



### IMPROVEMENT COMPLETION AGREEMENT

This AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a(n) \_\_\_\_\_ (“DEVELOPER”) and SNYDERVILLE BASIN WATER RECLAMATION DISTRICT, a local district of the State of Utah, (“SBWRD”) for \_\_\_\_\_ located at \_\_\_\_\_, hereinafter referred to as “Project.”

This Agreement is entered with reference to the following facts:

DEVELOPER has entered into a Line Extension Agreement For Public Wastewater System (LEA) with SBWRD, approved by the SBWRD Board of Trustees on the \_\_ day of \_\_\_\_\_, 20\_\_\_\_, which is attached hereto as Exhibit 1 and has agreed under the terms and conditions of the LEA to construct Wastewater Facilities (“FACILITIES”) within SBWRD boundaries.

SBWRD, in the best interest of the public, desires to assure timely and full completion and payment of the Facilities, guarantee payment of wastewater system fees (engineering, administrative, legal, and other fees) attendant and related to completion of the FACILITIES that may become due to SBWRD, and provide collateral for the warranty of the Facilities as required in the LEA.

Developer will deliver to SBWRD collateral of the type noted herein in compliance with the terms of this Agreement.

Now, therefore, in consideration of the LEA executed by the parties and the mutual covenants and conditions set forth herein, the parties hereby agree as follows:

1. Construction Completion and Project Warranty. DEVELOPER agrees to fully complete construction of the FACILITIES described and authorized in the LEA and be responsible for Warranty items during the Warranty Period as specifically set forth in the LEA.
2. Source of Funds. In compliance with the terms of this Agreement, DEVELOPER hereby delivers to SBWRD the following collateral:
  - a. ( ) Cash Deposit Escrow with SBWRD
  - b. ( ) Surety Bond on the form provided by SBWRD
  - c. ( ) Escrow Fund
  - d. ( ) Unconditional Irrevocable Letter of Credit

The amount of the selected form of collateral is \$\_\_\_\_\_.

3. Cash Deposit Escrow with SBWRD. In the case of a Cash Deposit Escrow under Election 2a herein, DEVELOPER shall deposit cash in the required amount with SBWRD to meet the obligations of this Agreement. DEVELOPER shall earn interest on the deposit at a rate equivalent to the current market rates being earned by SBWRD's cash management investment account.

Such interest shall be credited to DEVELOPER's account. Interest will not be paid by SBWRD on other forms of collateral. Release of funds from the Cash Deposit Escrow shall be according to the release process and release schedule specified in Section 7 herein.

Release of Funds shall be payable to: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Surety Bond. In the case of a Surety Bond under Election 2b herein, DEVELOPER hereby agrees to the terms of the Surety Bond. Surety bonds must be in the form approved by SBWRD. The Surety Bond shall remain in effect until completion of the Project Warranty Period as defined in the LEA. Reduction of the Surety Bond amount may occur according to the release process and release schedule specified in Section 7 herein. If a reduction of the amount of the Surety Bond is approved by SBWRD, the original Surety Bond shall be replaced with a new Surety Bond of the lesser amount.
5. Escrow Fund. In the case of an Escrow Fund under Election 2c herein, DEVELOPER hereby transfers and assigns to SBWRD the right to demand and collect the proceeds of funds from the Depository in the event of a failure of DEVELOPER to comply with the requirements of this Agreement and/or the LEA as herein provided. FUNDS ARE TO BE RELEASED FROM AN ESCROW FUND WITH A DEPOSITORY ONLY UPON WRITTEN AUTHORIZATION FROM SBWRD. SBWRD agrees to make no demand until failure of DEVELOPER to comply with the requirements.
  - a. Acceptable Depositories shall be Federally insured banks, savings and loans institutions, title companies with a licensed escrow officer conducting business on the premises, or a duly licensed bonding or surety company authorized to do business in the State of Utah.
  - b. The Depository hereby acknowledges that there is on deposit at \_\_\_\_\_ to the credit of DEVELOPER and SBWRD the sum of \$ \_\_\_\_\_, Account Number \_\_\_\_\_.  
Depository agrees to disburse the same in accordance with the terms and conditions set forth herein.
  - c. The Depository shall not be bound in any way by the requirements of any permit or approval described herein and its only duty, liability and responsibility shall be to hold the funds on deposit and to pay and deliver the funds to such parties under such conditions as are herein set forth.
  - d. Release of Escrowed Funds shall be according to the release process and release schedule specified in Section 7 herein.
6. Unconditional Irrevocable Letter of Credit. In the case of an Unconditional Irrevocable Letter of Credit under Election 2d herein, DEVELOPER hereby transfers and signs to SBWRD the right to demand and collect the proceeds of funds from the Letter of Credit in the event of a failure of DEVELOPER to comply with the requirements of this Agreement and/or the LEA as herein provided. THE AMOUNT OF THE LETTER OF CREDIT IS TO BE REDUCED ONLY UPON WRITTEN AUTHORIZATION FROM SBWRD. SBWRD agrees to make no demand until failure of DEVELOPER to comply with the requirements.
  - a. Acceptable issuers of Letters of Credit shall be Federally insured banks, credit unions, savings and loans institutions, or title companies with a licensed escrow officer conducting business on the premises authorized to do business in the State of Utah.
  - b. The Letter of Credit Issuer hereby acknowledges that DEVELOPER has acquired an Unconditional Irrevocable Letter of Credit in the sum of \$ \_\_\_\_\_, Numbered \_\_\_\_\_, and listing SBWRD as the Beneficiary and DEVELOPER as the Applicant. Issuer of the Letter of Credit agrees to disburse the

same in accordance with the terms and conditions set forth herein.

c. In the event the Letter of Credit has an expiration date, the Letter of Credit shall be renewed, and a copy of the renewed Letter of Credit provided to SBWRD a minimum 30 days prior to the expiration date. The expiration date shall not be prior to one year following the anticipated date of Final Project Approval.

d. The Letter of Credit Issuer shall not be bound in any way by the requirements of any permit or approval described herein and its only duty, liability and responsibility shall be to hold the funds on deposit and to pay and deliver the funds to such parties under such conditions as are herein set forth.

e. Reduction of the Letter of Credit amount shall be according to the reduction process and reduction schedule specified in Section 7 herein.

f. If a reduction of the amount of the Letter of Credit is approved by SBWRD, an Amendment to the Letter of Credit shall be provided to SBWRD prior to expiration of the original Letter of Credit.

7. Reduction of Collateral Amount The collateral amount may be reduced and monies released from the Cash Deposit Escrow or Escrow Fund or the amount of the Surety Bond or Letter of Credit reduced from time to time as a result of the completion of all or part of the FACILITIES with a written authorization from SBWRD. A written request from DEVELOPER to SBWRD requesting a reduction of the collateral amount is required prior to any authorized release or reduction. Payment to SBWRD of all outstanding fees due to SBWRD is also required prior to any authorized release or reduction. SBWRD shall review the project status in accordance with Exhibit 2 to this Agreement and verify whether or not all outstanding fees due have been paid. Upon verification of project status and payment of all outstanding fees due, SBWRD's General Manager will submit the request to SBWRD's Board of Trustees for approval at a regularly scheduled Board meeting. The following schedule shall apply to all releases and reductions:

<u>Percentage of Work Completed</u>	<u>Maximum Percentage of Collateral Eligible for Release</u>
30 %	20 %
50 %	40 %
70 %	60 %
90 %	80 %
100 %	90 %

If the Board of Trustees approves the reduction requested, such approval shall be made in writing, and SBWRD shall provide such writing to the Depository or Bonding Company with a copy to DEVELOPER.

8. Performance by DEVELOPER. When the FACILITIES have received Final Project Approval, as defined in the terms of the LEA, and the FACILITIES are found to be acceptable by SBWRD after a minimum period of one year after Final Project Approval, and fulfillment of all of DEVELOPER's obligations, and after acceptance of any warranty work, pursuant to the terms and conditions of the LEA, SBWRD agrees to release, or if held by the Depository, authorize and direct the release of, the remaining collateral funds or other percentage being held. In the event the FACILITIES have been partially completed and DEVELOPER fails to fulfill the obligations pursuant to the LEA, SBWRD shall have the following options that may be selected in its sole discretion: (1) Demand and collect the proceeds of the collateral funds secured by this Agreement, which funds shall be used for the completion of the construction, or (2) Give DEVELOPER an extension of time in which to complete the construction.
9. Deficit of Funds and Payment of Costs. The reduction or release of collateral funds does not preclude SBWRD from seeking additional funds from DEVELOPER in the event of defects in the wastewater facilities or non-performance of the terms of this Agreement or other changing

circumstances. In the event it becomes necessary to enforce the terms of this Agreement, the Party in default shall reimburse the Party not in default for all reasonable costs and attorney's fees incurred by the Party not in default.

- 10. Failure of Performance by DEVELOPER. It is expressly understood and agreed among the parties that this Agreement shall not relieve DEVELOPER from the obligation to install and fully pay for the wastewater facilities referenced herein. Should DEVELOPER fail to install and fully pay for such facilities, and SBWRD is required to do so, DEVELOPER further agrees to reimburse SBWRD for all costs, including construction, engineering and legal costs incurred by SBWRD to install the facilities required hereunder to the extent that these costs are not adequately covered by the principal amounts available to SBWRD as referenced in Section 2 herein.
- 11. Terms of Agreement. DEVELOPER agrees to maintain this Agreement in full force and effect and abide by its terms and conditions until notice to cancel or terminate this Agreement is received in writing from SBWRD.
- 12. Choice of Law. This Agreement and the obligations of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Utah.
- 13. Integration. The terms and provisions of this Agreement shall constitute the full and complete Agreement by and between these parties and shall supersede all prior oral or written agreements, representations or discussions of the parties and shall be binding upon their heirs, successors, administrators and assigns.
- 14. Severability. This Agreement is to be considered severable. Should any portion or section of this Agreement be declared invalid or unenforceable, such declaration shall have no effect upon the remaining portions or sections, which shall remain valid and enforceable.

\_\_\_\_\_  
DEVELOPER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

STATE OF UTAH            )  
                                      : ss.  
COUNTY OF SUMMIT    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, personally appeared before me \_\_\_\_\_, who being duly sworn, did say that he/she is the signer of the within instrument, and that the within and foregoing Improvement Completion Agreement was signed on behalf of \_\_\_\_\_, with actual and requisite authority, and said signer acknowledged to me that he/she executed the same.

S  
E  
A  
L

\_\_\_\_\_  
Notary Public



**EXHIBIT 1**  
**EXECUTED LINE EXTENSION AGREEMENT**

## EXHIBIT 2

### PERCENTAGE OF WORK COMPLETED SCHEDULE

<u>% OF WORK COMPLETED</u>	<u>COMPLETED WORK REQUIRED</u>	
30 % COMPLETE	PIPE - MANHOLE -	INSTALLED AND BACK FILLED TO TRENCH PIPE ZONE LIMITS BASE INSTALLED
50 % COMPLETE	PIPE- MANHOLE- LATERAL-	INSTALLED & BACKFILLED TO ROUGH GRADE BASE INSTALLED & WALL SECTIONS STACKED TO ROUGH GRADE. INSTALLED & BACKFILLED TO ROUGH GRADE.
70 % COMPLETE	PIPE- MANHOLE- LATERAL- SPECIAL REQ'MTS-	INSTALLED & BACKFILLED TO ROUGH GRADE, AIR-TESTED & VIDEO INSPECTED BASE INSTALLED & WALL SECTIONS STACKED TO ROUGH GRADE & MANHOLE VACUUM TESTED INSTALLED & BACKFILLED TO ROUGH GRADE & AIR-TESTED. PRELIMINARY INSPECTION REQUIRED.
90 % COMPLETE	PIPE- MANHOLE- LATERAL- SPECIAL REQ'MTS-	INSTALLED, BACKFILLED, AIR-TESTED & PAVEMENT INSTALLED. INSTALLED (NOT ADJUSTED TO FINISH GRADE). MANHOLE COLLARS NOT INSTALLED. GROUTING COMPLETE. INSTALLED & BACKFILLED TO FINISH GRADE & AIR-TESTED. LOCATION VERIFIED & FULLY EXTENDED. COMPLETION OF MAJOR PRELIMINARY INSPECTION "PUNCH-LIST" ITEMS REQUIRED. RECORD DRAWINGS SUBSTANTIALLY COMPLETE.
100 % COMPLETE	PIPE- MANHOLE- LATERAL- SPECIAL CONST.- SPECIAL REQ'MTS-	INSTALLED, BACKFILLED, AIR-TESTED & PAVEMENT INSTALLED. INSTALLED (ADJUSTED TO FINISH GRADE). MANHOLE COLLARS INSTALLED GROUTING COMPLETE. INSTALLED & BACKFILLED TO FINISH GRADE & AIR-TESTED. LOCATION VERIFIED & FULLY EXTENDED 2 X 4 MARKER PRESENT. ALL ITEMS COMPLETE (I.E. ACCESS ROADS, EROSION PROTECTION, MANHOLE MARKERS, ETC.) RESEEDING OF DISTURBED AREAS COMPLETE. FINAL INSPECTION PUNCH-LIST COMPLETE. SIGNED EASEMENTS COMPLETE. RECORD DRAWINGS COMPLETE. FINAL PROJECT APPROVAL GRANTED.

NOTE: SEWER MAIN AND LATERAL COMPLETION PERCENTAGE WILL BE ASSESSED ON THE STATUS OF EACH WHOLE SECTION (FROM MANHOLE TO MANHOLE OR ENTIRE LATERAL LENGTH) OF PIPE. THE LEAST COMPLETED CONDITION OF EACH SECTION WILL BE USED FOR THE ESTABLISHMENT OF THE PERCENTAGE.

NO PARTIAL COMPLETION ALLOWANCE WILL BE MADE FOR SPECIAL CONSTRUCTION ITEMS UNLESS SPECIFICALLY APPROVED AT THE ESTABLISHMENT OF THE IMPROVEMENT COMPLETION AGREEMENT.