

SEWER EXTENSION AGREEMENT
(Cash Form)

THIS AGREEMENT is made and entered as of the ____ day of _____, 20 ____, by and between _____ whose address is _____, hereinafter referred to as the “Developer;” and **JORDAN BASIN IMPROVEMENT DISTRICT**, a political subdivision of the State of Utah, whose address is 1253 West Jordan Basin Lane, Bluffdale UT 84065, hereinafter referred to as the “District.”

RECITALS:

- A. The Developer proposes to install sewer lines, manholes and related structures and facilities (hereinafter, the “Sewer Improvements”), on land in an area to be served by the District, and desires to connect the Sewer Improvements to the District’s sewer system;
- B. The proposed Sewer Improvements are to be installed in the _____ subdivision located at approximately _____, in _____ City, Utah (the “Development”);
- C. To ensure compliance with its Rules and Regulations, and to ensure public health, safety and welfare, the District will not allow connection of the Sewer Improvements to its system or otherwise approve or accept any work by the Developer until this Agreement is executed by the parties and the Performance Security¹ is provided as described in this Agreement; and
- D. The District requires this Agreement to ensure timely and workmanlike completion of the Sewer Improvements according to the District’s Design Standards and Construction Specifications, the plan and profile drawings approved by the District, and with the District’s Rules and Regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Design and Installation of Improvements.**

- a. **The Design.** The Developer has provided to the District a design consisting of plan and profile drawings of the Sewer Improvements (the “Design”) for review by the District. If directed by the District, the Design provides for the extension and, if necessary, upsizing of Developer’s sewer main line(s) to adjacent property boundaries. The Developer has incorporated the District

¹ See Section 2, below.

Engineer's recommendations into the Design, if any, and the District Engineer has given its approval of the Design.²

- b. **Rights of Way and Easements.** Prior to any construction or Development, Developer shall have acquired, at no expense to the District, all easements and other rights or interests required by the District for installing and maintaining that portion of the Sewer Improvements to be owned by the District, and shall have conveyed those easement rights or interests to the District in substance and form acceptable to the District.
- c. **Preconstruction Meeting.** A preconstruction meeting may be requested by the Developer only after the following have been completed:
 - 1) District Engineer's approval of the Design;
 - 2) Execution and delivery to the District of all required easements;
 - 3) Payment of all required fees, including but not limited to nose-on, design review and inspection fees³;
 - 4) Execution of this Agreement including the provision of Performance Security as described herein; and
 - 5) Execution, delivery and completion of any other documents or performances required by the District's Rules and Regulations or otherwise reasonably required to meet the purposes thereof.
- d. **Installation.** Upon compliance with all the foregoing requirements, the Developer shall install at Developer's sole cost and expense the Sewer Improvements as shown on the approved Design. All construction shall be performed in a timely and workman-like manner and in accordance with the District's Design Standards and Construction Specifications. All work shall be subject to District testing, inspection and approval before the same is covered or interconnected with the main outfall lines owned by the District. If any work is covered or interconnected before such testing, inspection and approval, the District may require the work to be uncovered (at a date and time convenient to the District, and at Developer's sole expense) for testing and inspection and may disconnect the Developer's Sewer Improvements from the District's sewer system. Consistent with the District's Design Standards and Construction Specifications, at the time of the installation the Developer shall install appropriate wyes in the sewer main line for each connection to be serviced, and extend lateral sewer lines to a point not less than 10 feet inside the boundary of property to be served by the Sewer Improvements; and all Sewer Improvements shall be located at a distance not less than five (5) feet from any other utilities, and not less than five (5) feet from the nearest curb, gutter or sidewalk.

² The District Engineer's approval of the Design does not constitute Final Project Approval.

³ After execution of this Agreement, additional fees shall be required, including without limitation, impact fees, inspection fees, plat signing fees, and other fees as required by the District's Rules and Regulations.

