

02/09

INDEMNITY AND WARRANTY AGREEMENT

This Indemnity and Warranty Agreement (the "Agreement") is made as of _____, between _____ Developer(s) ("Applicant"), and the Bear River Water Conservancy District, a water conservancy district organized under the laws of the State of Utah ("District").

RECITALS

A. Applicant is developing real property known as _____ ("Applicant's Development"), located in the vicinity of _____ Box Elder County, Utah;

B. Applicant has contracted with others to fabricate, construct and install water pipelines, valves, fire hydrants, related water transmission facilities and meters (collectively referred to as the "New Facilities") for Applicant's Development;

C. Applicant has requested the District to allow Applicant to extend its water transmission facilities (the "Extension") to Applicant's Development. Accordingly, the District has given a copy of the District's Water Service Policy to the Applicant outlining the terms and conditions under which District would allow Applicant to extend its water transmission facilities.

D. Applicant has completed the new facilities and now desires to receive water service from the District.

AGREEMENT

Now therefore, in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

1. Warranty of Workmanship and Materials. Applicant warrants to the District that all

work performed and material used in the fabrication, construction, installation, operation, maintenance and testing of the New Facilities is free from defects in material and workmanship; that all work performed and material used conformed to contract specifications, the District's specifications, drawings and data, and to applicable construction codes and local laws and ordinances regarding construction of similar facilities; and that the materials used were free from defects in design and are suitable for their intended purposes. The warranties shall extend for one year from the date on which the District accepts delivery from Applicant a Bill of Sale conveying ownership of the new facilities to the District. Applicant agrees to indemnify the District for any breach of the warranties.

2. Right of Way Warranty. The Applicant represents and warrants that it has obtained the necessary right of way and approval from Box Elder County to construct, operate and maintain the New Facilities in the county road right of way where the New Facilities are constructed. Applicant agrees to convey and transfer all of its right, title and interest to such right to the District.

3. Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Nothing in this Agreement is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.

4. Amendments and Waivers. Amendments to this Agreement may only be made in writing signed by the parties, and, to be effective, any waiver must be in writing signed by the party to be charged and then only to the extent specifically set forth in the writing.

5. Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement, these rights and remedies shall not be

mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies.

6. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

7. Authorization. Each individual executing this Agreement does thereby represent and warrant to each other so signing that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she signs.

8. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Utah.

9. Miscellaneous Provisions:

a. This Agreement constitutes the entire agreement of the parties and shall be binding upon and inure to the benefit of the parties and their successors and assigns.

b. Applicant may not assign this Agreement without the prior written consent of the District. The District may assign this Agreement without the consent of the Applicant.

c. In the event either party should default or otherwise fail to perform in accordance with the terms and conditions of this Agreement, the party seeking to enforce this Agreement shall be entitled to receive from the defaulting party all costs of enforcement, including reasonable attorney's fees, whether enforcement is by

litigation or otherwise.

“Applicant”

(NAME OF APPLICANT)

Dated: _____

By: _____

Its: _____

“District”

BEAR RIVER WATER CONSERVANCY
DISTRICT

Dated: _____

By: _____

Clinton Burt, Chairman