
**INFRASTRUCTURE ACQUISITION
AND
REIMBURSEMENT AGREEMENT**

BETWEEN

NS PUBLIC INFRASTRUCTURE DISTRICT NO. 1

AND

NEW SALEM VISION 1, LLC

DATED OCTOBER 31, 2024

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EXHIBITS

EXHIBIT A - Application for Acceptance of District Eligible Costs
Dedicated Public Infrastructure

EXHIBIT B - Application for Acceptance of District Eligible Costs
Capital Services Costs

INFRASTRUCTURE ACQUISITION AND REIMBURSEMENT AGREEMENT

This INFRASTRUCTURE ACQUISITION AND REIMBURSEMENT AGREEMENT (the “**Agreement**”) is made and entered into as of the 31st day of October, 2024, by and between NS PUBLIC INFRASTRUCTURE DISTRICT NO. 1, an independent political subdivision of the State of Utah (the “**District**”), and NEW SALEM VISION 1, LLC, a Utah limited liability company (the “**Developer**”).

RECITALS

A. The District was organized to provide Public Infrastructure for the Project as authorized in the PID Act, Special District Act, and the Governing Document for the District.

B. In accordance with the PID Act, Special District Act, and the Governing Document, the District has the power to perform any act or exercise any power reasonably necessary for the efficient operation of the District in carrying out its purposes;

C. The Developer has incurred or may in the future incur District Eligible Costs, which may consist of Eligible Public Infrastructure Costs, Eligible Capital Service Costs, or both.

D. The Parties desire to establish the terms and conditions for the reimbursement of District Eligible Costs that become Certified District Eligible Costs.

E. The District does not intend to direct the design or construction of any Public Infrastructure by way of this Agreement.

F. Pursuant to [Utah Code Section 17B-1-103\(l\)](#), the District is permitted to enter into contracts that the Board considers necessary, convenient, or desirable to carry out the District’s purposes, and the Board has determined that the best interests of the District, property owners within the District, and the public, are served by entering into this Agreement, and this Agreement is in furtherance of the purposes for which the District was established.

G. The Parties have authorized their respective officers or representatives to execute this Agreement and to take all other actions necessary and desirable to effectuate the purposes of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

COVENANTS AND AGREEMENTS

ARTICLE 1

PURPOSE OF AGREEMENT

1.1 **Purpose of Agreement.** This Agreement establishes the terms and conditions for the reimbursement of Certified District Eligible Costs by the District.

ARTICLE 2 DEFINITIONS

2.1 **Definitions.** In this Agreement, unless a different meaning clearly appears from the context, capitalized terms mean:

Accountant's Cost Certification: A written certification issued by the District Accountant following review of an Engineer's Cost Certification, invoices, and other material presented to substantiate Eligible Public Infrastructure Costs, in form and substance reasonably acceptable to the District, declaring the total amount of Eligible Public Infrastructure Costs proposed for reimbursement.

Accountant's Services Cost Certification: A written certification issued by the District Accountant following review of invoices, and other material presented to substantiate the Eligible Capital Services Costs, in form and substance reasonably acceptable to the District, declaring the total amount of Eligible Capital Services Costs proposed for reimbursement.

Agreement: This Infrastructure Acquisition and Reimbursement Agreement between the Parties dated August 7, 2024.

Application for Acceptance of District Eligible Costs/Application: An application by the Developer for reimbursement of Eligible Public Infrastructure Costs or Eligible Capital Services Costs, in the form attached to this Agreement as Exhibits A and B.

Application Review Procedures: Those requirements set forth in Article III hereof by which an Application for Acceptance of District Eligible Costs is evaluated for sufficiency as a condition to adoption of a District Acceptance Resolution.

Board: The duly elected and/or appointed Board of Trustees of the District.

Bonds: means bonds, notes or other financial obligations issued by the District with respect to which proceeds are available for the payment of Certified District Eligible Costs.

Certified District Eligible Costs: District Eligible Costs that have been accepted by the District through adoption of a District Acceptance Resolution.

Component Unit(s): portions of Public Infrastructure that are substantially complete and fit for their intended purposes, whether or not yet placed in service.

Construction Drawings: Drawings prepared by a licensed and registered engineer and approved by the applicable governmental entity, by which Public Infrastructure has been built.

Dedicated Public Infrastructure: Public Infrastructure that is to be dedicated to another governmental entity for public use.

Design Engineer's Certification: A certification in form and substance reasonably acceptable to the District from an engineer or other appropriate design professional, licensed in Utah and approved by the District, stating that 1) the Public Infrastructure, or applicable Component Unit thereof, has been inspected for compliance with approved designs, plans and construction standards, and, if applicable, Construction Drawings; 2) that the Public Infrastructure, or applicable Component Unit thereof, has been substantially constructed in accordance with the approved designs, plans and construction standards, and, if applicable, Construction Drawings; and 3) the Public Infrastructure is fit for its intended purpose.

Developer: New Salem Vision 1, LLC, a Utah limited liability company.

District Acceptance Resolution: A resolution adopted by the Board of the District following satisfactory completion of the Application Review Procedures.

District Accountant: An accountant licensed to practice in the State of Utah that has been engaged by the District.

District Eligible Costs: Collectively, the Eligible Public Infrastructure Costs and the Eligible Capital Services Costs.

District Engineer: An engineer licensed to practice in the State of Utah that has been engaged by the District.

District Inspection Report: A report issued by the District Engineer following an Inspection addressing those matters set forth Section 3.3 hereof.

District: NS Public Infrastructure District No. 1.

Eligible Public Infrastructure Costs: Costs related to the acquisition, financing, planning, design, construction, and installation of Public Infrastructure that may be lawfully funded by the District under the PID Act and the Governing Document, and which may represent Dedicated Public Infrastructure.

Eligible Capital Services Costs: Costs of certain services and/or work directly related to the ability of the District to provide and/or the provision of Public Infrastructure, including but not limited to: District organizational costs, engineering, architectural, surveying, construction planning, and related legal, accounting, and other professional services.

Engineer's Cost Certification: A written report certifying that, in the opinion of the District Engineer, the cost of the Public Infrastructure is reasonable considering the type of Public Infrastructure being reviewed.

Governing Document: means the Governing Document for the District approved by the creating entity.

Maximum Repayment Term: Shall mean, with respect to any and all costs accepted by an Acceptance Resolution and not otherwise the subject of a Reimbursement Obligation, thirty (30) years from the date of each such Acceptance Resolution, or such lesser period as may be established in the Governing Document.

MMD AAA Index: The Municipal Market Data “AAA” General Obligation Yield Curve, 30-Year constant maturity, published by Refinitiv at www.tm3.com, or successor index if replaced.

MMD Interest Rate: The interest rate based on the MMD AAA Index plus 400 basis points.

Notices: Shall mean those forms of notice authorized by Section 7.5 hereof.

Party or Parties: Party refers to the District or the Developer, individually; Parties refers to the District and the Developer, collectively.

PID Act: means Title 17D, Chapter 4 of the Utah Code, as amended from time to time and any successor statute thereto.

Project: The proposed development described generally in the Governing Document, for which the District is authorized to furnish Public Infrastructure.

Public Infrastructure: in compliance with [Utah Code Section 17D-4-203](#) public infrastructure includes, but is not limited to, (i) all or part of the costs of acquiring, acquiring an interest in, improving, or extending any of the improvements, facilities, or property allowed under [Utah Code Section 11-14-103](#); (ii) capital costs of improvements in an energy assessment area, as defined in [Utah Section 11-42a-102](#), and other related costs, against the funds that the District will receive because of an assessment in an energy assessment area, as defined in [Utah Code Section 11-42a-102](#); (iii) public improvements related to the provision of housing; and (iv) capital costs related to public transportation.

Registered Municipal Advisor: A municipal advisor, as defined in Section 15B of the federal “Securities Exchange Act of 1934,” that is registered with the securities and exchange commission under Section 15B of the federal “Securities Exchange Act of 1934.”

Reimbursement Obligation/s: One or more notes, bonds, or other financial obligations issued at the request of the Developer in the amount of Certified District Eligible Costs as approved from time to time.

Special District Act: means Title 17B of the Utah Code, as amended from time to time.

State: means the State of Utah.

Third-Party Accounting Firm: An accounting firm mutually selected by the Parties to perform certain functions as set forth in Sections 3.2.b and 3.3 hereof.

Third-Party Engineering Firm: An engineering firm mutually selected by the Parties to perform certain functions as set forth in Section 3.2.a hereof.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended from time to time.

ARTICLE 3

APPLICATION FOR ACCEPTANCE/REVIEW PROCEDURES

3.1. **Application for Acceptance of District Eligible Costs.** The Developer will initiate a request for the District's acceptance of District Eligible Costs by submitting the following, as applicable:

a. For Dedicated Public Infrastructure, a completed "Application for Acceptance of District Eligible Costs - Dedicated Public Infrastructure" attached hereto as **Exhibit A** and incorporated herein by this reference.

b. For Eligible Capital Services Costs, a completed "Application for Acceptance of District Eligible Costs - Capital Services Costs" attached hereto as **Exhibit B** and incorporated herein by this reference.

c. Notwithstanding the provisions of Section 3.1.a., no Application for Acceptance of District Eligible Costs – Dedicated Public Infrastructure may be submitted to the extent such Application includes costs for Dedicated Public Infrastructure that has not received conditional acceptance from the applicable governmental entity, unless a) the District has Bond proceeds available to fund the full amount to be requested, and b) the District agrees to accept such Application. In such event, the provisions of Section 3.3 regarding the conduct of an inspection and issuance of an Inspection Report shall apply.

3.2. **Common Application Review Procedures - Eligible Public Infrastructure Costs.** Following receipt of a complete Application for Acceptance of District Eligible Costs as provided in Section 3.1 (a) or (b) above, the District shall promptly direct the following to occur:

a. The District shall direct the District Engineer to review the Application for Acceptance of District Eligible Costs to substantiate the District Eligible Costs associated with the Public Infrastructure proposed for reimbursement for the purpose of issuing an Engineer's Cost Certification. Such Engineer's Cost Certification shall be issued promptly upon completion of the Engineer's review. The Developer may dispute the conclusions set forth in the Engineer's Cost Certification, and the Parties shall attempt to resolve any such disputes in good faith, within 30 days of issuance thereof. In the event the Parties are not able to resolve such disputes within 30 days of the date of the Engineer's Cost Certification,

the Parties shall submit the dispute to a Third-Party Engineering Firm, whose findings shall be binding on the Parties. The fees and expenses of the Third-Party Engineering Firm shall be split equally between the Parties, unless otherwise agreed.

b. Upon receipt of the Engineer's Cost Certification, the District shall direct the District Accountant to review the Engineer's Cost Certification and Application for Acceptance of District Eligible Costs and issue an Accountant's Cost Certification. The Developer may dispute the conclusions set forth in the Accountant's Cost Certification, and the Parties shall attempt to resolve any such dispute in good faith. In the event the Parties are not able to resolve such disputes within 30 days of the date of the Accountant's Cost Certification, the Parties shall submit the dispute to a Third-Party Accounting Firm, whose findings shall be binding on the Parties. The fees and expenses of the Third-Party Accounting Firm shall be split equally between the Parties.

3.3. **Additional Application Review Procedures.** In addition to the requirements set forth in Section 3.2, to the extent the Application for Acceptance of District Eligible Costs – Dedicated Public Infrastructure includes costs for Dedicated Public Infrastructure that has not received conditional acceptance from the applicable governmental entity the District shall promptly direct the following to occur:

a. The District Engineer, or other appropriate consultant engaged by the District according to the nature of the work being inspected, and the Developer, or its representative, shall jointly conduct an Inspection of the Public Infrastructure within 30 days of the submission of a complete Application for Acceptance of District Eligible Costs – Dedicated Public Infrastructure;

b. Within 14 days after the Inspection, the District Engineer shall issue a District Inspection Report that addresses the following:

i. whether the Public Infrastructure has been constructed in substantial accordance with the Construction Drawings;

ii. whether the Public Infrastructure is fit for its intended purpose; and

iii. whether any corrective work is necessary before declaring satisfaction of subsections (i) and (ii) hereof, in which case the District Inspection Report will include a punch list of such items.

c. If the District Inspection Report identifies any necessary corrective work, the Developer shall be responsible for correcting such work listed on the punch list to the reasonable satisfaction of the District. The Parties shall mutually agree on a date by which such corrective work must be completed, failing which the Application shall be deemed terminated. In such event, the Developer may submit a new Application to initiate the acceptance process anew. Within 30 days after the corrective work has been completed, the Engineer and the Developer shall jointly inspect the Public Infrastructure that was found to be defective, and upon a determination by the District that the corrective work is satisfactory, the District Engineer shall issue a new District Inspection Report for such Public Infrastructure.

d. The District and the Developer agree and acknowledge that, in the event that the District Engineer determines that the Dedicated Public Infrastructure, was completed in a manner that makes direct inspection of such Dedicated Public Infrastructure by the District Engineer (and issuance of the District Inspection Report) impossible or infeasible, then the Developer shall be required to obtain a Design Engineer's Certification to be issued to the District as a condition to acceptance.

3.4. **Application Review Procedures - Eligible Capital Services Costs.** Upon receipt of an Application for Acceptance of District Eligible Costs – Capital Services Costs using the form attached hereto as **Exhibit B**, the District shall promptly direct the District Accountant to review the invoices and other material presented to substantiate the District Eligible Costs and to issue an Accountant's Services Cost Certification. The Developer shall have a reasonable opportunity to dispute the conclusions set forth in the Accountant's Services Cost Certification, and the Parties shall attempt to resolve any such dispute in good faith. In the event the Parties are not able to resolve such disputes within 30 days of the date of the Accountant's Services Cost Certification, the Parties shall submit the dispute to a Third-Party Accounting Firm, whose findings shall be binding on the Parties. In such event, the fees and expenses of the Third-Party Accounting Firm shall be split equally between the Parties.

3.5 **Documentary Requirements in Exhibit Schedules.** The Developer acknowledges that the Exhibits contain additional documentary requirements that must be met, unless modified or waived by the District, as a condition to the adoption of any District Acceptance Resolution and agrees to satisfy same.

ARTICLE 4

DISTRICT ACCEPTANCE

4.1. **District Acceptance Resolution.** The Parties agree that no reimbursement shall be required under this Agreement unless and until the District has adopted a District Acceptance Resolution. Upon completion of the applicable Application Review Procedures described in Article III hereof, the District shall accept the District Eligible Costs within a reasonable time thereafter, not to exceed 60 days. Such acceptance shall be evidenced by the District adopting a District Acceptance Resolution and thereupon the District Eligible Costs so accepted shall become Certified District Eligible Costs. The District Acceptance Resolution shall declare the satisfaction of the requirements of this Agreement, subject to any waivers or modifications of specific requirements as the District may, in its sole discretion, approve. The District Acceptance Resolution shall also address the means by which reimbursement is to occur, as contemplated in Section 5.1 hereof.

4.2 **Reimbursement Subject to Availability of Funds.** The obligation of the District to reimburse the Developer following adoption of an Acceptance Resolution shall be subject to availability of funds, and as otherwise provided in Section 5.1 hereof.

ARTICLE 5

PAYMENT OF CERTIFIED DISTRICT ELIGIBLE COSTS

5.1. **Payment of Certified District Eligible Costs.** In connection with the adoption of a District Acceptance Resolution and satisfaction of any conditions to reimbursement as may be set forth therein, the District shall tender to the Developer, or any other entity as directed by the Developer, the amount of the Certified District Eligible Costs from the sources identified below in the following order of priority (unless otherwise agreed to by the Developer):

a. First, from the proceeds of Bonds (whether available at the time of adoption of a District Acceptance Resolution or at any time thereafter), in which case, within three (3) business days of adoption of a District Acceptance Resolution, the District shall make a requisition in the amount of the Certified District Eligible Costs from any project fund held by the bond trustee (or such lesser amount as may then be available in the project fund), which requisition shall direct that the bond trustee make payment of the applicable amount directly to the Developer. To the extent Bond proceeds are not available within three (3) business days of adoption of a District Acceptance Resolution, but subsequently become available upon a future Bond issuance, payment of Certified District Eligible Costs shall be made at closing, with such funds being issued directly to the Developer.

b. Second, from such funds as the District determines, in its sole and absolute discretion, to be available; and/or

c. Third, through the issuance of one or more Reimbursement Obligations.

5.2. **Limitation on Payment Source for Dedicated Improvements Not Conditionally Accepted.** Notwithstanding the foregoing, and subject to the provisions of 3.1.d hereof, reimbursement for Dedicated Public Infrastructure in advance of conditional acceptance by the applicable governmental entity shall be limited to proceeds from the issuance of Bonds available at the time of adoption of an Acceptance Resolution with respect to such Public Infrastructure.

5.3. **Interest Prior to Issuance of Reimbursement Obligations.** With respect to Certified District Eligible Costs recognized prior to the issuance of any Reimbursement Obligation, simple interest with no compounding shall accrue on unpaid Certified District Eligible Costs at the MMD Interest Rate (the “**Interest Rate**”). Such Interest Rate shall adjust on a semi-annual basis.

Such interest shall accrue from the date of adoption of such District Acceptance Resolution to the earlier of the date Reimbursement Obligation is issued to evidence the Certified District Eligible Costs, or the date of repayment in full of the applicable Certified District Eligible Costs.