- e. **Completion Deadline.** All Sewer Improvements shall be completed and the system conveyed to the District by Bill of Sale as set forth in subsection h, below, on or before two (2) years from date of this Agreement.
- f. **Physical Connection to System – Debris Protection.** Upon completion of the connection of the Developer’s Sewer Improvements to the District’s main outfall line(s), the Developer shall install a plug, acceptable to the District, in the manhole(s) where the sewer connection occurs.
- g. **Inspections, Work Hours.** The District’s work hours are 7:00 am to 4:30 pm, Monday through Thursday, and 8:00 am to 12:00 pm on Friday, except holidays. Inspections to be performed at any other time shall require the prior written consent of the District, and shall require the Developer to pay additional inspection fees.
- h. **Transfer by Developer to District.** Prior to Final Completion and before the Completion Deadline in subsection e, above, Developer shall execute and deliver to the District the approved Bill of Sale conveying the Sewer Improvements to the District free and clear of all liens and encumbrances. The District shall thereafter be the sole owner and shall operate and maintain such Sewer Improvements; provided, however, the Developer shall continue to be subject to the warranty obligations described herein; and further, the District shall not own nor have any duty to maintain service laterals extending from the District’s sewer main(s) to any individual lots or connections.
- i. **Final Connection and Use Requirements.** The Sewer Improvements shall not be connected to the District’s system or otherwise utilized for the collection and conveyance of sewage until the Developer has met all District Requirements including without limitation, completed all Sewer Improvements, passed all inspections, and paid all fees required by this Agreement, by the District’s Construction Standards and Design Specifications and by the District’s Rules and Regulations.

2. **Performance Security.** Concurrent with the execution of this Agreement, the Developer delivers to the District cash or equivalent in the amount of \$ _____ (the “Performance Security”). The purpose of the Performance Security is to secure performance of Developer’s duties as defined in this Agreement, in the District’s Design Standards and Construction Specifications and in the District’s Rules and Regulations.⁴ The parties acknowledge that Performance Security held by the District is deposited and held with the Utah Public Treasurers Investment Fund (“PTIF”), managed by the office of the Utah State Treasurer, and that interest will accrue on the funds at the rate determined by the Utah State Treasurer. Administrative fees and interest accrual on funds held with the PTIF are determined

⁴ Hereinafter, the collective and combined requirements of this Agreement, the District’s Design Standards and Construction Specifications and the District’s Rules and Regulations are referred to as the “District Requirements.”

solely by the Utah State Treasurer. The amount of the Performance Security represents the following:

- a. **Completion Security.** \$ _____, which is the District Engineer’s estimate of the cost of the Sewer Improvements (the “Completion Security”). The Completion Security shall be held by the District as security for the Developer’s timely and workmanlike completion of the Sewer Improvements described herein; and
 - b. **Warranty Security.** \$ _____ which represents ten percent 10% of the District Engineer’s estimate of the cost of the Sewer Improvements (the “Warranty Security”). The Warranty Security shall be held as security for the Developer’s obligations during the warranty periods described herein.
3. **Progress Releases of Completion Security.** The Developer may make written requests that the District authorize periodic partial releases of the Completion Security. The District’s approval of partial releases of the Completion Security is conditioned upon Developer’s strict compliance with the following:
- a. **First Partial Release.** For developments where at least 1,000 lineal feet of sewer main line are to be installed, when at least 50% of the Sewer Improvements are Substantially Complete (as defined in the District Design Standards and Construction Specifications) and have been properly installed, the Developer may request a release of 40% of the Completion Security. As used in this paragraph 3, “properly installed” means: 1) satisfactory connection of Sewer Improvements to the District’s existing sewer main line; 2) District’s television inspection of the Sewer Improvements, and confirmation that the Sewer Improvements are straight, clean and free from debris, and appear to be free of defect; 3) submission by Developer of satisfactory compaction test results; 4) submission by Developer of satisfactory air and vacuum test results; 5) submission by Developer of drawings identifying the location of all lateral lines; and 6) certification by Developer’s registered surveyor that the Sewer Improvements lie within the public right of way or a recorded public sewer easement⁵. If one or more subsequent television or other inspections for a partial release is required, Developer shall pay a fee for each subsequent television inspection, in the amount outlined in the District’s Consolidated Fee Schedule.
 - b. **Second Partial Release.** On any Project, irrespective of the length of Sewer Improvements being installed, the Developer may request a release of an amount not to exceed 80% of the Completion Security when all Sewer

⁵ This shall be a Certified Survey, on the JBID’s form, signed by a licensed Surveyor including manhole coordinates, rim and invert elevations, in Utah Central NAD83 foot coordinate system.

