

SEWER EXTENSION AGREEMENT
FILL AREA
(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.** A portion of the proposed Sewer Improvements to be installed will be installed in a Fill Area. A Fill Area is defined as a length of Sewer Main Line where the invert elevation of the Sewer Main Line is located above the natural ground surface which existed prior to any grading for the development.
- D.** 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 Fill Area Warranty Bond is provided as described in this Agreement; and
- E.** 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. **Fill Area Warranty Bond.** Concurrent with the execution of this Agreement, the Developer delivers to the District cash or equivalent in the amount of \$ _____ (the “Fill Area Warranty Bond”). The purpose of the Fill Area Warranty Bond 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.¹ The parties acknowledge that Fill Area Warranty Bond 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 solely by the Utah State Treasurer.
2. **District Withdrawals from the Fill Area Warranty Bond.**
 - a. The purpose of the Fill Area Warranty Bond is to ensure that the Improvements do not settle or sustain any type of damage for a period of 2 years commencing on the date of Final Completion.
 - b. In the event of a default, the District is authorized to withdraw from and utilize the Fill Area Warranty Bond (in whole or in part) to pay for and to make any replacements, repairs or other work as may be required under the Improvement Warranty.
 - c. Before making any withdrawals from the Fill Area Warranty Bond, 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 Fill Area Warranty Bond 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 Fill Area Warranty Bond, 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 Fill Area Warranty Bond 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.
3. **Release of Fill Area Warranty Bond.** Upon full and satisfactory inspection 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 relinquish all claims and rights in the Fill Area Warranty Bond and release the balance of the Fill Area Warranty Bond, plus any accrued interest to the Developer.

4. **Developer's Continuing Obligations.** The withdrawal by the District of any funds from the Fill Area Warranty Bond 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 Fill Area Warranty Bond. In the event the cost of any work performed by the District exceeds the amount then available from the Fill Area Warranty Bond, 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.
5. **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 sewer lines and facilities.
6. **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.

7. **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. **Two-Year Warranty Period-** The parties acknowledge and agree that non-native soils are more likely to settle than native and undisturbed soil, and that areas where sewer improvements are installed in non-native soils (due to depressions in topography or otherwise) are subject to significant concerns and risks to public health, safety and welfare that may not be present with other sewer installations. Accordingly, the parties acknowledge and agree that for the protection and integrity of the District's system, where a project requires the installation of Sewer Improvements in non-native or disturbed soil, the term of the Developer's Fill Area Warranty Bond shall be two (2) years, 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 two-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.

- e. **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 two (2) years, commencing the date the repair, replacement or work is completed; and in such event, the District shall be entitled to withhold release of the Fill Area Warranty Bond until completion of the extended warranty period.
8. **Other Bonds.** This Agreement and the Fill Area Warranty Bond 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 Fill Area Warranty Bond as provided herein.
9. **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.
- 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

“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: