

SEWAGE SERVICE AGREEMENT

MADE AND ENTERED INTO AS OF THIS ___ day of _____, 20___, by and between THE WASHINGTON-EAST WASHINGTON JOINT AUTHORITY, Washington County, Pennsylvania, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (the "Authority"),

A
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_____.
(the "Developer").

WITNESSETH THAT:

WHEREAS, the Authority provides sewage service in the Township of _____, Washington County, Pennsylvania (the "Township");

WHEREAS, the Developer has requested sewage service for a plan of lots located in the Township said plan of lots being known as _____, as shown on the Plans hereinafter referred to (the "Development");

WHEREAS, to make the Authority's sewage available, sanitary sewer lines must be extended from the Authority's facilities to and through the Development in accordance with plans prepared by _____, (the "Plans");

WHEREAS, the Developer is willing, upon the terms and conditions of this agreement, to extend sewer lines in accordance with the Plans; and

WHEREAS, the Authority is willing, upon the terms and conditions of this Agreement, to have sewer lines extended in accordance with the Plans and to provide sewage service to the Development;

NOW THEREFORE, in consideration of the for going premises and the covenants and conditions hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I

Definitions

- 1.1 Building Drain shall mean that part of the lowest horizontal piping of a drainage system, beginning at a point five (5) feet outside the inner face of the building wall, which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, and which shall be owned and maintained by the customer.
- 1.2 Building Sewer shall mean the pipe, to be owned and maintained by the customer, located between the building drain and the building sewer connection or the lateral sanitary sewer.
- 1.3 Building Sewer Connection shall mean the pipe, Y's, manholes and other appurtenances, to be owned and maintained by the Authority, located between the building sewer and the public sewer.

ARTICLE II

Installation of Sewer Lines

2.1 The Developer shall install the sewer lines and all appurtenances (hereinafter sometimes referred to as the "installations") as shown on the Plans. All materials and workmanship shall be in accordance with the Authority's Specifications.

2.2 The Developer shall install all installations prior to the paving of the roads in the Development, shall properly backfill all trenches to prevent settlement under all proposed paved roads and shall comply with all Township ordinances, rules and regulations relating to road repaving and restoration.

2.3 The Developer shall apply for and obtain in the name of the Authority any and all necessary highway occupancy permits or similar permits required by any governmental agency and shall fully comply with all terms and conditions thereof.

2.4 All manholes and other appurtenances shall be accessible and in good working order and operating condition at the expiration of the maintenance period referred to in paragraph 9.3 hereof.

ARTICLE III

Developer's Responsibility for Costs

3.1 The Developer shall be responsible for all costs in connection with the installations; the term "costs" shall include, without limitation, the following;

- A. Cost of all sewer lines.
- B. Cost of connections to existing systems.
- C. Cost of all fittings, manholes, appurtenances, and all other related work.
- D. Cost of all right-of-way and lands, including acquisition and condemnation costs.
- E. All engineering, legal, overhead, administrative and other costs incurred by the Authority in connection with the installations, including the cost of the preparation, administration and enforcement of this agreement.
- F. Cost of resident engineering and inspection services required during construction and testing of the installations and prior to the release of the financial security furnished for the maintenance of the installation pursuant to paragraph 9.3 hereof.

3.2 The Developer shall deposit a \$500 retainer fee, as a minimum, to offset initial engineering, administration and legal expenses. Upon the payment in full of all costs, incurred by the Authority in connection with the installations and this Agreement and upon the release of the security furnished for the maintenance of the installations pursuant to paragraph 9.3 hereof, the Authority shall pay to the Developer the balance, if any, of the deposit or any other funds held by the Authority under the provisions of this Article III.

3.3 If the Developer fails to observe the rules and regulations of the Authority or defaults in the performance or the observance of any obligation or agreement on the part of the Developer herein contained and the Authority employs attorneys or incurs other expenses for the enforcement of the Authority's rules and regulations or the provisions of this Agreement, the Developer agrees to pay to the Authority the reasonable fees of such attorneys and such other expenses so incurred by the Authority.

3.4 All bills submitted by the Authority to the Developer for costs incurred by the Authority under this Article III in excess of the Deposit shall be due and payable upon presentation to the Developer, and thirty (30) days thereafter shall bear interest at the maximum rate permitted by law.

ARTICLE IV

Contractor; Materials; Inspection

4.1 The Authority shall have the right to approve the Developer's sewer line contractor. The Developer shall furnish to the Authority a resume of the contractor's experience, the contract specifications, a cost breakdown and evidence that said contractor carries sufficient liability and property damage insurance.

4.2 The Developer shall furnish evidence to the Authority that all materials to be incorporated into the installations comply with the materials specifications of the Authority.

4.3 The Developer shall notify the Authority, in writing, 48 hours in advance of any construction to permit the Authority to inspect the work, which inspection may, at the discretion of the Authority, be performed on a full time basis. The Developer shall air test the main sanitary sewers in accordance with the testing provisions of the Specifications.

4.4 The Authority shall have the right to require all work to cease and to be discontinued if, in the opinion of the Authority or its Consulting Engineer, the work constitutes a danger to the Authority's customers or the work is not being performed in accordance with the Specifications, the Plans, the Authority's rules and regulations, the terms of this Agreement or otherwise in a careful, good and workmanlike manner.

ARTICLE V

Completion of Installations; Releases

5.1 The Developer shall complete the acquisition and construction of the installations within 120 calendar days after the work has commenced thereon. If the Developer discontinues work on the installations for 30 calendar days or longer for any reason whatsoever, the Authority shall have the right to require an inspection of the installations at the expense of the Developer and to require performance of additional work necessary to make the installations acceptable to the Authority before permission will be given by the Authority to the Developer to resume work on the installations.

5.2 Upon completion of the construction of the installations, and as a condition to the Authority's acceptance thereof under Article VIII hereof, the Developer shall furnish to the Authority releases, in form and substance satisfactory to the Authority, from the owners of all properties upon which the installations were constructed, if any, releasing the Developer and the Authority from all claims, damages and liabilities arising out of or in connection with the construction of the installations.

ARTICLE VI

Title to the Installations

6.1 Title to the installations constructed pursuant to this agreement, including building sewer line connections and related facilities, but excluding building sewer lines and building drains, shall vest in the Authority immediately upon the Authority's acceptance thereof as provided in Article VIII hereof. The Developer shall execute and deliver or cause to be executed and delivered, such bills of sale, assignments, deeds, conveyances and instruments, including easements, and take such other action as deemed necessary by the Authority to vest title to the installations in the Authority. The Authority shall have the right to extend the installations owned by it and to make any other sewer extensions beyond or laterally from the installations without any obligation to provide any refund or reimbursement to the Developer.

ARTICLE VII

Plans and Easements

7.1 Prior to commencement of the acquisition and construction of the installations, the Developer shall furnish to the Authority five (5) sets of blue-lined prints and one (1) set of reproducible mylar plans of the approved installations. Upon completion of the installations, the Developer will provide to the Authority as-built plans of all installations.

7.2 The Developer shall grant and convey or dedicate to the Authority easements having a width of 20 feet for all sewer lines and appurtenances, title to which is to vest in the Authority under paragraph 6.1 hereof, giving the Authority, its successors and assigns, the free and uninterrupted use, liberty and privilege to construct, install and maintain sewer lines with all necessary connections, appurtenances and related facilities that may be required, together with the right of free ingress, egress and regress to and for the Authority, its successors and assigns, at all times hereafter to enter upon such easements for the purpose of constructing, installing, maintaining, repairing and replacing sewer lines, appurtenances and related facilities. Where practicable, the Developer shall revise and re-record such plan in the order that all such easements shall be shown thereon. All instruments of conveyance shall be as to form and substance satisfactory to the Authority.

ARTICLE VIII

Acceptance of Installations; Applications for Service; Additional Work

8.1 After the Developer has fully performed its obligations under this Agreement, the Authority shall accept ownership of those installations described in paragraph 6.1 hereof and shall so notify the Developer in writing.

8.2 Upon the acceptance of the installations by the Authority, the Developer or its successors or assigns shall submit written applications for sewer service on forms prescribed by the Authority, which applications shall be accompanied by payment of the proper sewage treatment and connection fees.

8.3 After acceptance of the installations and upon receipt of applications for service and payment of sewage treatment and connection fees, the Authority shall furnish sanitary sewage service under the terms of this Agreement and in accordance with the Authority's schedule of rates and rules and regulations.

8.4 Upon any written request of the Authority made within 18 months after the Authority's acceptance of the installations, the Developer will, at its expense, promptly adjust the installations to finished grade and perform such other work as may be requested by the Authority to permit it to properly operate and maintain the installations.

ARTICLE IX

Financial Security; Maintenance

9.1 The Developer shall furnish to the Authority prior to or contemporaneously with the execution and delivery of this Agreement, surety bonds, letters of credit or any other type of financial security authorized by Section 4B(s.1) of the Municipality Authorities Act of 1945, as amended (the "Act"), in an amount equal to 100% of the estimated cost of the installations, all of which financial security shall be in form and substance satisfactory to the Authority and conditioned upon the prompt performance of the construction of the installations and the prompt payment of all material furnished and all labor supplied or performed in the construction of the installations.

9.2 As a condition precedent to the release by the Authority of any security provided under section 9.1 hereof, the Developer shall deliver to the Authority a certificate signed by an Authorized Developer Representative (hereinafter referred to) setting forth the names of all contractors, subcontractors, material men and other persons who have supplied labor or materials in respect of the installations and stating that all such contractors, subcontractors, material men and other persons have been paid in full.

9.3 The Developer shall maintain the installations and all work performed under this Agreement in good condition and repair for a period of 18 months from the date of the final acceptance of the installations by the Authority through formal action by the Board of the Authority at a regular or special meeting thereof. As security for the performance by the Developer of its obligations under this paragraph 9.3 and as a condition precedent to the Authority's acceptance of the installations, the Developer shall furnish to the Authority a surety bond, letter of credit or any other type of financial security authorized by Section 4B(s.1) of the Act in an amount equal to 15% of the actual cost of the installations and in form and substance satisfactory to the Authority.

ARTICLE X

Indemnification of Authority

10.1 The Developer shall protect, indemnify and save harmless the Authority and its members, directors, officers, employees, attorneys and agents against and from any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the Authority and its members, directors, officers, employees, attorneys and agents, or any of them, by reason of any accident, injury (including death) or damage to any person or property, however caused (other than the negligence or the willful misconduct of the Authority), resulting from, connected with or growing out of any act of commission or omission of the Developer or any officer, employee, agent, assignee, contractor or subcontractor of the Developer or any use, non-use, possession, occupation, condition, operation, service, design, construction, acquisition, maintenance or management of, or in connection with, the installations, or any part thereof, and regardless of whether such liabilities, suits, actions, claims, demands, damages or losses by against the Authority or any of its members, directors, officers, employees, attorneys or agents, or be against or be suffered or sustained by legal entities, officers, agents or other persons to whom the Authority or any of its members, directors, officers, employees, attorneys or agents may become liable therefore. The Authority shall not be liable for any damage or injury to the persons or property of the Developer or any of its directors, officers, agents, contractors, subcontractors and employees, or any other person or entity who or which may be upon the Development. The Developer may, and if so requested by the Authority shall, undertake to defend, at its sole cost and expense, any and all suits, actions and proceedings brought against the Authority or any of its members, directors, officers, employees, attorneys or agents in connection with any of the matters indemnified against in this paragraph 10.1. The Authority shall give the Developer timely notice and shall forward to the Developer every demand, notice, summons or other process received with respect to any claim or legal proceeding within the purview hereof, but the failure of the Authority to give such notice shall not affect any right to indemnification hereunder.

ARTICLE XI

Sewage Permit

11.1 The Developer shall apply to the Department of Environmental Resources of the Commonwealth of Pennsylvania for approval of the proposed sewer line extension. The Developer shall not commence construction of the installations until such Permit is received by the Authority.

11.2 The Developer further agrees that if the Department of Environmental Resources has not issued a Permit within one year after the date hereof, this Agreement will be considered null and void and both parties will be relieved of any further obligations hereunder, except that the Developer shall reimburse the Authority for all costs incurred by the Authority in connection with this Agreement.

ARTICLE XII

Miscellaneous

12.1 The Developer, by a written certificate filed with the Authority, shall designate a person or persons authorized to act on behalf of the Developer (the "Authorized Developer Representative"). Whenever under the provisions of this Agreement or in the construction of the installations, the approval of the Developer is required or the Authority is required to take some action at the request of the Developer, such approval or request shall be given for the Developer by the Authorized Developer Representative, and the Authority shall be authorized to rely upon such approval or request.

12.2 The Developer agrees that this Agreement and the right to sewage service from the installations constructed under the terms of this Agreement shall at all times be subject to the rates and the rules and regulations of the Authority.

12.3 Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement, change, waiver, discharge or termination is sought.

12.4 This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and shall supersede all prior understandings and agreements between the parties with respect to such subject matter. The captions in this Agreement are for purposes of reference only and shall not limit or otherwise affect any of the terms hereof. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.5 The Developer may not assign or transfer its rights hereunder without the prior written consent of the Authority.

12.6 This Agreement shall be a covenant running with the land and may be recorded.

12.7 This Agreement shall bind the parties hereto, their respective successors and assigns.