Improvements are Substantially Complete and have been properly installed as defined in subparagraph a., above.

- c. **Final Release of Completion Security.** The Developer may request the release of the remaining balance of the Completion Security⁶ upon Final Completion as defined in the District Design Standards and Construction Specifications, and demonstration that all construction and final District inspections of the Sewer Improvements are complete, including the following:
 - 1) all items required for the First and Second Partial Releases outlined above;
 - 2) all manholes are collared and level with adjacent pavement;
 - 3) existing pipes in the tie-in manholes are cut out and/or plug(s) are removed;
 - 4) all manholes are cleaned;
 - 5) accurate and complete “as-constructed drawings” have been submitted to the District;⁷
 - 6) a fully executed bill of sale, in the approved format, has been delivered to the District;
 - 7) all plugs and false bottoms have been removed; and
 - 8) all lateral location markers are installed.
4. **Release of Warranty Security.** The Warranty Security shall be retained by the District throughout the entire term of the Improvement Warranty⁸, and its release shall be conditioned upon Developer’s timely, workmanlike and satisfactory completion of all obligations required under the Improvement Warranty.
5. **District Withdrawals from Performance Security.**
 - a. The purpose of the Performance Security is to ensure that the Developer completes the construction of the Sewer Improvements in a timely and workmanlike manner, abides by the Improvement Warranty provisions of this Agreement and otherwise fully and strictly complies with the District Requirements.
 - b. In the event of a default, the District is authorized to withdraw from and utilize the Performance Security (in whole or in part) to pay for and complete the Sewer Improvements and to make any replacements, repairs or other work as may be required under the Improvement Warranty.
 - c. Before making any withdrawals from the Performance Security, the District shall provide the Developer at least ten (10) days written notice of default. If the Developer fails to remedy the default within ten (10) days of the notice, or

⁷Developer shall furnish accurate, surveyed, “as-constructed drawings” to the District showing the physical location of all sewer mains, laterals, inspection tees, wye branches, manholes and other facilities as they are actually installed, in an electronic format acceptable to the District.

⁸ See paragraph 10, below.

fails to obtain from the District a written extension of Developer's time to comply, the District is authorized to withdraw funds from the Performance Security and proceed as deemed necessary in the discretion of the District to remedy Developer's default.

- d. The District may make multiple withdrawals from the Performance Security, provided however, that the District is required to provide only a single written notice of a default in Developer's obligations.
 - e. Funds withdrawn from the Performance Security may be used by the District to pay for all expenses, costs and fees incurred to remedy the Developer's default. Said expenses, costs and fees shall include without limitation, damages to third parties, sewer line cleaning costs, televising costs, inspection costs, property damage, construction costs, engineering costs, costs of supplies, parts or equipment, delivery expenses, legal fees, and administrative costs equal to fifteen percent (15%) of the expenditures made by the District to remedy the Developer's default.
6. **Release of Performance Security.** Upon full and satisfactory performance of the Developer's obligations under this Agreement and strict compliance with the District Requirements, including completion of any work required during the Improvement Warranty periods, the District shall notify the Developer in writing of the satisfactory construction of the Sewer Improvements and expiration of the warranty period. Upon giving such written notice, the District shall relinquish all claims and rights in the Performance Security and release the balance of the Performance Security, plus any accrued interest to the Developer.
7. **Developer's Continuing Obligations.** The withdrawal by the District of any funds from the Performance Security does not relieve the Developer from any duties or responsibilities under this Agreement; nor shall any such withdrawal constitute a waiver or estoppel, or an accord and satisfaction, against the District. To that end, the Developer expressly agrees that if the District performs or causes to be performed all or any portion of the Sewer Improvements or work required under the Improvement Warranty, any and all costs and expenses incurred by the District (plus administrative costs as described herein) may be offset by the Performance Security. In the event the cost of any work performed by the District exceeds the amount then available from the Performance Security, the balance shall be paid by the Developer, including without limitation, damages to third parties, sewer line cleaning costs, televising costs, inspection costs, property damage, construction costs, engineering costs, costs of supplies, parts or equipment, delivery expenses, legal fees, and administrative costs equal to fifteen percent (15%) of the expenditures made by the District to remedy the Developer's default.
8. **Developer's Representations.** Developer hereby represents and warrants that:
- a. Developer is the owner of the real property for which this Agreement is made;

