

SUBDIVISION AGREEMENT  
(Right of Way Landscaping)  
(Government Code §66462 and §66463)

Subdivision: PA14-0042 (x-ref SD8971)

Effective Date: \_\_\_\_\_

Subdivider: Toll Borthers, Inc.

Completion Period: **2 years**

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CONTRA COSTA COUNTY

Brian M. Balkas Public Works Director

SUBDIVIDER: (Name and Title)

Toll Brothers, Inc.

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

(signature)

(print name & title)

Bob Moore - Division President/  
Regional Manager

RECOMMENDED FOR APPROVAL:

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

Engineering Services Division

(signature)

(print name & title)

Richard Nelson - Division President

FORM APPROVED: Victor J. Westman, County Counsel

(NOTE: All signatures to be acknowledged. If Subdivider is incorporated, signatures must conform with the designated representative groups pursuant to Corporations Code §313.)

1. PARTIES & DATE. Effective on the above date, the County of Contra Costa, California, hereinafter called "County," and the above-mentioned Subdivider, mutually promise and agree as follows concerning this subdivision:

2. IMPROVEMENTS. Subdivider agrees to install certain road improvements (both public and private), drainage improvements, signs, street lights, fire hydrants, landscaping, and such other improvements (including appurtenant equipment) as required in the improvement plans for this subdivision as reviewed and on file with the Contra Costa County Public Works Department and in conformance with the Contra Costa County Ordinance Code (including future amendments thereto).

Subdivider shall complete said work and improvements (hereinafter called "work") within the above completion period from date hereof as required by the California Subdivision Map act (Government Code §§66410 and following), in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the County Ordinance Code, the stricter requirements shall govern.

3. IMPROVEMENT SECURITY. Upon executing this Agreement, the Subdivider shall, pursuant to Government Code §66499, and the County Ordinance Code, provide as security to the County:

A. For Performance and Guarantee: \$ 7,000 cash, plus additional security, in the amount of \$628,000 which together total one hundred percent (100%) of the estimated cost of the work. Such additional security is presented in the form of:

\_\_\_\_\_ Cash, certified check or cashiers check.

X Acceptable corporate surety bond.

\_\_\_\_\_ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees performance under this Agreement and maintenance of the work for one year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

B. For Payment: Security in the amount of \$318,000, which is fifty percent (50%) of the estimated cost of the work. Such security is presented in the form of:

\_\_\_\_\_ Cash, certified check, or cashier's check

X Acceptable corporate surety bond.

\_\_\_\_\_ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

C. Upon acceptance of the work as complete by the Board of Supervisors and upon request of the Subdivider, the amount securities may be reduced in accordance with §94-4.406 and §94-4.408 of the Ordinance Code.

4. **GARANTEE AND WARRANTY OF WORK.** Subdivider guarantees that said work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one-year from and after the Board of Supervisors accepts the work as complete in accordance with Article 96-4.6, "Acceptance", of the Ordinance Code. Subdivider agrees to correct, repair, or replace, at his expense, any defects in said work.

The guarantee period does not apply to road improvements for private roads which are not to be accepted into the County road system.

5. **PLANT ESTABLISHMENT WORK.** Subdivider agrees to perform establishment work for landscaping installed under this agreement. Said plant establishment work shall consist of adequately watering plants, replacing unsuitable plants, doing weed, rodent and other pest control and other work determined by the Public Works Department to be necessary to insure establishment of plants. Said plant establishment work shall be performed for a period of one-year from and after the Board of Supervisors accepts the work as complete. At the discretion of the County, bids may be released after final acceptance of landscaping improvements by the County.

6. **IMPROVEMENT PLAN WARRANTY.** Subdivider warrants the improvement plans for the work are adequate to accomplish the work as promised in Section 2 and as required by the Conditions of Approval for the Subdivision. If, at any time before the Board of Supervisors accepts the work as complete or during the one-year guarantee period, said improvement plans prove to be inadequate in any respect, Subdivider shall make whatever changes are necessary to accomplish the work as promised.

7. **NO WAIVER BY COUNTY.** Inspection of the work and/or materials, or approval of work and/or materials or statement by any officer, agent or employee of the County indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments, therefor, or any combination or all of these acts, shall not relieve the Subdivider of his obligation to fulfill this agreement as prescribed; nor shall the County be thereby be stopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.

8. **INDEMNITY:** Subdivider shall hold harmless and indemnify the indemnitees from the liabilities as defined in this section:

A. The indemnities benefitted and protected by this promise are the County, and its special district, elective and appointive boards, commissions, officers, agents, and employees.

B. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the County reviewed said improvement plans or accepted the work as complete, and including the defense of any suit(s), action(s), or other proceeding(s) concerning said liabilities and claims.

C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor, or any officer, agent, or employee of one or more of them;

D. Non-Conditions: The promise and agreement in this section are not conditioned or dependent on whether or not any Indemnitee has prepared, supplied, or approved any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of any Indemnity.

9. **COSTS:** Subdivider shall pay when due, all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

10. **SURVEYS.** Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the County Road Commissioner-Surveyor before acceptance of any work as complete by the Board of Supervisors.

11. **NON-PERFORMANCE AND COSTS:** If Subdivider fails to complete the work within the time specified in this Agreement, and subsequent extensions, or fails to maintain the work, the County may proceed to complete and/or maintain the work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the County (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Subdivider hereby consents to entry on the subdivision property by the County and its forces, including contractors, in the event the County proceeds to complete and/or maintain the work.

Once action is taken by County to complete or maintain the work, Subdivider agrees to pay all costs incurred by the County, even if Subdivider subsequently completes the work.

Should County sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the work, Subdivider agrees to pay all attorney's fees, and all other expenses of litigation incurred by County in connection therewith, even if Subdivider subsequently proceeds to complete the work.

12. **INCORPORATION/ANNEXATION.** If, before the Board of Supervisors accepts the work as complete, the subdivision is included in territory incorporated as a city or is annexed to an existing city, the County's rights under this agreement and/or any deposit, bond, or letter of credit securing said rights shall be transferred to the new or annexing city. Such city shall have all the rights of a third party beneficiary against Subdivider, who shall fulfill all the terms of this agreement as though Subdivider had contracted with the city originally.

13. **RECORD MAP.** In consideration hereof, County shall allow Subdivider to file and record the Final Map or Parcel Map for said Subdivision.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Alameda)

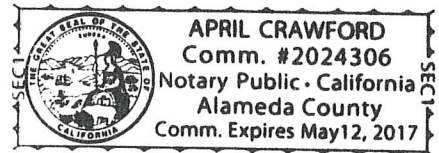
On July 23st, 2015 before me, April Crawford, Notary Public-----  
(insert name and title of the officer)

personally appeared Robert D. Moore and Richard M. Nelson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature April Crawford (Seal)





**Subdivision:** PA 14-0042 (x-ref. SD 8971)  
**Bond No.:** 58727561  
Premium: \$5,024.00

**IMPROVEMENT SECURITY BOND**  
**FOR PUBLIC RIGHT OF WAY LANDSCAPE AGREEMENT**  
(Performance, Guarantee, and Payment)  
(California Government Code Sections 66462 and 66463)

1. **RECITAL OF SUBDIVISION AGREEMENT:** The Principal has executed an agreement with the County to install and pay for public right of way landscaping, and other related improvements in Subdivision PA 14-0042 (x-ref. SD 8971) as specified in the Subdivision Agreement (Right of Way Landscaping), and to complete said work within the time specified for completion in the Subdivision Agreement (Right of Way Landscaping), all in accordance with State and local laws and rulings thereunder in order to satisfy conditions for filing of the Final Map or Parcel Map for said Subdivision.
  
2. **OBLIGATION:** Toll Brothers, Inc., as Principal, and Western Surety Company, a corporation organized existing under the laws of the State of SD, and authorized to transact surety business in California, as Surety, hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns to the County of Contra Costa, California to pay it:
  - A. **Performance and Guarantee:** Six Hundred Twenty Eight Thousand Dollars and 00/100 Dollars (\$ 628,000.00) for itself or any city assignee under the above County Subdivision Agreement, plus
  
  - B. **Payment:** Three Hundred Eighteen Thousand Dollars and 00/100 Dollars (\$ 318,000.00) to secure the claims to which reference is made in Title XV (commencing with Section 3082) of Part 4 of Division III of the Civil Code of the State of California.
  
3. **CONDITION:**
  - A. The Condition of this obligation as to Section 2.(A) above is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on is or its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the County of Contra Costa (or city assignee), its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by County (or city assignee) in successfully enforcing such obligation, all to be taxed as costs and included in any judgement rendered.

- B. The condition of this obligation as to Section 2.(B) above is such that said Principal and the undersigned as corporate surety are held firmly bound unto the County of Contra Costa and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Civil Code for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by County (or city assignee) in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgement therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

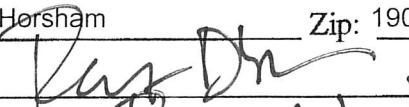
- C. No alteration of said subdivision agreement or any plan or specification of said work agreed to by the Principal and the County shall relieve any Surety from liability on this bond; and consent is hereby given to make such alteration without further notice to or consent by Surety; and the Surety hereby waives the provisions of California Civil Code Section 2819, and holds itself bound without regard to and independently of any action against Principal whenever taken.

**SIGNED AND SEALED** on August 11, 2015

**PRINCIPAL:** Toll Brothers, Inc.

Address: 250 Gibraltar Road

City: Herndon Zip: 19044

By: 

Print Name: Robert P. Moore

Title: Div. President

**SURETY:** Western Surety Company

Address: 100 Matsonford Road, Suite 200

City: Radnor Zip: 19087

By: 

Print Name: William F. Simkiss

Title: Attorney-in-Fact

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of PA

County of Chester

On August 11, 2015 before me, Arlene Ostroff, Notary Public  
Date Name and Title of Notary

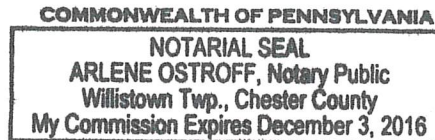
personally appeared William F. Simkiss  
Name and or Names of Signer(s)

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature   
Arlene Ostroff Notary Public Signature



Place Notary Public Seal Above

OPTIONAL

*Though the information below is not required by law, it may prove valuable to the persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

## Description of Attached Document

Title or Type of Document \_\_\_\_\_

Document Date \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer – Title(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Guardian or Conservator
- ☒ Attorney-in-Fact
- ☐ Trustee
- ☐ Other: \_\_\_\_\_

Signer is representing \_\_\_\_\_  
 Western Surety Company

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb

- ☐ Individual
- ☐ Corporate Officer – Title(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Guardian or Conservator
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Other: \_\_\_\_\_

Signer is representing \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**William F Simkiss, Richard J Decker, Daniel P Dunigan, Joseph W Kolok Jr, Brian C Block, James L Hahn, Individually**

of Paoli, PA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

### - In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 15th day of June, 2015.



WESTERN SURETY COMPANY

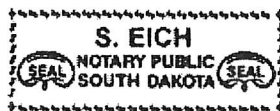
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 15th day of June, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

February 12, 2021



S. Eich, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 11TH day of AUGUST, 2015.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary



**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Alameda)

On August 14, 2015 before me, April Crawford, Notary Public-----  
(insert name and title of the officer)

personally appeared Robert D. Moore, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

*April Crawford*

(Seal)

