



**SOUTH SALT LAKE CITY  
IMPROVEMENTS AGREEMENT**

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**SOUTH SALT LAKE**

THIS AGREEMENT (“Agreement”) entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ is made by and between the City of South Salt Lake, a Utah municipal corporation of the State of Utah (“City), whose address is 220 E. Morris Ave., South Salt Lake City, UT 84115, and

\_\_\_\_\_ (hereinafter “Developer”) of

\_\_\_\_\_ (address).

**WHEREAS,** Developer has submitted a subdivision or development project (the “Project”) for which approval by the City is required; and

**WHEREAS,** Developer is required to install landscaping and/or infrastructure improvements in connection with the Project, prior to plat recordation or development activity; and

**WHEREAS,** Developer desires to engage in development activity or plat recordation prior to completion of improvements; and

**WHEREAS,** Developer has requested that Developer be permitted to post an improvement completion assurance, in compliance with Utah state law and ordinances of the City of South Salt Lake; and

**WHEREAS,** the City will approve the subdivision or issue the permit, only if Developer promises to install and warrant the landscaping and infrastructure improvements within the Project in the time and manner described in this Agreement, and provide an adequate Improvement Completion Assurance with Developer’s promise,

**NOW, THEREFORE,** in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Definitions.** Terms which are not defined in this Agreement shall be defined as provided in Chapter 10-9a of the Utah Code, as amended.

**2. Installation of Landscaping and Infrastructure Improvements.** Developer guarantees the installation of landscaping and infrastructure improvements required by the City, as approved by the City Engineer for the Project, according to the City’s installation and inspection specifications. The improvements shall be installed precisely as shown on the plans, drawings and specifications previously reviewed and approved by the City in connection with the Project. Developer further agrees to pay the total cost of obtaining and installing the Improvements, including the cost of acquiring easements. This guarantee is binding upon the Developer’s heirs, personal representatives, successors and assigns.

**3. Time to Complete Installation.** The landscaping and infrastructure improvements shall be installed within eighteen (18) months from the date this Agreement is executed.

**4. Improvement Completion Assurance.**

- a. Developer hereby delivers to the City an Improvement Completion Assurance (the “Assurance”) totaling \$ \_\_\_\_\_, which constitutes 110% of the engineer’s original estimated cost of completion of landscaping and infrastructure improvements for the Project.
- b. Developer and City stipulate that the amount of the Assurance is a reasonable, preliminary estimate of the cost of the Improvements and landscaping.
- c. The form of the Assurance is (check one):
  - Surety/Performance Bond
  - Financial Institution Bond
  - Cash/Escrow Account

Evidence of the Assurance is attached to this Agreement as “Exhibit A”.

**5. Dedication.** If dedication is required by the City, Developer shall dedicate to the City the areas shown on the subdivision or development plat as public streets and as public easements.

**6. Indemnification Prior to Improvement Acceptance.** Developer shall indemnify the City and its representatives from all liability, claims, costs and expenses of any nature, including attorney fees which may be incurred by the City in connection with any public streets or public easements until the same are accepted by the City following installation, final inspection and approval.

**7. Non-Release of Developer’s Obligation.** The delivery of this Agreement or the Assurance shall not constitute a waiver or estoppel against City, and does not relieve Developer from its obligation to install and fully pay for all landscaping and improvements as required in paragraph 2, above. The right of City to make claim against the Assurance shall not affect any rights or remedies of City against Developer for breach of any part of this Agreement. Further, Developer agrees that if City makes claim upon the Assurance and performs or causes to be performed the installation required of Developer pursuant to this Agreement, then any and all costs incurred by the City in doing so, that are not collected by the City by making claim against the Assurance, shall be paid by Developer, including legal, administrative, engineering, and procurement fees and costs.

**8. Connection & Maintenance.** Upon performance by Developer of all obligations set forth in this Agreement and compliance with all applicable ordinances, resolution, rules and regulations, whether now or hereafter in force, including payment of all connection, review and inspection fees, City shall permit Developer to connect the Improvements to the City’s storm drain, water and sewer systems, as applicable, and to utilize and maintain such Improvements to the extent and in the manner now or hereafter provided in City regulations.

**9. Connection & Impact Fees.** As applicable, all impact and connection fees shall be paid prior to inspection by the City. All inspection fees required by ordinance and resolution shall be paid to City by Developer prior to inspection.

**10. Inspection & Determination.** The landscaping and infrastructure improvements, their installation, and all other work performed by Developer or its agents pursuant to this Agreement shall be inspected at such times as City may reasonably require and prior to closing any trench containing such Improvements. The City shall exercise reasonable diligence in inspecting the Improvements, and shall make a determination of whether to accept or reject the Developer’s Improvements within fifteen (15) days after receiving the request, unless winter conditions prevent inspection, in which case the City shall render a determination within forty-five (45) days. If the City rejects the Improvements or warranty work, then it shall provide a list of reasons for the determination.

**11. As-built Drawings.** Upon completion of the Improvements, Developer shall furnish to City drawings showing the Improvements, including the actual location of water and sewer laterals with survey references, as well as the location of all other related structures or materials actually constructed by Developer. Developer's performance under this Agreement is not complete until the drawings have been provided to City.

**12. Partial Release.** The Developer may request partial release of the Assurance if certain landscaping or infrastructure has been completed, as-built drawings have been provided, and the City has approved those improvements after an inspection. Eligibility for partial release is dependent whether the Improvements meet the qualifications in the City's system for partial release. The amount released shall be roughly equivalent to the itemized cost of the improvement on the original cost estimate. The Developer shall ensure that 10% of the partially released Assurance remains in place throughout the warranty period.

**13. Warranty.**

- a. Because it is difficult, even after thorough inspection, to discover all defects in workmanship or materials during the course of the work, Developer hereby warrants that any Improvements installed, together with the surface of the land and any pre-existing improvements replaced or restored by the Developer, shall remain in good condition and free from all defects in workmanship, materials or equipment for the entire warranty period.
- b. The Developer shall maintain an Assurance covering 10% of the Developer's actual proven costs of completion for the improvement under warranty, throughout the warranty period.
- c. The warranty period begins upon the City's inspection and acceptance of the landscaping or infrastructure improvements; or, in cases of partial release, the acceptance of that partially released improvement.
- d. The City may, at any time during the warranty period, inspect, photograph or televise the improvements and notify Developer of any defects discovered in the improvements.
- e. Within ten (10) days from the date the notice of the defects is sent to the Developer, Developer shall undertake remedial actions, repairs, or corrections required to correct any defects in the Improvements, without charge or cost to the City.
- f. Completion of this Agreement shall only occur after expiration of the warranty period.
- g. The warranty period for projects is **one (1) year** for all landscaping and infrastructure.
  - i. **Exception.** In cases of infrastructure, when the City Engineer determines that the one-year period will be inadequate to protect the public health, safety and welfare, and one of the following apply, the warrant period may be adjusted (check if applicable):
    - The applicant has demonstrated prior poor performance in installing or maintaining Improvements in projects either in the City or in other jurisdictions; or
    - The area upon which the infrastructure will be constructed contains suspect soils which have not been required to be mitigated.

Adjusted warranty period: \_\_\_\_\_

**14. Default.** City may make claim upon the Assurance only if: (1) the Improvements are not completed as required by this Agreement within the time period specified in Paragraph 3, above, or (2) the Improvements are not installed strictly or maintained during the warranty period.

- a. Default occurs when, after receiving notice of a deficiency in Developer's performance under this Agreement, Developer fails to remedy the deficiency within ten (10) business days after the notice is sent. In the event of Developer's default, City may make claim upon the Assurance for completion of the landscaping or improvements which are required under this Agreement.
- b. Additionally, to mitigate damage to the Improvements or to the property of the City or others, City may elect to correct any defect in the Improvements and shall be allowed to make a claim against the Assurance for reimbursement of all its costs, including legal, administrative, engineering procurement or other services reasonably necessary to remedy Developer's default.

**15. Claim Against Assurance.** In cases of bonds, the City shall make claim against the bond which has been posted. In cases of cash, the City makes claim by requesting that the cash being held by the City be made available for use to correct the default. In cases of letters of credit, escrow accounts, or bonds maintained by financial institutions, the City makes a claim to the institution which issued the instrument.

**16. Amendment.** Any amendment, modification, termination or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached to this Agreement

**17. Assignment.** No party shall assign or transfer any right under this Agreement without first obtaining the prior written consent of the other party, which consent shall not be unreasonably withheld. When validly assigned or transferred, this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

**18. Notices.** Any notice required or desired to be given hereunder shall be deemed sufficient if sent by certified mail, postage prepaid, addressed to the respective party at the address set forth in this Agreement.

**19. Severability & Rehabilitation.** If any portion of this Agreement is declared to be invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated. A court of competent jurisdiction may rehabilitate this Agreement so that it complies with applicable laws governing the Agreement at the time of execution.

**20. Governing law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

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

**22. Waiver.** No waiver of any of the provisions 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.

**23. Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

**24. Integration.** This Agreement, together with the referred exhibits, approved plans and specifications, constitute the entire and integrated agreement between the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter that are not contained in this Agreement shall be of any force or effect.

**25. Attorney's Fees.** In the event either party hereto defaults in any of the covenants or agreement contained herein, 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.

**26. Other Bonds or Obligations.** This Agreement and the Assurance provided by the Developer do not alter the obligation of Developer to provide other bonds under applicable ordinances or rules of any other governmental entity having jurisdiction over Developer. The furnishing of any security in compliance with the requirements of the ordinances or rules of other jurisdictions shall not adversely affect the ability of the City to make claim on the Assurance, as provided herein.

**27. Time of Essence.** The parties agree that time is of the essence.

**28. Exhibits.** Any exhibits to this Agreement are incorporated 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 off the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

SOUTH SALT LAKE CITY:

DEVELOPER:

BY: \_\_\_\_\_  
City Engineer

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

\_\_\_\_\_  
Print Name

ATTEST:

\_\_\_\_\_  
Title

\_\_\_\_\_  
City Recorder

PRE-APPROVAL AS TO FORM:

/s/ Hannah Vickery  
Assistant City Attorney  
Pre-approval valid if Agreement terms are not amended