- b. Any streets and/or easements in which the District will be required to maintain its facilities have been or will be dedicated as public streets or recorded as sanitary sewer easements in the office of the appropriate county recorder;
- c. The District has been granted, or is hereby granted, the full right to enter at any time upon all property within the Development to operate, inspect, maintain, replace and/or remove the District's sewer lines and facilities.

9. **Costs and Fees.**

- a. The Developer shall bear the entire cost of constructing all Sewer Improvements in accordance with the Design, including extensions from existing District sewer mains to the Development, the sewer collection system within the Development, laterals to each lot or connection within the Development, and the extension of sewer lines to the boundary line of adjacent property.
- b. The Developer shall bear the entire cost of performing any work required under the Improvement Warranty.
- c. No structure, lot or parcel of real property shall be connected to any portion of the District's existing sewer system until all District fees, including impact fees for that lot or parcel have been paid to the District. The fees paid by Developer shall be those established by the District's Board of Trustees in effect on the date the fees are paid to the District.
- d. The Developer agrees to bear all costs and expenses incurred by the District due to Developer's failure to comply with the terms of this Agreement. These expenses shall include, and shall not be limited to, damages to third parties, sewer line cleaning costs, televising costs, inspection costs, property damage, and other expenses incurred by the District, and administrative costs equal to fifteen percent (15%) of the expenditures made by the District to remedy the Developer's default. All such costs and expenses shall be paid by the Developer within fifteen days of billing by the District, and any unpaid balance shall bear interest at the rate of eighteen percent (18%) per annum, compounded monthly.

10. **Improvement Warranty.** The Developer's warranty obligations under this agreement are as follows (the "Improvement Warranty"):

- a. **Developer's Warranty.** The Developer unconditionally warrants and guarantees that the Sewer Improvements, and every part thereof, shall comply with the District Requirements, will not fail in any respect as a result of poor workmanship or materials, shall not be defective in any respect, and shall not deteriorate during the warranty periods described herein.
- b. **Obligation to Repair and Replace.** In the event of any violation of the warranty obligations described herein, the Developer shall, at its sole cost and

expense, promptly make all repairs, corrections, and/or replacements, and perform any other required work, in a manner that will make the Sewer Improvements compliant in all respects with this Agreement and with the District Requirements.

c. **Standard One-Year Warranty Period.** Except as defined in subparagraphs d. and e., below, the term of the Developer's warranty shall be one (1) year, commencing on the date of Final Completion.

d.

e. **Extended Warranty – Prior Poor Performance.** In the event the District determines that the Developer or its contractor(s) have a record of prior poor performance, and that a one-year warranty is inadequate to protect the public health, safety and welfare, the District may require an extended warranty from the Developer, including additional Warranty Security in an amount acceptable to the District. The requirements of such an extended warranty and additional security will be memorialized in a signed addendum to this Agreement.

f. **Continuation of Warranty – Repairs.** In the event any repair, replacement or other work is required under the warranty provisions herein, the term thereof shall immediately be extended for a period of one (1) year, commencing the date the repair, replacement or work is completed; and in such event, the District shall be entitled to withhold release of the Warranty Security until completion of the extended warranty period.

11. **Capacity.** The District's obligation to provide sewer service hereunder is expressly subject to and conditioned upon the availability of adequate conveyance and treatment capacity; and shall be subject to any limitations, requirements and regulations established from time to time by the District's Board of Trustees, by the governing body of the sewer treatment facility, or by any other governmental entity having jurisdiction over the parties.

