

SEWER EXTENSION AGREEMENT
(Warranty 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, the Performance Security¹ is provided as described in this Agreement, a plat has been signed by the District, and a Certificate of Final Completion has been issued by the District; and
- D. The District requires this Agreement to ensure timely and workmanlike completion of the Sewer Improvements in compliance with 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.
- E. The Developer desires to construct the Sewer Improvements before the District signs or otherwise approves the plat for the Development, and is willing to provide the warranty and the performance security required by the District.

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.**

¹ See Section 2, below.

- 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 Engineer’s recommendations, if any, into the Design, and the District Engineer has given its approval of the Design.²
- b. **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) Payment of all required fees, including but not limited to nose-on, design review and inspection fees³;
 - 3) Execution of this Agreement including the provision of Performance Security as described herein; and
 - 4) execution, delivery and completion of any other documents or performances required by the District Requirements⁴ or otherwise reasonably required to meet the purposes thereof.
- c. **Installation.** Upon compliance with the foregoing (subparagraphs 1.a and b.), the Developer shall install at Developer’s sole cost and expense the Sewer Improvements as shown on the approved Design, and in strict compliance with all District Requirements. All construction shall be performed in a timely and workman-like manner. 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 Substantial or 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.

⁴ As used herein, the term “District Requirements” means the collective and combined requirements of the Design, this Agreement, the District’s Design Standards and Construction Specifications and the District’s Rules and Regulations.

- d. **Completion Deadline.** All Sewer Improvements shall be completed and the system conveyed to the District by Bill of Sale as set forth in subsection g, below, on or before two (2) years from date of this Agreement.
- e. **Physical Connection to System – Debris Protection.** At the manhole location where the Developer’s Sewer Improvements connect to the District’s main outfall line(s), the Developer shall install a plug, acceptable to the District.
- f. **Inspections, Work Hours.** The District’s work hours are 8:00 am to 4:30 pm, Monday through 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.
- g. **Transfer by Developer to District – Easements, Rights-of-Way, Improvements.** As conditions precedent to the District’s execution of the plat for the Development and issuance of its Certificate of Final Completion, Developer shall, at no expense to the District:
- 1) acquire and convey⁵ to the District all easements and other rights or interests required by the District for installation and maintenance of that portion of the Sewer Improvements to be owned by the District; and
 - 2) execute and deliver to the District a 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.
- h. **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, paid all fees required by this Agreement, by the District’s Construction Standards and Design Specifications and by the District’s Rules and Regulations, and received the District’s Certificate of Final Completion.
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 under the District Requirements, including the Warranty Improvement provisions of this Agreement. The amount of the

⁵ The conveyance of such easements, rights and interests shall be on forms and in substance acceptable to the District.

Performance Security represents ten percent 10% of the District Engineer's estimate of the total cost of the Sewer Improvements.

- a. The parties acknowledge and agree that the Performance Security held by the District is or will be 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 solely by the Utah State Treasurer.

3. **District Withdrawals from Performance Security.**

- a. 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.
- b. 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 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.
- c. 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.
- d. Funds withdrawn from the Performance Security may be used by the District to pay for all expenses, costs and fees incurred by the District 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 other expenses incurred by the District, plus administrative costs equal to fifteen percent (15%) of the expenditures made by the District to remedy the Developer's default (the "Remedy Expenses" of the District).

4. **Release of Performance Security.** The Performance Security shall be retained by the District throughout the entire term of the Improvement Warranty periods. 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.

5. **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 Remedy Expenses incurred by the District may be offset by the Performance Security. In the event the cost of any Remedy Expenses of the District exceeds the amount then available from the Performance Security, the balance shall be paid by the Developer.
6. **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.
7. **Costs and Fees.**
 - a. The Developer shall bear the entire cost of constructing all Sewer Improvements in accordance with the District Requirements, 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 pay and bear all Remedy Expenses of the District. 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.

8. **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 workmanlike manner, and otherwise 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. **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 at its discretion 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.
 - e. **Repairs – Extended Warranty Period.** In the event any repair, replacement or other work is required under these warranty provisions, 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 approved in writing by the District; and in such event, the District shall be entitled to withhold release of the Warranty Security until completion of the extended warranty period.
9. **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.
10. **Other Bonds.** This Agreement and the Performance Security do not alter the obligation of Developer to provide other bonds required by any municipality, county or other 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.

11. **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 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, 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 all obligations under 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.

- l. **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.

“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: