

STATE OF ALABAMA)

)

JEFFERSON COUNTY)

ASSURANCE OF PERFORMANCE AGREEMENT

This agreement is made and entered into between _____ developer _____
(hereinafter referred to as “Developer”) and the Jefferson County Environmental Services
Department (hereinafter referred to as “County ESD”).

WITNESSETH:

WHEREAS, the Developer is in the process of developing _____ project _____
(hereinafter referred to as “project”) in the city of _____ city _____ in
_____ county _____ County; and

OR

in the community of _____ community _____ in unincorporated _____ county _____
County; and

WHEREAS, the County has recently adopted Standard Specifications which provide for certain requirements to be completed prior to acceptance for connection of sanitary sewers; and

WHEREAS, the project is not, at this time, complete in that certain improvements itemized and shown on Exhibit “A” need to be addressed prior to formal acceptance; and

WHEREAS, the Developer has a desire to modify construction sequencing and corresponding order of approval; and

WHEREAS, the County ESD desires the assurance of completion of the installation of all site improvements while continuing to assure good condition of all the existing main sanitary sewers installed ~~in~~ as a part of the ~~P~~project; and

WHEREAS, the County ESD as an option to and/or alternative for their standard sanitary sewer installation and acceptance procedures is offering the Assurance of Performance Program which affords the Developer the opportunity to begin installation of itemized improvements or executable actions as shown on Exhibit “B”, prior to the County ESD’s formal/official acceptance of the existing main sanitary sewer lines; and

WHEREAS, the Jefferson County Commission approved a resolution (Minute Book: _____, Page(s): _____, Date: _____) that allows for the Director of the

Environmental Services Department, at his/her discretion, to enter into said Assurance of Performance Agreement; and

WHEREAS, the County ESD is willing to allow the Developer to commence construction of the sewer service lines, as shown on attached Exhibit "C" (sewer service lines highlighted in yellow) and to allow said Developer to connect to/hook up to the existing main sanitary sewers serving the project provided that the Developer enter into an Assurance of Performance Agreement as well as agreeing to all requirements listed in said agreement, described herein; and

WHEREAS, the Developer is willing to furnish to the County ESD a deposit in the form of a cashier's check, payable to "Jefferson County Environmental Services Department", to secure its performance as to the completion of installation of all items outlined on Exhibit "A" without damage to any existing main sanitary sewers or sewer service lines and to guarantee that all main sanitary sewers and sewer service lines will be retested (vacuum and air) and televised again (if necessary) at the Developer's expense, to review the integrity of the main sanitary sewers and sewer service lines after the completion of all work. The dollar amount of the cashier's check shall be calculated as \$25.00 per linear foot of all existing main sanitary sewers and sewer service lines to be installed or a minimum of \$20,000.00, whichever is greater. Said cashier's check (deposit) must be received and accepted by the County ESD prior to the approval of said agreement by the Director of the Jefferson County Environmental Services Department.; and

WHEREAS, the County ESD agrees to accept said cashier's check and agrees to have reimbursed/refunded the dollar amount of said surety to the Developer after all utilities and paving are installed in the project and after all existing main sanitary sewers and sewer service lines have passed re-testing/re-inspection to the satisfaction of the County ESD and after the County ESD has accepted for maintenance and operation all said existing main sanitary sewers as well as the County ESD having received, accepted and approved as-constructed drawings of all said existing main sanitary sewers; and

WHEREAS, the Developer agrees to comply with all County ESD ordinances, regulations and sanitary sewer specifications as well as agrees to obtain all applicable permits and pay all fees associated with such.

Now therefore, in consideration of the foregoing premises and covenants recited herein, the Developer and the County ESD agree as follows:

1. This agreement is a voluntary alternative to the County ESD standard sanitary sewer installation and acceptance procedures. This agreement in no way whatsoever allows the Developer to eliminate and/or become exempt from obtaining all required permits or from performing all necessary procedures or processes for the approval and acceptance of sanitary sewage facilities by the County ESD, but merely affords the Developer an option to achieve the same results with potentially improved construction sequencing.

2. The Developer is responsible for informing the County ESD what existing main sanitary sewers and sewer service lines to be installed will be covered by this agreement which includes being properly labeled and highlighted in yellow on both Exhibits “A”, “C” and “D”, ~~and “B”~~. Any additional existing main sanitary sewers and ~~sewer service lines~~ serving the project not highlighted will not be included as part of this agreement and as such shall not become part of this agreement or benefit from its outline attributes.

3. The Developer further agrees to fulfill the following requirements prior to the installation of any sewer service lines:
 - A. Developer shall obtain a sewer impact permit in accordance with the County ESD’s “Standard Specifications for Sanitary Sewer Service Lines and Connections”, latest version, and sewer impact procedures and requirements.

 - B. If any restaurants and/or food preparation are part of the project, a grease removal system that complies with the requirements of the Jefferson County Environmental Services Department Grease Control Program (Ordinance No. 1778) must be pre-approved and installed.

 - C. Install all main sanitary sewers to serve the project (as shown on attached Exhibit “D” and highlighted in yellow). Sewers shall be designed, inspected, tested and televised in accordance with the

County ESD's "Standard Specifications for Sanitary Sewer Service Lines and Connections", latest version, prior to approval. Preliminary as-constructed sanitary sewer drawings shall also be submitted by the Developer and approved by the County ESD.

4. Developer shall obtain from the County ESD the necessary sewer service line installation permits which will allow for the installation of the sewer service lines as well as their connection to the existing main sanitary sewers already installed.
5. Any portion(s) of said existing main sanitary sewers and/or sewer service lines that have been determined to be defective and/or damaged by preliminary/initial testing and/or re-testing/re-inspection must be repaired immediately to County ESD standards (this may include but not be limited to any pipe and/or manholes that must be replaced/reinstalled and/or any deeds of correction deemed necessary by the County ESD), and be re-tested/re-inspected until said existing main sanitary sewers and/or sewer service lines have passed said testing to the satisfaction of the County ESD.
6. A Jefferson County Environmental Services Department inspector must be on site at all times when the performance of any work including the preliminary/initial testing and re-testing/re-inspection associated with the installation of and/or repair of and/or replacement of the main sanitary sewers and sewer service lines is taking place. The Developer is responsible for contacting the County ESD to

schedule inspection(s) (it should be noted that the Jefferson County Environmental Services Department Engineering and Construction Division inspects main sanitary sewers while the Impact Division inspects sewer service lines). Any of said work performed that has not been inspected by the County ESD is subject to rejection by the County ESD including the possible removal of any pipe and manholes that have been installed. The Developer shall incur all costs and fines associated (also refer to portion of item number 7 regarding non-approved connection(s)). It is in the best interest of the Developer to be expedient in the performance of all re-testing/re-inspection immediately following the completion of all work associated with the installation of, repair of and/or replacement of any sewage facilities.

7. In no way whatsoever does this agreement allow for the conveyance of “live” sewage flow of any kind whatsoever by sewage facilities covered by this agreement to take place until after all of the following have been performed and completed:
 - A. All sewage facilities covered by this agreement have been installed.
 - B. All utilities and paving have been installed as well as the completion of all other work that would directly impact said sewage facilities.

- C. All sewage facilities covered by this agreement have been re-tested/re-inspected and televised and have passed said test/inspection to the satisfaction of the Jefferson County Environmental Services Department.
- D. All main sanitary sewers covered by this agreement have been accepted for maintenance and operation by the Jefferson County Environmental Services Department.
- E. All as-constructed drawings of all main sanitary sewers covered by this agreement have been submitted to the Jefferson County Environmental Services Department ~~for approval~~ and are subsequently approved.

Exceptions that deny “live” sewage flow after the above have been completed are:

- F. Any existing Jefferson County maintained sanitary sewers downstream, that would be connected to by the existing main sanitary sewers covered by this agreement, are damaged, experiencing blockages and/or otherwise in an inoperable state.
- G. Any proposed main sanitary sewers downstream, to be installed by others, that would be connected to by the existing main sanitary sewers covered by this agreement, have not been installed and/or completed and/or have not been accepted by the Jefferson County Environmental Services Department.

- H. The main sanitary sewers covered by this agreement are “capped” sanitary sewers.

- I. Any moratorium on sewer connections imposed upon Jefferson County’s existing sanitary sewer collection system and/or wastewater treatment plant served by said collection system by the U.S. Environmental Protection Agency (USEPA), the Alabama Department of Environmental Management (ADEM), consent decree or court order.

It should be noted that if “live” (non-approved) sewage flow is injected/flowing into Jefferson County’s sanitary sewer collection system prior to completion of all necessary/required items listed in 7.A through 7.E to the satisfaction of the County ESD, the Developer forfeits all of the posted surety (no exceptions). In no way whatsoever does the forfeiture of said surety, as a result of the aforementioned, exempt or relieve said Developer from completing all necessary/required items listed in this agreement to the satisfaction of the County ESD. Furthermore, in addition to the forfeiture of said surety, as a result of the aforementioned, said Developer shall incur all costs and fines associated with any work that has not been inspected by the County ESD (listed in detail in item number 6). Non-compliance with the terms of this agreement as well as with County ESD regulations governing sanitary sewers could result in the permanent disconnection of the project from Jefferson County’s sanitary sewer collection system and as such said Developer will be responsible for any monetary costs/losses as a result of the aforementioned.

8. The Developer shall indemnify and hold harmless Jefferson County, its elected officials, successors, employees, agents and attorneys from any and all damages, claims or suits of any nature in any way whatsoever associated with this agreement. This indemnification and hold harmless includes furnishing a defense to any such claim or suit and paying promptly in full any such judgment, costs, expenses or charges relating thereto.

9. The County ESD will commence the process of refunding/reimbursing to the Developer the dollar amount of said surety after all of items 7.A through 7.E have been performed and completed. It is the responsibility of the Developer to have all of the above items completed as well as reporting such to the Jefferson County Environmental Services Department to seek refund/reimbursement.

10. All of said existing main sanitary sewers covered by this agreement must be released by the County ESD in whole for Jefferson County to maintain and operate. The County ESD will not release and accept portions of said existing main sanitary sewers. No exceptions will be made to the aforementioned.

11. If the Developer for whatever reason chooses to discontinue the development of the project prior to completion and proposes to sell and/or turn over their interests to another party, this agreement shall not transfer. The new party will be required to enter into a new Assurance of Performance Agreement as well as furnishing a new surety covering said project. The Developer must, prior to selling and/or

turning over their interest to the new party, inform the County ESD, in writing, their intentions to do such. Furthermore, the Developer and the new party must arrange to meet with Jefferson County Environmental Services Department personnel for the purpose of familiarizing the new party with the Assurance of Performance/Surety Program process. It should be noted that the new party will be responsible for all main sanitary sewers and sewer service lines that are covered by this agreement. The County ESD will not release and accept portions of said main sanitary sewers (no exceptions will be made to the aforementioned). The County ESD will not refund/reimburse the Developer the existing surety covering this agreement until after the new party has furnished said new surety to the County ESD and the new Assurance of Performance Agreement has been executed by the new party as well as by the Director of the Jefferson County Environmental Services Department. The County ESD has the right to deny any Assurance of Performance Agreement deemed to not be in the best interest of Jefferson County.

12. The Developer understands that there is a one year warranty covering materials and workmanship on all the existing main sanitary sewers covered by this agreement and that said warranty begins on the date listed on the official Jefferson County Environmental Services Department letter of acceptance of maintenance and operation. In no way whatsoever does this agreement replace said warranty.

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

Dated this ____ day of _____, 20__.

JEFFERSON COUNTY ENVIRONMENTAL SERVICES DEPARTMENT

By: _____

David A. Denard, Director

Developer

By: _____

Its: _____

The State of state

county County

I, the undersigned authority, in and for said County, in said State, hereby certify that _____ whose name as _____ of _____, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledge before me on this day that, being informed of the contents of the conveyance, he/she, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this _____ day of _____, 20 _____.

Notary Public

My Commission Expires: _____