12. **Other Bonds.** This Agreement and the Performance Security do not alter the obligation of Developer to provide other bonds required by any city, county or agency having jurisdiction over Developer's development. The furnishing of security in compliance with the requirements of other jurisdictions shall not adversely affect the ability of the District to withdraw from the Performance Security as provided herein.

13. **Miscellaneous**

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

b. **Severability.** Should any portion of this Agreement for any reason be

declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the remaining portions of the Agreement, which shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

- c. **Waiver.** No waiver of any provision of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.
- d. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, agents, officers, employees, successors and assigns.
- e. **Default.** In the event either party violates any of the covenants, warranties, responsibilities or duties of this Agreement, or violates any provision of the District's Design Standards and Construction Specifications or the Rules and Regulations of the District, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.
- f. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.
- g. **Governing Law.** This Agreement and the parties' performance hereunder shall be governed by the laws of the State of Utah. The State or Federal Courts located in Salt Lake County, Utah shall be the exclusive forum for any action to enforce this Agreement.
- h. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof; and prior or contemporaneous promises, representations, warranties or understandings shall have no force or effect. Any amendment to this Agreement shall be made in writing and signed by the parties.
- i. **Time of Essence.** Time is of the essence of this Agreement and in the performance of the District Requirements.
- j. **Definitions.** As used herein, words that are capitalized shall be construed using the definitions set forth in this Agreement; or if not defined herein, shall be construed using the definitions set forth in the District's Design Standards and Construction Specifications or in the District's Rules and Regulations.
- k. **Conflicts with Rules and Standards.** In the event a provision of this Agreement conflicts with the District's Design Standards and Construction

Specifications or with the District's Rules and Regulations, the provision, standard, specification, rule or regulation that will most effectively ensure the integrity and efficiency of the District's system shall govern.

1. **Notices.** Notices shall be deemed effective on the date of delivery (if hand delivered) or three (3) days after mailing, certified U.S. Mail, return receipt requested. Notice shall be given to the parties at the following addresses:

To the District: (if by hand delivery)
Attn: District General Manager
1253 West Jordan Basin Lane
Bluffdale, Utah, 84065

(if by mail)
Attn: District General Manager
P.O. Box 629
Riverton, UT 84065

To the Developer: _____

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

**“DISTRICT”
JORDAN BASIN IMPROVEMENT DISTRICT**

By: _____
Joel Thompson, General Manager

DISTRICT ACKNOWLEDGMENT

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 20__, personally appeared before me Joel Thompson, who being by me duly sworn, did say that he is the General Manager of **JORDAN BASIN IMPROVEMENT DISTRICT**, a political subdivision of the State of Utah, and that said instrument was signed in behalf of the District by authority of its Board of Trustees and acknowledged to me that the District executed the same.

Notary Public

Seal:

“DEVELOPER”

By: _____

Its: _____

DEVELOPER ACKNOWLEDGMENT

(Complete if Developer is an Individual)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 20__, personally appeared before me _____ who being duly sworn, did say that (s)he is the signer of the foregoing instrument, who duly acknowledged to me that (s)he executed the same.

Notary Public

Seal:

(Complete if Developer is a Corporation)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 20__, personally appeared before me _____ who being by me duly sworn did say that (s)he is the _____ of _____, a corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its bylaws or by a resolution of its Board of Directors; and acknowledged to me that said corporation executed the same.

Notary Public

Seal:

(Complete if Developer is a Partnership)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 20____, personally appeared before me _____
_____, who being by me duly sworn did say that (s)he is the _____
_____ of _____, a partnership, and that the foregoing
instrument was duly authorized at a lawful meeting held by authority of its bylaws and signed in
behalf of said partnership.

Notary Public

Seal:

(Complete if Developer is a Limited Liability Company)

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the ____ day of _____, 20____, personally appeared before me _____
_____ who being by me duly sworn did say that (s)he is a
_____ of _____, a limited liability
company, and that the within and foregoing instrument was duly authorized by the limited liability
company at a lawful meeting held by authority of its operating agreement; and duly acknowledged
to me that said limited liability company executed the same.

Notary Public

Seal: