



Date: October 2, 2023  
To: Weber County Board of Commissioners  
From: Scott Mendoza  
Community Development Department

Agenda Date: October 10, 2023

Subject: **Request for approval of a financial guarantee agreement by and between Weber County and Ogden City for the installation of public improvements associated with the Weber/Morgan Children's Justice Center Subdivision.**

Attachments: A - Aerial Vicinity Map  
B - Dedication Plat (Weber/Morgan Children's Justice Center Subdivision)  
C - Financial Guarantee Agreement

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**Summary:**

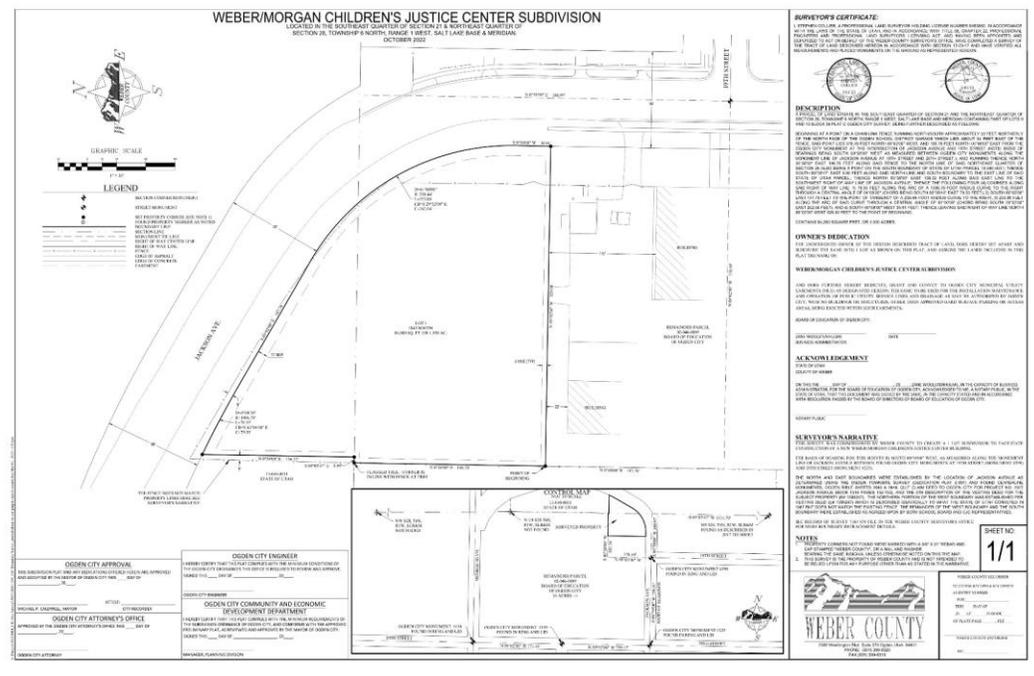
Weber County is working with the Board of Education of Ogden City and is planning to lease Board property which will become the site for construction of a new Weber/Morgan Children's Justice Center building. The property is approximately 1.9 acres in size and is located at 1845 Jackson Avenue, in Ogden City. See Attachment A for a vicinity map.

For the property to be considered "legal" and ready for construction, the County has had to submit a subdivision application to Ogden City in order to officially subdivide and create a building lot. The City's subdivision code requires the installation of certain public improvements before a dedication plat can be recorded; however, it also allows for an applicant to record a plat if that applicant agrees to enter into a financial guarantee agreement with the City. In addition to agreeing to the terms of the agreement, the County must deposit (with the City) a cash amount that is equal to the estimated cost of installing the improvements. The estimated cost of installing the public improvements is \$100,400.65. The City will incrementally release these funds (back to the County) as installation is completed. See Attachment B for the dedication plat that will create the building lot. See Attachment C for the proposed financial guarantee agreement.

## Attachment A



## Attachment B



# ATTACHMENT C

## FINANCIAL GUARANTEE (CASH FORM) (To Assure Completion of Improvements)

THIS AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 2023,

### \*\*\*\*\* PARTIES \*\*\*\*\*

“APPLICANT”: Weber County Corporation,  
*[insert legal name of person entering into the agreement]*

a(n) Body Politic of the State of Utah,  
*[insert legal description of applicant; ie, individual, a Utah corporation, partnership, limited liability company, etc.], of*

street address: 2380 Washington Blvd.

Ogden, Utah 84401,  
*[insert valid address of Applicant]*

telephone: (801) 625.3850 facsimile (801) 625.3699;

email: swilkinson@webercountyutah.gov

“CITY”: OGDEN CITY CORPORATION, a Utah Municipal Corporation  
2549 Washington Boulevard, Suite 200  
Ogden, Utah 84401  
telephone: (801)629-8150, facsimile: (801)629-8154

### \*\*\*\*\* RECITALS \*\*\*\*\*

WHEREAS, Applicant desires:

- a conditional use permit
- subdivision recordation
- a building permit
- a temporary occupancy permit
- a business license
- an excavation permit
- OTHER (explain) \_\_\_\_\_

from City for the Weber/Morgan Children's Justice Center Subdivision

*[description or name of project as used in development approvals]*

located at 1845 Jackson Avenue; and  
*[insert street and number address of project]*

**WHEREAS**, approval by the City is conditioned upon completion by the Applicant of improvements (herein the "Improvements") as described in the approved plans, and as specified in **Exhibit A**, attached hereto and incorporated herein by this reference; and

**WHEREAS**, CITY will not grant said approval until adequate provision has been made to guarantee completion of the Improvements, if any, and to warrant the Improvements from any defects, which Improvements are estimated to cost \$ 100,400.65 *[insert estimated cost as approved by the City]* and which Improvements shall be installed in accordance with the applicable ordinances and specifications of CITY; and

**WHEREAS**, provision has been made whereby APPLICANT may file, in lieu of final completion of the Improvements prior to development approval, a guarantee acceptable to CITY to secure the actual construction and warranty of the Improvements in a manner satisfactory to CITY.

**NOW, THEREFORE**, in consideration of the premises and other valuable consideration, the parties agree as follows:

**\*\*\*\*\* TERMS AND CONDITIONS \*\*\*\*\***

**1. ADDITIONAL DEFINITIONS.**

- 1.1. "APPLICANT" and "CITY," as used in this Agreement, also refer to all heirs, executors, administrators, successors, and/or assigns of APPLICANT and CITY, respectively.
- 1.2. "Estimated Improvement Costs," as used in this Agreement, means the estimated costs as approved by the City to construct or install the Improvements as outlined in this Agreement and as further calculated in **Exhibit A**.
- 1.3. "Failure to Perform" or "Fail to Perform," as used in this Agreement, means, in addition to failing to satisfactorily complete the Improvements within the time allowed in paragraph 5, the non-performance in a timely manner by a party to this Agreement of any obligation, in whole or in part, required of such party by the terms of this Agreement or required by Ogden City ordinance or other applicable law. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available

pursuant to the terms of this Agreement.

1.4 "Incidental Costs," as used in this Agreement, means direct or indirect costs, such as engineering and architect fees, administrative expenses, court costs, attorneys' fees (whether incurred by in-house or independent counsel), insurance premiums, performance bonds, payment bonds, mechanic's or materialmen's liens, and/or any other cost and interest thereon incurred by CITY, occasioned by APPLICANT'S failure to perform any and/or all obligations under this Agreement.

1.4 "Retainage," as used in this agreement, means 10% of the Estimated Improvement Costs or 10% of the actual cost of constructing and installing the Improvements if the Applicant provides the CITY with evidence, deemed satisfactory by CITY, of the actual costs of completion.

2. **PURPOSE FOR AGREEMENT.** The parties hereto expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Improvements named herein, but also, among other things, to eliminate and avoid the harmful effects of unauthorized land developments which may leave property and/or improvements improperly completed, undeveloped and/or unproductive.

3. **UNRELATED OBLIGATIONS OF APPLICANT.** The benefits and protection provided by this Agreement shall inure solely to CITY and not to third parties, including, but not limited to, purchasers, contractors, subcontractors, laborers, suppliers, or others. CITY shall not be liable to claimants or others for obligations of APPLICANT under this Agreement. CITY shall further have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement.

4. **AGREEMENT DOCUMENTS.** All data which is used by CITY to compute the cost of or otherwise govern the design and installation of the Improvements is hereby made a part of this Agreement, and is incorporated herein by this reference. This Agreement incorporates herein by reference the approved plat, site plan, permit, and/or improvement plans which otherwise govern the design and installation of the Improvements as required by applicable ordinances of the Ogden Municipal Code or its successor ordinances.

5. **COMPLETION DATE.** APPLICANT shall complete the Improvements: *[check & complete]*

X Within a period of two years from the date this Agreement was entered into. *[For subdivisions, unless it is a private subdivision with onsite landscaping requirements under the Ogden City Zoning Ordinances.]*

-or-

\_\_\_ Within a period of two years from the date this Agreement was entered into, or before occupancy or use of any building, structure or improvement associated with the project or before issuance of an occupancy permit by the City, whichever occurs first. In the case of inclement weather that prevents the installation of the required improvements, the time for completion of the Improvements may be extended, in writing, upon approval of the CITY in conjunction with issuance of a temporary occupancy permit; however, in no case shall the time for completion be extended beyond the date of issuance of a temporary certificate of occupancy beyond the first day of June immediately following the date of issuance of such temporary certificate of occupancy. *[For private subdivisions with onsite landscaping requirements under the Ogden City Zoning Ordinances.]*

-or-

\_\_\_ Before occupancy or use of any building, structure or improvement associated with the project or before issuance of an occupancy permit by the City. In the case of inclement weather that prevents the installation of the required improvements, the time for completion of the Improvements may be extended, in writing, upon approval of the CITY in conjunction with issuance of a temporary occupancy permit; however, in no case shall the time for completion be extended beyond the date of issuance of a temporary certificate of occupancy beyond the first day of June immediately following the date of issuance of such temporary certificate of occupancy. *[For installation of landscaping or other improvements required under the Ogden City Zoning Ordinances.]*

-or-

\_\_\_ Within a period of \_\_\_ years/months/days (circle one) from the date this Agreement was entered into. *[Use only if specifically approved or required by City.]*

-or-

\_\_\_ As specified in **Exhibit B**, attached hereto and incorporated herein by this reference. *[Use only if specifically approved or required by City.]*

6. **SPECIFIC ENFORCEMENT.** Applicant has entered into this Agreement with City for the purpose of guaranteeing construction and warranty of the Improvements. City shall be entitled to specifically enforce Applicant's obligation under this Agreement to construct, install and warrant the Improvements in a manner satisfactory to City.
  
7. **APPLICANT'S INDEPENDENT OBLIGATION.** Applicant expressly acknowledges, understands, and agrees that its obligation to complete and warrant the Improvements and/or fulfill any other obligation under this Agreement or Ogden City ordinances is independent of any obligation to City, either express or implied. Applicant acknowledges (a) that its contractual obligation to complete and warrant the Improvements pursuant to this Agreement is independent of any other remedy available to City to secure proper completion of the Improvements; (b) that Applicant may not assert as a defense that City has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Applicant of its duty to perform as outlined in this Agreement, or preclude City from requiring Applicant's performance under this Agreement; and (c) that Applicant has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full.
  
8. **APPLICANT'S OBLIGATION FOR COSTS.** It is expressly understood and agreed upon between the parties that this Agreement shall not relieve Applicant from the obligation to complete and fully pay for the Improvements. Should Applicant fail to perform in any degree its responsibilities under this Agreement, Applicant agrees to compensate City for all costs, including Incidental Costs, related to the Applicant's Failure to Perform its obligation to complete and warrant the Improvements to the extent that such costs are not adequately covered by the Proceeds described in paragraph 9.
  
9. **PERFORMANCE GUARANTEE.** Applicant hereby assigns and sets over to City, as an independent guarantee with City for the purpose of ensuring construction and installation of the Improvements, the following (check one and complete):

\_\_\_ That certain Cashier's Check (a copy of which is attached hereto) in the amount of \$ \_\_\_\_\_ (herein the "Proceeds"). Said check is numbered \_\_\_\_\_, and was issued by \_\_\_\_\_ [insert name of bank] on \_\_\_\_\_ [insert date of check] in favor of City.

-or-

\_\_\_ That certain money market certificate (a copy of which is attached hereto) in the amount of \$ \_\_\_\_\_ (herein the "Proceeds"). Said certificate is numbered \_\_\_\_\_, and was issued by \_\_\_\_\_ [insert name of bank] on \_\_\_\_\_ [insert date of certificate] in

favor of City.

-or-

X The sum of \$100,400.65 in cash (herein the "Proceeds"). If a personal check is used, attach copy of check as part of this Agreement, otherwise attach receipt. **(City will not approve this Agreement until the personal check has been covered by the drawee.)**

10. **PARTIAL RELEASE OF PROCEEDS.** As the Improvements are accepted by City, a portion of the Proceeds may be released to Applicant upon Applicant's written request. Such requests may be made only once every 30 days. The amount of any requested release shall be determined in the sole discretion of City. No release shall be authorized until such time as City has inspected the Improvements and found them to be in compliance with City standards. Completion of Improvements, even if verified by City, shall not entitle Applicant to an automatic release of any part of the Proceeds. The release of any Proceeds shall be evidenced by the written authorization of City.
11. **FINAL ACCEPTANCE.** Notwithstanding the fact that certain of the Proceeds may be released upon partial completion of the Improvements, neither shall any partial release nor any full release of the Proceeds constitute final acceptance of the Improvements by City. Final acceptance of the Improvements shall be official only upon written notice to Applicant from City expressly acknowledging such.
12. **WARRANTY OF IMPROVEMENTS.** Applicant hereby warrants that the Improvements shall remain free from defects or damage following final inspection, and acceptance or approval, as applicable, of the Improvements, such that the Improvements continue to meet City standards, as determined by City, for one year following said final inspection and acceptance or approval, as applicable (the 'Warranty Period'). The term of this Agreement shall extend to the end of the Warranty Period unless terminated earlier as allowed by paragraph 15.
13. **RETAINAGE.** Applicant expressly agrees that notwithstanding any partial release of any of the Proceeds requested by Applicant and/or granted by City, the Proceeds shall not be released below the amount of the Retainage for one year following final inspection and/or acceptance of the Improvements. The Retainage shall be held to ensure that if Improvements have any latent defects or damage as determined by City, the Improvements will be repaired or replaced to meet City standards for one year after said final acceptance. Notwithstanding retention of said Retainage, Applicant shall be responsible for any substandard, defective, or damaged Improvements if the Retainage is inadequate to cover the full cost of repairing or replacing any such Improvements.

14. **APPLICANT INDEMNIFICATION.** Applicant agrees to indemnify, save harmless and defend City, its officers, agents and employees, from and against any and all liability which may arise as a result of the installation of the Improvements prior to City's final acceptance of the Improvements, and any and all liability which may arise as a result of any Improvements which are found to be defective during the one year warranty period covered by this Agreement. With respect to Applicant's agreement to defend City, as set forth above, City shall have the option to either provide its own defense, with all costs for such being borne by Applicant, or require that Applicant undertake the defense of City.
15. **FINAL RELEASE OF PROCEEDS.** Upon final acceptance and/or approval of all Improvements, the Proceeds, not including the Retainage, will be released to the Applicant. The Retainage will be held for the Warranty Period to ensure that the Improvements do not have any latent defects or damage as determined by City. If at the end of the Warranty Period the Improvements have remained free of defect or damage, the Retainage will be released to the Applicant. At Applicant's request, all of the Proceeds may be released and this Agreement terminated upon final acceptance and/or approval of the Improvements if a separate and independent financial guarantee is first provided in the amount of the Retainage to warranty the Improvements as described in this Agreement.
16. **CITY USE OF PROCEEDS.** In the event that the Improvements are not timely and satisfactorily completed in accordance with this Agreement, the City is authorized to use the Proceeds to install the required improvements. If the Improvements are not maintained for the Warranty Period or prove to be defective during the Warranty Period, the City is authorized to use the remaining funds to repair or replace the Improvements as may be required.
17. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to City standards for whatever reason including previous releases, Applicant shall be responsible for the deficiency. Additionally, no further permits shall be issued, no business license shall be issued, and/or any existing permits or business license applicable to the location of the Improvements may be immediately suspended or revoked by the City until the Improvements are completed or, until a new financial guarantee acceptable to the City has been executed to ensure completion of the remaining Improvements.
18. **ACCESS TO PROPERTY.** Should City elect to use the Proceeds to complete, repair or replace the Improvements, Applicant herein expressly grants to City and any contractor or other agent hired by City the right of access to the project property to complete or remedy defects in the Improvements.

19. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the one-year warranty period discussed above, City shall notify Applicant in writing of such substandard or defective Improvements. Applicant shall then have 15 days from the date the notice is sent in which to commence repair or replacement of the Improvements, and a reasonable amount of time as determined by City which shall be specified in the notice, to complete repair of the Improvements. Should Applicant fail to either commence work on the Improvements or complete work on the Improvements within the required time periods, City may exercise its option to remedy the defects and demand payment for such from Applicant, should the Retainage be insufficient to cover the costs incurred by City.
20. **INSURANCE.** As an Incidental Cost, should City elect to install, complete or remedy any defect or damage in the Improvements, Applicant shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment or injury to any person or property, including but not limited to damage to Applicant or its property as a result of the work of any contractor or agent hired by City to complete or remedy the Improvements. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by City. Applicant shall indemnify, defend and hold harmless City, its officers, employees and agents, for any liability which exceeds the insurance policy limit. Applicant further agrees that City, at its option, may collect and expend the Proceeds to make the premium payments if Applicant fails to pay said premium. No permit, approval or business license shall be issued by City and any existing permit, approval or business license shall be suspended until said premium is initially paid and a guarantee is in place to cover subsequent payments. Applicant further agrees to indemnify, defend and hold harmless City, its officers, agents and employees, for or from any damage or loss suffered or any judgment resulting from the work of any contractor or agent hired by City on behalf of Applicant.
21. **MECHANIC/MATERIAL LIENS.** Should City elect to complete or remedy defects in the Improvements, Applicant shall indemnify, defend and hold harmless City from and against any liability which exceeds the Proceeds for the payment of any mechanic's or materialmen's liens as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by City or which may arise due to either a defect in or failure of this Agreement or insufficient Proceeds to cover such costs.
22. **FAILURE TO PERFORM.** In addition to those events previously or subsequently described herein, the following shall be considered Failure to Perform on the part of Applicant, the occurrence of which shall entitle City to invoke any and all remedies outlined in this Agreement or any and all remedies it may have in equity or at law: Applicant's abandonment of the project as determined by City; Applicant's insolvency,

appointment of a receiver or filing a voluntary or involuntary petition in bankruptcy; the commencement of a foreclosure proceeding against the project property; or the project property being conveyed in lieu of foreclosure.

23. **NOTICE.** Any notice required by this Agreement shall be mailed via first class mail, postage prepaid, to the party's address as shown on the first page of this Agreement. Other forms of notice may also be used, but any such alternative form of notice does not substitute for the mailing required by this section.
24. **WAIVER.** The failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term or condition. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring failure to perform.
25. **ATTORNEYS FEES.** In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay the successful party reasonable attorneys fees incurred by such party, and, in addition, such costs and expenses as are incurred in enforcing this Agreement.
26. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement. In case either party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity, or law.
27. **GOVERNING LAW.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by City ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledged that any subdivision or other development regulations enacted after the execution of this Agreement reasonably necessary to protect the health, safety and welfare of the citizens of City, shall also apply to the subdivision or development which is the subject of this Agreement.
28. **INDUCEMENT, INTEGRATION, MODIFICATION, CAPTIONS, SEVERABILITY.**

28.1 The making and execution of this Agreement has been induced by no

representations, statements, warranties or agreements other than those herein expressed.

- 28.2 This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter herein.
- 28.3 This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties. Notwithstanding any other provision of this Agreement to the contrary, if the City's ordinances requiring Applicant to escrow funds pursuant to this Agreement, are amended in a manner that would benefit Applicant if applied to Applicant, the City shall use good faith efforts to amend this Agreement for the benefit of Applicant to conform to any such ordinance amendment, including without limitation, amending this Agreement to reduce, substitute, or release the funds escrowed by Applicant pursuant to this Agreement.
- 28.4 The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or describe the scope, content or intent of any part or parts of this Agreement.
- 28.5 If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.
29. **NOT INTEREST BEARING ACCOUNT.** Applicant understands and agrees that no interest on the Proceeds submitted pursuant to paragraph 9 shall accrue to the benefit of the Applicant during the term of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

WHEREUPON, the parties hereto have set their hands the day and year first above written.

APPLICANT

CITY

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

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

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_  
*[City Engineer, Planning Manager, etc.]*

ATTEST:

ATTEST:

\_\_\_\_\_  
CLERK/AUDITOR

\_\_\_\_\_  
CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

CITY NOTARY

STATE OF UTAH )  
 :SS  
COUNTY OF WEBER )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me  
\_\_\_\_\_, the \_\_\_\_\_ of Ogden City, the signer(s)  
of the foregoing instrument who duly acknowledged to me that such officer executed the same on behalf of  
said Ogden City.

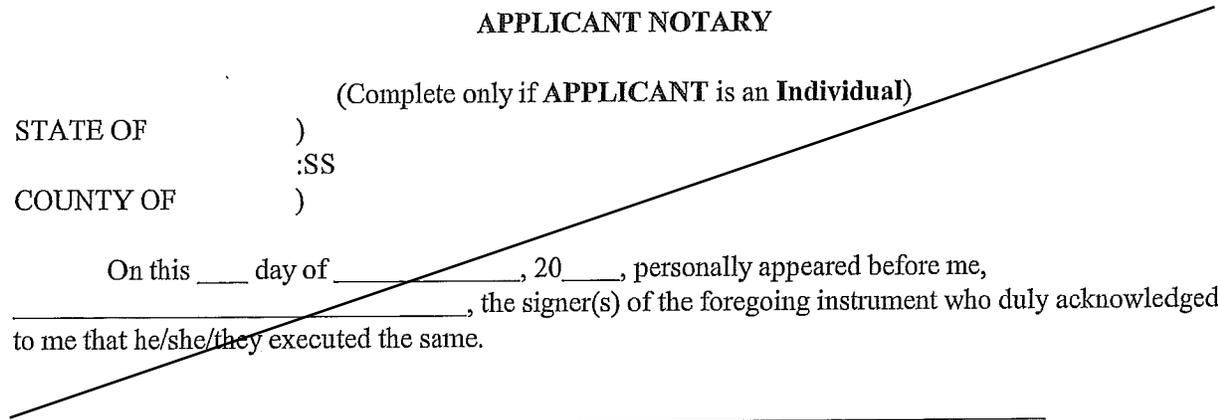
\_\_\_\_\_  
NOTARY PUBLIC

APPLICANT NOTARY

(Complete only if APPLICANT is an Individual)

STATE OF )  
 :SS  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me,  
\_\_\_\_\_, the signer(s) of the foregoing instrument who duly acknowledged  
to me that he/she/they executed the same.



\_\_\_\_\_  
NOTARY PUBLIC

\*\*\*\*\*

(Complete only if APPLICANT is a Corporation)

STATE OF )  
 :SS  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me,  
\_ who being by me duly sworn did say that he/she is the \_\_\_\_\_ of  
corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its  
Board of Directors, and he acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

\*\*\*\*\*

(Complete only if APPLICANT is a Partnership)

STATE OF )  
:  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me,  
\_\_\_\_\_, who being by me duly sworn did say that he/she/they is/are the  
\_\_\_\_\_ of \_\_\_\_\_ a partnership, and that the foregoing instrument  
was duly authorized by the partnership at a lawful meeting held or by authority of its by-laws and signed in  
behalf of said partnership.

\_\_\_\_\_  
NOTARY PUBLIC

\*\*\*\*\*

(Complete only if APPLICANT is another type of entity)

STATE OF )  
:SS  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me,  
\_\_\_\_\_ who being by me duly sworn did say that he/she is the  
\_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_ and that the foregoing instrument was signed in behalf of  
said entity, and he/she acknowledged to me that said entity executed the same.

\_\_\_\_\_  
NOTARY PUBLIC



**Exhibit A**  
Page 1 of 1  
**City of Ogden**  
2549 Washington Blvd.  
Ogden UT, 84401  
801-629-8986

Permit Number: **ENG003810-2023**

## Financial Guarantee Exhibit

Demolition	\$22,338.75
Street Improvement	\$45,491.90
Sanitary Sewer	\$2,200.00
Storm Drain	\$3,770.00
Culinary Water	\$3,100.00
Miscellaneous	<u>\$23,500.00</u>
Engineering Escrow	\$100,400.65
LandScape	<u>\$0.00</u>
Total Escrow Amount	<u><u>\$100,400.65</u></u>