

WHEN RECORDED, MAIL TO:

KARI JIMENEZ
IVINS CITY
55 NORTH MAIN
IVINS, UT 84738

DOC # 20130011087

Agreement Page 1 of 8
Russell Shirts Washington County Recorder
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By IVINS CITY



APN: I-6-1-30-321; I-6-1-30-322; I-6-1-30-325; I-6-1-30-33112; I-6-1-30-33221; I-6-1-30-320; I-6-1-31-4410-1; I-6-1-31-4410-2; I-6-1-31-4421; I-6-1-31-4420; I-6-1-31-412; I-6-1-31-41010

Memorandum of Understanding For Development of Small Diameter Gravity Sewer System in Taviawk

This Memorandum of Understanding ("MOU") is entered into as of this 22nd day of March, 2013, ("Effective Date") by and between **KAYENTA DEVELOPMENT, INC.**, ("Developer"), the developer and owner of certain real property located in Ivins City, Washington County, Utah, and **IVINS CITY**, a municipality and political subdivision of the State of Utah ("City").

RECITALS

1. Although the City currently prefers a conventional gravity sewer collection system for all subdivisions, including the Taviawk area of Kayenta, the City considers the Small Diameter Gravity Sewer System (SDGS) to be a reasonable alternative for the future wastewater collection system for the Kayenta area west of the Kayenta Wash and north of the Taviawk Wash.
2. Developer believes the SDGS system to be the best alternative for future wastewater collection in the Taviawk area of Kayenta, and perhaps all of the Kayenta developments where a conventional gravity sewer system is not yet located, and is willing to take on the associated risks to install the SDGS system in the Taviawk area and to provide to the City all data necessary to evaluate the performance of such a system over a three year period.
3. Taviawk Phases 8 and 9 are both currently served with a low pressure sewer system with individual pumps on each property to deliver wastewater up the streets to the conventional gravity system in Taviawk Drive and, as per the existing development agreement, this system is temporary and shall be replaced with a conventional gravity sewer system that would connect into the Ivins City system at 200 North and 600 West in accordance with the terms of the development agreement.
4. The purpose of this MOU is to set forth terms for establishing an evaluation period of a SDGS system for existing lots in Taviawk Phases 8 and 9 and for any future phases in the Taviawk area west of Taviawk Drive.
5. The evaluation period will determine whether the performance of the SDGS system is, in fact an acceptable alternative to the conventional gravity sewer collection system for the Taviawk area of Kayenta.

AGREEMENT

The Parties hereby agree as follows:

1. Definitions:
 - a. Septic Tank Effluent: Wastewater that has been processed through an onsite septic tank which removes the majority of solids from the wastewater. This water has a lower potential to cause clogging in a collection system.
 - b. Septic Tank Effluent Gravity (STEG) System: A sewer system where each individual property has a septic tank and filter that provides onsite pretreatment of wastewater which removes most suspended solids prior to discharging into a small diameter sewer collection system that conveys the wastewater to a centralized treatment location.
 - c. Septic Tank Effluent Pumping (STEP) System: Equivalent to the STEG system except that the system is located at an elevation below the hydraulic grades in the sewer collection system such that a pump would be required to push the septic tank effluent into the small diameter sewer collection system.
 - d. Small Diameter Gravity Sewer (SDGS) System: A sewer collection system that conveys septic tank effluent from STEG, STEP or a combination of the systems such that effluent will flow by gravity from the tanks to a centralized treatment system. Cleanouts are used to provide access for flushing and manholes are not required.
 - e. Conventional Gravity Sewer System: A sewer collection system where wastewater is discharged directly to a free flowing gravity sewer system consisting of minimum pipe sizes of 8-inches in diameter, installed on a minimum slope and cleanout manholes placed at a maximum distance of 400 feet. This system is the predominant sewer collection system for Ivins City.
2. Developer will install the SDGS system with all necessary components to accommodate maximum ease of maintenance and odor control connecting to the City collection system at 200 North and 600 West.
3. A note shall be added to all future plats of affected properties indicating that there are special maintenance requirements for the sewer system. Developer will also provide information for the proper operation and maintenance of STEP/STEG systems to all purchasers of affected lots sold by Developer.
4. The City will maintain the SDGS system upon completion and acceptance up to the point of connection of individual laterals.

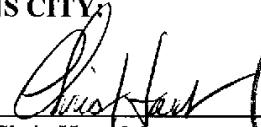
5. All individual lot laterals, pumps, filters, and septic tanks shall be maintained by the lot owner or assignee.
 - a. Property owners shall install the system with electronic monitoring equipment with an alarm notification system (flashing light and or buzzer) and the ability for electronic messaging via phone, email, fax, text message or equivalent or the ability to add such a feature with minimal additional cost.
 - b. Property owners with a STEP or STEG system shall provide annual documentation to the City demonstrating proper maintenance of septic tanks, filters, pumps and laterals.
 - c. The City may require that a qualified professional take over maintenance of all septic tanks, filters, pumps and laterals to assure proper care.
 - d. All property owners shall pay to the City full amounts for sewer fees and monthly rates.
6. Developer will meet all regular bonding requirements for subdivision development excluding the sanitary sewer improvement portion of the bond which will be covered by a supplementary bond.
7. Requirements for the supplementary bond are set forth as follows:
 - a. The purpose of the supplementary bond is for the case where, after the three year evaluation period, the City rejects the SDGS system and requires installation of a conventional gravity sewer system.
 - b. Ivins City will accept as the supplementary bond for the three year evaluation period an interest in land evidenced by a recorded Deed of Trust naming the City as beneficiary to meet the required bonding. The amount of the Deed of Trust shall be as set forth below and shall be increased, or additional Deeds of Trust recorded, as additional SDGS systems are installed during the three year test period.
 - c. The amount of the bond shall be 100 percent of the cost to abandon the SDGS system and install the conventional system including asphalt repair costs and lateral reconnection costs. The bond does not include the cost to bypass septic tanks which would be done at an option to the property owner.
 - d. The bond shall also include an additional 25 percent amount to cover retention of bonding during the one year warranty period of the improvements.
 - e. Approval of supplementary bonding amounts will follow the same processes for approval of subdivision bonding.

8. At the end of the three year evaluation period:
 - a. If the City fully accepts the SDGS system, the supplementary bond shall be released back to Developer, unless there are portions of sanitary sewer that are still under construction or covered by the one year warranty period with the supplementary bond.
 - b. If the City rejects the SDGS system, Developer will abandon the SDGS system and install a conventional system at no cost to the City. The City will release its interest in the land bond up to 100 percent of the improvement cost while maintaining the 25 percent warranty portion of the bond for one year after initial acceptance of the conventional system.
9. This agreement will initially be used in the Taviawk Phase 9-I subdivision but may be used for any applicable Taviawk subdivision.
10. The purpose of this agreement is to supplant the requirement of a conventional gravity sewer system to allow a three year evaluation period for a SDGS system. The evaluation period shall be used to evaluate whether the system is a viable alternative in our area to a conventional system.
11. At the end of the three year evaluation period, the Developer shall provide the following information to the City to aid in the evaluation of the SDGS system:
 - a. Data for all individual septic tanks effluent systems including the following information:
 - i. Date septic tank was placed in service.
 - ii. Septic tank capacity in gallons
 - iii. Septic tank material and number of chambers
 - iv. Home data including – square footage, number of bed rooms, average number of occupants during service period, and percentage of time occupied (for second homes).
 - v. Type of filter (brand and model)
 - vi. Brand, model number and size of pump (if applicable)
 - vii. Description of electronic alarm system (brand, model and communication features)
 - b. Measured depth of solids retained in the septic tank.
 - c. Survey of residents owning the system whereby:

- i. Developer shall make reasonable attempt to reach all owners with an obligation to reach at least 75 percent.
 - ii. Survey shall at the minimum evaluate the property owners understanding of the operation and maintenance requirements, identify if any problems were encountered during the evaluation period, indicate what was done to cure any problems that may have occurred, and allow the property owner to evaluate his or her satisfaction with the system during the evaluation period.
12. The City will accept the SDGS system as a viable alternative if the summation of all operations and maintenance costs are equal to or less than a conventional gravity sewer system and the performance of the SDGS system has been proven to be as viable as or better than a conventional gravity sewer system as determined by:
 - a. The system has adequate capacity to convey waste water.
 - b. The system does not cause an odor control problem in the downstream collection system.
 - c. The system does not increase the generation of sulfide gases and thus decrease the life cycle of concrete manholes in the downstream collection system.
 - d. The system does not place undue burden on the property owner or Ivins City Public Works to keep the system in working conditions.
13. Any legal action brought to interpret or enforce this MOU shall be brought in the Fifth Judicial District Court in and for Washington County, State of Utah.
14. This MOU constitutes the proposed resolution between the Parties with respect to the use and testing of the SDGS system in the Taviawk area of Kayenta. Each of the Parties hereto acknowledges that no representations or promises not expressly contained in this MOU have been made by any Party or by the agents or representatives of any Party.
15. The Parties acknowledge and represent that they have full authority and approval (including City Council approval) to execute this MOU and to bind the Parties and entities represented herein.
16. If a court of competent jurisdiction finds any provision of this MOU unenforceable, the remaining portions of the MOU shall remain in full force and effect as though the offending portion were not included.
17. The terms and conditions of this MOU shall be binding upon the heirs, successors and assigns of the Parties hereto.
18. This agreement shall run with the land for the Taviawk subdivisions and any and all land pledged as security for the three year test period of the SDGS system.

19. This MOU may not be amended except by written agreement signed by the Parties.

IVINS CITY,

By: 

Chris Hart, Mayor



Attest:


Kari Jimenez, Ivins City Recorder

DEVELOPER:



KAYENTA DEVELOPMENT, INC.

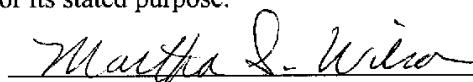
STATE OF UTAH

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ss.

COUNTY OF WASHINGTON)

On this 22 day of March, 2013, before me personally appeared CHRIS HART and KARI JIMENEZ whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Recorder of Ivins City, and that the foregoing document was signed by them by authority, and they acknowledged before me that Ivins City executed the document and the document was the act of Ivins City for its stated purpose.


Notary Public

STATE OF UTAH

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ss.

COUNTY OF

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On the 22 day of March, 2013, personally appeared before me LANCE ANDERSON, PRESIDENT OF KAYENTA DEVELOPMENT, INC., whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that KAYENTA DEVELOPMENT, INC. is an Owner/Developer of the Taviawk XI and XII Subdivisions and that the foregoing document was signed by him/ by authority, and he/she acknowledged before me that he/she executed the document for its stated purpose.


Notary Public

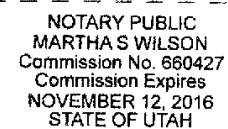


EXHIBIT "A"

Legal Description for the Property

TAVIAWK PHASE 11 AND 12

BEGINNING AT A POINT NORTH 01°22' 24" EAST 137.33 FEET ALONG THE SECTION LINE AND SOUTH 88°44' 09" EAST 2,403.51 FEET ALONG THE SECTION LINE FROM THE SOUTHEAST CORNER OF SECTION 25, TOWNSHIP 41 SOUTH, RANGE 17 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 81° 14' 35" WEST 127.14 FEET; THENCE SOUTH 63° 26' 54" WEST 139.74 FEET; THENCE SOUTH 57° 54' 47" WEST 156.89 FEET; THENCE SOUTH 60° 51' 57" WEST 163.76 FEET; THENCE SOUTH 66° 32' 53" WEST 167.82 FEET; THENCE SOUTH 72° 04' 11" WEST 179.77 FEET; THENCE SOUTH 86° 32' 06" WEST 242.81 FEET; THENCE SOUTH 02° 21' 27" WEST 42.08 FEET; THENCE NORTH 88° 55' 31" WEST 131.65 FEET; THENCE SOUTH 41° 12' 22" WEST 140.50 FEET; THENCE SOUTH 47° 15' 05" WEST 94.64 FEET; THENCE SOUTH 88° 00' 43" WEST 140.07 FEET; THENCE SOUTH 01° 21' 13" WEST 688.91 FEET; THENCE NORTH 88° 51' 27" WEST 1297.20 FEET; THENCE NORTH 81° 07' 39" WEST 38.00 FEET TO A POINT ON A 2119.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS POINT BEARS SOUTH 81° 07' 39" EAST); THENCE ALONG THE ARC OF SAID CURVE 373.49 FEET THROUGH A CENTRAL ANGLE OF 10° 05' 56" TO A POINT ON A 5019.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 640.59 FEET THROUGH A CENTRAL ANGLE OF 07° 18' 46" TO A POINT ON A 1519.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 38.80 FEET THROUGH A CENTRAL ANGLE OF 01° 27' 49"; THENCE SOUTH 62° 15' 08" EAST 38.00 FEET TO A POINT ON A 1481.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS POINT BEARS SOUTH 62° 15' 08" EAST); THENCE ALONG THE ARC OF SAID CURVE 853.04 FEET THROUGH A CENTRAL ANGLE OF 33° 00' 07"; THENCE NORTH 60° 44' 58" EAST 155.10 FEET; THENCE NORTH 60° 44' 58" EAST 111.03 FEET TO A POINT ON A 2981.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 302.81 FEET THROUGH A CENTRAL ANGLE OF 05° 49' 12"; THENCE NORTH 66° 34' 11" EAST 338.06 FEET; THENCE NORTH 66° 34' 11" EAST 170.70 FEET; THENCE SOUTH 24° 05' 56" EAST 11.10 FEET TO A POINT ON A 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS POINT BEARS SOUTH 23° 29' 35" EAST); THENCE ALONG THE ARC OF SAID CURVE 28.65 FEET THROUGH A CENTRAL ANGLE OF 82° 04' 34"; THENCE SOUTH 31° 25' 01" EAST 292.02 FEET TO A POINT ON A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 32.06 FEET THROUGH A CENTRAL ANGLE OF 91° 50' 42"; THENCE SOUTH 29° 30' 25" EAST 35.00 FEET; THENCE NORTH 60° 29' 35" EAST 174.29 FEET TO A POINT ON A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 30.85 FEET THROUGH A CENTRAL ANGLE OF 88° 22' 43"; THENCE SOUTH 31° 06' 56" EAST 53.49 FEET TO A POINT ON A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 16.41 FEET THROUGH A CENTRAL ANGLE OF 47° 00' 40" TO A POINT ON A 35.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 93.76 FEET THROUGH A CENTRAL ANGLE OF 153° 29' 14"; THENCE SOUTH 15° 42' 49" EAST 113.89 FEET; THENCE SOUTH 12° 22' 42" EAST

141.94 FEET; THENCE SOUTH 01° 16' 02" WEST 196.31 FEET TO THE POINT OF BEGINNING.

CONTAINING 58.6965 ACRES

TOGETHER WITH PARCELS I-6-1-30-321 AND I-6-1-30-322

TOTAL AREA = 59.9595 ACRES