change:

City: City of Sioux Falls  
City Engineering Office  
224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402

Copy to:

Developer:

Copy to:

Disbursing  
Agent:

11. **Approval of Documents.** All documents required to be delivered pursuant to this Agreement shall be in form and content acceptable to the City.

12. **Fees.** Developer agrees to be responsible for the payment of the fees of Disbursing Agent.

13. **General Provisions.**

a. **Waivers.** No waiver of any breach of this Agreement shall constitute a waiver of any other breach of the same or other provisions of this Agreement, and no waiver shall be effective unless made in writing.

b. **Entire Agreement; Amendments.** This Agreement comprises the entire Agreement between the parties hereto with respect to the subject matter hereof. Any amendment to this Agreement or to the Exhibit attached hereto, shall be in writing only, and shall be signed by all parties.

c. **Severability.** In the event that any term, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such holding or holdings shall not invalidate or make unenforceable any other term, condition, or provision of this Agreement. The remaining terms, conditions, and provisions shall be fully severable, and the remaining terms, conditions, and provisions shall be construed and enforced as if such term, condition, or provision held invalid had never been inserted in this Agreement.

d. **Governing Law.** The laws of the state of South Dakota (without giving effect to its conflicts of laws principles) govern all matters arising out of or

relating to this Agreement and the transaction it contemplates, including without limitation, its interpretation, construction, performance and enforcement. Any suit arising hereunder shall be venued in the Circuit Court for the County of Minnehaha, State of South Dakota.

e. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Developer and Disbursing Agent, and their respective successors and assigns.

f. **Cooperation.** The parties hereto agree to cooperate with one another in the performance of their respective obligations and responsibilities set forth in this Agreement. The parties further agree to execute and deliver such other and additional documents and instruments as may be reasonably necessary to accomplish the purposes of this Agreement.

g. **No Joint Venture or Partnership.** The parties hereto agree that they will be independent contractors in performing their respective obligations under this Agreement. This Agreement is not intended to create, nor does it create, a relationship of partners or joint venturers between the parties hereto.

h. **Counterparts.** The parties hereto may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which constitute only one Agreement. The signatures of all the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering the Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from one party to the other parties. In approving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**City of Sioux Falls**

**Developer**

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

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

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

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

**Disbursing Agent**

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

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

EXHIBIT A

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# ILOC AGREEMENT

**IRREVOCABLE STANDBY LETTER OF CREDIT**

**Issuer's Letter of Credit Number:**

**Issuer:**

**Name of Banking Institution:** [Insert issuing bank information]  
**Address:**  
**City/State/ZIP:**  
**Telephone:**

**Issue date:**

**Expiration date and time (subject to extension):**

**Beneficiary:**

**Name:** City of Sioux Falls  
c/o City Engineering Office  
**Address:** 224 West Ninth Street  
P.O. Box 7402  
**City/State/ZIP:** Sioux Falls, SD 57117-7402  
**Telephone:** 605-367-8601

**Applicant:**

**Name:** [Insert developer information]  
**Address:**  
**City/State/ZIP:**  
**Telephone:**

**Amount: (per SCA)**

**Re: Development of [generally describe project]**

The Issuer, a bank that is an official depository of the City, hereby issues this Irrevocable Standby Letter of Credit (this "Letter of Credit") in Beneficiary's favor pursuant to the Subdivision Construction Agreement adopted under the City of Sioux Falls revised ordinances, Chapter 32, Appendix A (the "Subdivision Construction Agreement" or "SCA") attached hereto as Exhibit A and incorporated by reference herein.

*Presentation of Documents.* Your draft must be presented at Issuer's office indicated above by personal delivery or by registered or certified mail or courier and must be accompanied by (1) the original Letter of Credit and any original amendments, and (2) an original statement purportedly signed by an engineer or other employee of Beneficiary stating:

“The amount of this draw under Irrevocable Standby Letter of Credit No. \_\_\_\_\_, issued by \_\_\_\_\_ [insert name of Issuer], represents the amount due Beneficiary as a result of the failure of [name of Applicant] to complete, in whole or in part, the improvement and/or other performance or warranty required of Applicant under Appendix A to the City of Sioux Falls Subdivision Ordinance and the Subdivision Construction Agreement including, but not limited to, the applicable plans, drawings and specifications and warranty. I hereby certify that notice of the incompletions or other failure to perform upon which this draw is based was given to the Applicant by registered or certified mail or by courier on \_\_\_\_\_ (insert date at least twenty days prior to date of draw request).”

Except for presentation of this documentation, this Letter of Credit is unconditional. Multiple partial drawings are permitted.

*Expiry.* The initial term of this Letter of Credit shall expire at midnight, Central Standard Time [insert date, not to be more than five years after issuance date]. Thereafter this Letter of Credit shall be deemed to be automatically extended annually for successive periods of one year each unless Issuer provides Applicant and Beneficiary notice by registered or certified mail or by courier at least 60 days prior to the then current expiration date.

In the event of the failure of the applicant to furnish another Letter of Credit meeting the requirements of the Subdivision Construction Agreement, or other security acceptable to Beneficiary in its sole discretion as indicated by a writing and actually signed by Beneficiary’s duly authorized officer delivered to Applicant, at least 30 days prior to the expiration date of this Letter of Credit, the Beneficiary may draw upon this Letter of Credit in the amount Beneficiary estimates is required to complete the required construction or repairs or other performance set forth above in this Letter of Credit.

*Reductions in Amount; Termination.* The amount of this Letter of Credit (or any replacement Letter of Credit) may be reduced to reflect the progress of the Applicant’s required performance, consistent with the Subdivision Construction Agreement, as Beneficiary may determine in its sole discretion, but consistent with the requirements of the SCA. Reductions may be made only upon Issuer’s receipt of a writing actually signed by Beneficiary’s duly authorized officer specifying the permitted reduction in amount. This Letter of Credit may be terminated in the manner set forth in the SCA upon completion of the warranty period as more fully delineated therein.

This Letter of Credit shall inure to the benefit of the Beneficiary only and no other party shall acquire any rights hereunder.

This Letter of Credit shall be governed by the laws of the State of South Dakota, and the ordinances of the City of Sioux Falls, South Dakota, without respect to any conflicts for choice of law provisions. All terms used but not defined herein shall have the meaning provided by Article 5 (including incorporated provisions) of the Uniform

Commercial Code as enacted by the State of South Dakota. Captions and headings contained in this Letter of Credit are for the convenience of the parties and shall not be used to interpret or construe this Letter of Credit. This Letter of Credit is further subject to the [Uniform Customs and Practice for Documentary Credits (1993 Revision) (the "UCP")], except where the UCP may conflict with a mandatory provision of applicable law.

All correspondence to the Issuer, Applicant, or Beneficiary concerning this Letter of Credit shall be addressed to the addressee's address indicated above. Issuer hereby represents that it is a banking institution licensed and registered under the laws of the State of South Dakota and that it has been approved as an issuer by the City of Sioux Falls.

*Issuer to Honor Letter of Credit.* We hereby agree with Beneficiary that draws under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation to us.

[ISSUER'S NAME]

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

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

[ACKNOWLEDGMENT IS OPTIONAL BUT PREFERRED]

EXHIBIT A

DRAFT

# **MINIMUM TESTING** **REQUIREMENTS**



Providing a Better Quality of Life for You!

## ENGINEERING DIVISION POLICY LETTER

**Policy Number:** 2012-01

**Title:** Public Improvements Minimum Testing Requirements

**Purpose:** This policy shall establish uniform testing guidelines for all public improvements installed under the supervision of the City of Sioux Falls (CIP projects, developments, etc.). This policy shall replace the previously established Minimum Testing Requirements dated February 15, 2008.

**Effective Date:** August 1, 2012

**Expiration Date:** N.A.

**Policy Division:** Construction Administration

**Supersedes Policy Numbers or New Policy:** New

**Recommended:**

**Approved:**

\_\_\_\_\_  
**Joshua Peterson, Principal Engineer**

\_\_\_\_\_  
**Chad Huwe, City Engineer**

**On:** \_\_\_\_\_

**On:** \_\_\_\_\_

### **PUBLIC IMPROVEMENTS MINIMUM TESTING POLICY**

This policy shall establish uniform testing guidelines for all public improvements installed under the supervision of the City of Sioux Falls. This policy shall replace the previously established Minimum Testing Requirements dated February 15, 2008.

The City Engineering Division's policy on test procedures and requirements for all public improvements shall be as follows:

1. Testing performed by a private engineer or a private testing company for the City Engineer shall be done under the supervision of a registered professional engineer and certified by the same. Field testing done by the inspector need not be certified but shall be done under the supervision of the registered professional engineer in charge of inspection.
2. The City Engineer and the testing company shall work together to determine the expected number of tests prior to construction. The testing company may make recommendations on increasing or decreasing the testing frequency based on expected conditions and test results. The City Engineer shall determine whether a change in frequency is warranted as allowed by these requirements and may, at any time, order additional testing above and beyond the minimum required. Additional testing shall be performed as detailed in these requirements. The City Engineer also reserves the right to reduce or eliminate testing if it is determined to be in the best interest of the City.
3. Results of all field tests shall be recorded on a test report. Copies of all tests reports shall be submitted electronically in PDF format to the City Engineer for City records. The following information shall be included on each test report as applicable:
  - a. Project/Subdivision name, phase, project number, CIP number, and prime contractor/developer.
  - b. Date and time of sample.
  - c. Date and time of test.
  - d. Name of person performing the test and signature.
  - e. Description of test performed.
  - f. Street name, station, offset, depth, lift, etc. of the test or sample location.
  - g. Test results along with the materials specifications.
  - h. Summary statement stating whether test passed or failed. For a failing test, the failure should be highlighted.
4. Tests shall be performed as detailed in the current version of the South Dakota Department of Transportation's Materials Manual which is available on the SDDOT's website or the current ASTM standards. The City encourages all testers to become certified under the SDDOT's Materials Testing and Inspection Certification Program.
5. The contractor/developer and supplier are encouraged to perform testing as needed to monitor their own quality control. However, this testing will not be used in determining acceptance of the installed material. If this testing will be destructive to the final product, such as coring asphalt pavement, approval must be obtained from the City Engineer prior to testing.

6. Failing tests need to be reported in a timely fashion to facilitate corrective action. The tester shall notify the City Engineer verbally of the failure immediately, with documentation to follow as soon as possible. As applicable, the City Engineer shall notify the developer, contractor, inspector, and project manager.
7. The City of Sioux Falls will pay for the first test and all city ordered tests. Corrective action tests required due to failing materials shall be the responsibility of the contractor/developer.
8. The City Engineer shall verify that all materials used meet City specifications and requirements. Material tickets for each load shall be available for inspection and collection. The tickets shall clearly define the materials being supplied and if applicable, the mix proportions.
9. The City Engineer and/or the testing company shall be notified the day before a test is needed. Notification of less than 24 hours may result in a testing delay. The developer, contractor, and supplier understand that certain tests take longer than others and the need for extended planning. Tests such as standard density and optimum moisture determination may take several days to complete.
10. The following is an outline of the minimum testing requirements, as well as special conditions:

	<b><u>Capital Improvement Projects</u></b>	<b><u>Subdivisions</u></b>
<b><u>Asphalt Paving</u></b>	Density tests shall be performed at the frequency of 1 per 900 lane feet per lift. Density tests shall be performed using the cut out (core) or nuclear gauge method. The nuclear gauge method shall only be used for acceptance testing if it is calibrated with cores as detailed in the Materials Manual. A standard density (Rice) test shall be performed once per project and when there is a change in the mix.	Density tests shall be performed at the frequency of 1 per 900 lane feet per lift but no less than 2 per day. Density tests shall be performed using the cut out (core) or nuclear gauge method. The nuclear gauge method shall only be used for acceptance testing if it is calibrated with cores as detailed in the Materials Manual. A standard density (Rice) test shall be performed once per subdivision and when there is a change in the mix.
<b><u>PCC Streets</u></b>	An air content test shall be performed on the first truck. An air test, slump test, and at least four concrete cylinders (1 for an early break, 2 for 28 day breaks, and one backup) shall be made for every 150 cubic yards of pouring.	
<b><u>Sidewalks, Curb &amp; Gutter, Fillets, Valley Gutters, Inlets and Other Miscellaneous Concrete</u></b>	An air test, slump test, and a strength test shall be performed for every 100 cubic yards of pouring. Additional strength tests should be run when needed to determine when concrete is ready to carry traffic.	An air test, slump test, and a strength test shall be performed for every 100 cubic yards of pouring but no less than 1 each per day. Additional strength tests should be run when needed to determine when concrete is ready to carry traffic.
<b><u>Structural Concrete</u></b>	Air tests, slump tests, and strength tests shall be run at the frequency specified by the current version of the SDDOT Materials Manual in the Minimum Sampling and Testing Requirements section.	

<b><u>Subgrade</u></b>	Soil density and moisture content tests shall be performed on all pavement subgrade and roadway fills a minimum of one (1) per city block or every 600 feet, whichever is less, per four (4) feet of depth. A minimum of one (1) standard density and optimum moisture determination shall be made for each project/subdivision and one (1) additional test for each change in the soil type.
<b><u>Utility Trenches</u></b>	A minimum of one density test and moisture content shall be made for every 500 lineal feet of trench per four (4) feet of depth. A minimum of one (1) standard density and optimum moisture determination shall be made for each project/subdivision and one (1) additional test for each change in the backfill.
<b><u>Base Course, Select Granular Backfill, Aggregates, and other Granular Materials</u></b>	A minimum of one (1) gradation shall be run per project/subdivision per type of material. Density tests shall be run on base course for roadways a minimum of one (1) per city block or every 600 feet, whichever is less.
<b><u>Additional Subgrade, Utility Trench, and Granular Material Requirements</u></b>	In addition to the moisture and density test requirements, the contractor shall be responsible for providing a firm and unyielding surface. This requirement shall be checked by proof rolling the subgrade, trenches and granular materials using a fully loaded tandem axle truck or other equipment as approved by the City Engineer.

# **CONCRETE ACCEPTANCE AND** **WARRANTY GUIDELINES**

## Concrete Acceptance and Warranty Guidelines for CIP Projects

The following document was developed by the Engineering Division with input from several concrete contractors to help provide basic guidelines for determining what is acceptable for concrete items at both the construction acceptance and warranty inspections. The final decision on acceptable work rests solely with the Engineer.

<b>Curb and gutter</b>			
<b>Construction Acceptance</b>		<b>Warranty Inspection</b>	
<b>Fault</b>	<b>Rectification</b>	<b>Fault</b>	<b>Rectification</b>
Single random crack in bay(joint to joint)	Neglect if less than a quarter(coin) in width with no settlement and it does not cross a tooled or sawed joint that is working. Exception-At inlet throats, cracks in width greater than a quarter may be allowed to remain at the discretion of the Engineer. Otherwise repair as listed below.	Single random crack in bay(joint to joint)	Generally neglect unless the random crack exhibits excessive spalling or other deficiencies that will impact the long term performance of the curb and gutter. Otherwise repair as listed below.
Two or more random cracks in single bay(joint to joint) or two adjacent bays	Repair affected bay(s) as directed below.	Two or more random cracks closer than 3 feet together or three or more random cracks across a single bay or two adjacent bays.	Repair as listed below.
Settled or displaced	Replace settled or displaced areas.	Settled or displaced	Replace settled or displaced areas.
Ponded water caused by reasons other than settling (workmanship).	Repair bay(s) as listed below if depth of water is greater 1/2 inch or greater.	Ponded water caused by reasons other than settling(workmanship)	n/a.
Snow Plow Damage	n/a The Contractor is not responsible for snow plow damage.	Snow Plow Damage	n/a The Contractor is not responsible for snow plow damage.
Repair Methods	Repairs must be a minimum of 4 feet in length and be removed to the nearest joint. Full bay replacements do not require tying to existing curb and gutter. Partial bay replacements must be tied to the existing curb and gutter using a minimum of two #4 by 18 inch deformed tie bars on the non working joint side.	Repair Methods	Repairs must be a minimum of 4 feet in length and be removed to the nearest joint. Full bay replacements do not require tying to existing curb and gutter. Partial bay replacements must be tied to the existing curb and gutter using a minimum of two #4 by 18 inch deformed tie bars on the non working joint side.

## Valley Gutters and Fillets

Construction Acceptance		Warranty Inspection	
Fault	Rectification	Fault	Rectification
Single transverse random crack in a bay (joint to joint) that does not cross any tooled/sawed joint that is working.	Single transverse random cracks are allowed to remain in place if they do not cross sawed or tooled joints that have worked. Single random cracks that cross working joints shall be repaired. Repairs shall be performed as listed below.	Either 1) A sum total of 3 or more random cracks including corner random cracking or 2) Any combination of random cracking that is affecting the long performance of the valley gutter or fillet. Examples include areas of excessive spalling, pop outs, or areas of random cracking that is close enough to likely create pop outs rapidly.	Either 1) Repair affected bay(s) as directed below. Area of repair shall be enough to remove all random cracks. However, a single transverse random crack that does not cross any tooled/sawed joint may be allowed to remain if all other random cracks are repaired or 2) Repair affected bay(s) as listed below to correct areas affecting long term performance of the valley gutter or fillet.
Corner random cracking (typically located at the corner of a valley gutter or at the square edge of a fillet).	A single corner random crack will be allowed to remain if the corner random crack is further than 8 inches from the corner and smaller than the thickness of a quarter in width. Otherwise the affected bay(s) shall be repaired as listed below. Multiple corner random cracks in the same panel must be repaired as listed below.		
Two or more random cracks, including corner random cracking, in either a single bay(joint to joint) or adjacent bays.	Repair affected bays(joint to joint) as listed below.		
3 or more random cracks, including corner random cracking, across entire fillet or valley gutter.	Either: 1). Replace entire valley gutter or fillet or 2). Repair affected bays(joint to joint) as listed below.		
Settled or displaced	Replace settled or displaced areas.	Settled or displaced	Replace settled or displaced areas.
Ponded water caused by reasons other than settling (workmanship)	Repair bay as listed below to obtain proper drainage if depth of water is 1/2 inch or greater.	Ponded water caused by reasons other than settling(workmanship)	n/a
Edge spalling.	Repair any edge spall larger than a softball in size using an approved epoxy based repair. If the Engineer determines that there is excessive edge spalling then the affected bay(s) must be repaired as listed below.	Edge spalling	Repair any edge spall larger than a softball in size using an approved epoxy based repair.
Snow Plow Damage	Repair affected bay(s) for any snow removal damage caused by lack of adequate asphalt ramping if top lift is not completed. Snow plow damage after top lift is not subject to repair.	Snow Plow Damage	n/a.
Repair Methods	When required, repair for valleys shall be full width and not less than 1/2 the length of the bay. Repairs for fillets shall be joint to joint, or a minimum of 4' x 4', or other size acceptable to the Engineer which allows the repair to be adequately tied into the remaining fillet. Repairs must be tied into existing valley or fillet (18", #4 bar, 12" on center, embedded 8" minimum)	Repair Methods	When required, repair for valleys shall be full width and not less than 1/2 the length of the bay. Repairs for fillets shall be joint to joint, or a minimum of 4' x 4', or other size acceptable to the Engineer which allows the repair to be adequately tied into the remaining fillet. Repairs must be tied into existing valley or fillet (18", #4 bar, 12" on center, embedded 8" minimum)

## Sidewalks, Driveways, and Approaches.

Construction Acceptance		Warranty Inspection	
Fault	Rectification	Fault	Rectification
Random cracks or surface defects (footprints, bicycle tracks, etc.)	Replace affected panel(s)	Multiple random cracks in any panel or any random crack wider than a quarter(coin)	A single random crack less than the thickness of a quarter(coin) will be allowed to remain. Remove and replace affected panel(s) not meeting this criteria.
		Settled or displaced.	Replace if displacement is greater is 1/2 inch or greater.

## Concrete Paving

Construction Acceptance		Warranty Inspection	
Fault	Rectification	Fault	Rectification

See SDDOT Standard Specifications for Roads and Bridges