5.4. **Issuance of Reimbursement Obligations.** Subject to any limitations or restrictions contained in any loan or bond documents, the Governing Document and the conditions of this Section 5.4, upon request of the Developer, the District hereby agrees to issue to or at the direction of the Developer one or more Reimbursement Obligations to evidence any repayment obligation of the District then existing with respect to Certified District Eligible Costs, and interest

accrued, under this Agreement. Such Reimbursement Obligations shall be payable solely from the sources identified in the Reimbursement Obligations, including, but not limited to, *ad valorem* property tax revenues of the District, and shall be secured by the District's pledge to apply such revenues as required thereunder, unless otherwise consented to by the Developer. Such Reimbursement Obligations shall mature on a date or dates, subject to the limitation set forth herein, and bear interest at a market rate, to be determined at the time of issuance of such Reimbursement Obligations.

a. In connection with the issuance of any such Reimbursement Obligation, the District shall make such filings as it may deem necessary to comply with the provisions of [Utah Code Section 17D-4-301](#), as amended.

b. To the extent such Reimbursement Obligations may be issued as tax-exempt obligations, and upon the request of the Developer, such obligations shall be issued with a tax-exempt opinion of nationally recognized bond counsel.

c. The District shall bear the costs of issuance of the Reimbursement Obligations.

d. The terms of this Agreement may be used to construe the intent of the Parties in connection with issuance of any Reimbursement Obligations and shall be read as nearly as possible to make the provisions of any Reimbursement Obligations and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the terms of any Reimbursement Obligations, the terms of such Reimbursement Obligations shall prevail.

ARTICLE 6

TERMINATION

6.1. Termination of Obligation to Reimburse.

a. Notwithstanding any provision in this Agreement to the contrary, this Agreement and the District's obligation to reimburse the Developer for any and all Certified District Eligible Costs not converted to Reimbursement Obligations shall terminate automatically and be of no further force or effect upon the occurrence of: (i) the Developer's voluntary dissolution, liquidation and winding up; (ii) administrative dissolution (or other legal process not initiated by the Developer, dissolving the Developer as a legal entity) that is not remedied or cured within sixty (60) days of the effective date of such dissolution or other process; or (iii) the initiation of bankruptcy, receivership or similar process or actions with regard to the Developer (whether voluntary or involuntary). The termination of this Agreement and the District's reimbursement obligations set forth herein shall be absolute and binding upon the Developer and its successors and assigns. The Developer, by its execution of this Agreement, waives and releases any and all claims and rights, whether existing now or in the future, against the District relating to or arising out of the District's reimbursement obligations under this Agreement, in the event that any of the occurrences described in this Section 6.1.a. occur.

b. Furthermore, this Agreement and the District's obligations under this Agreement to reimburse the Developer shall terminate at the earlier of the repayment in full of the Certified District Eligible Costs or at the expiration of the Maximum Repayment Term. The Parties hereby agree and acknowledge that, upon the termination date set forth in the preceding sentence, any obligation of the District to reimburse the Developer for amounts due and outstanding under this Agreement, including accrued interest, shall be forgiven in its entirety, generally and unconditionally released, waived, acquitted and forever discharged, and shall be deemed a contribution to the District by the Developer and there shall be no further obligation of the District to pay or reimburse the Developer with respect to such amounts. This limitation shall not apply to Reimbursement Obligations, which shall mature in accordance with their terms.

ARTICLE 7

MISCELLANEOUS

7.2. **Default/Remedies.** In the event of a breach or default of this Agreement by any Party, the non-defaulting Party, after having given notice to the other Party and a 30 day period to cure said breach or default, shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees, expert witness fees and court costs.

7.3. **Time Is of the Essence/Modification of Performance Dates.** Time is of the essence hereof; provided, however, that if the last day permitted or otherwise determined for the performance of any required act under this Agreement falls on a Saturday, Sunday, or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated. Notwithstanding the foregoing, any date specified for completion of any required act by either Party hereunder may be modified upon the mutual agreement of the Parties.

7.4. **Indemnification.** The Developer hereby agrees to indemnify and save harmless the District from all claims and/or causes of action, including but not limited to mechanic's liens, arising out of the fraudulent misrepresentation or misstatement in connection with the Developer's performance of its obligations hereunder.

7.5. **Notices.** All notices, demands and communications (collectively, "Notices") under this Agreement shall be delivered or sent, addressed to the address of the intended recipient set forth below or such other address as a Party may designate by notice pursuant to this Section, by: (a) first class, registered or certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight carrier, or (c) sent by confirmed facsimile transmission or email. Notices shall be deemed given either one business day after delivery to the overnight carrier, three days after being mailed as provided in clause (a) or (b) above, or upon confirmed delivery as provided in clause (c) above.

To the District: NS Public Infrastructure District No. 1
c/o White Bear Ankele Tanaka & Waldron
2154 E. Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attention: Blair M. Dickhoner, Esq.
(303) 858-1800
bdickhoner@wbapc.com

To the Developer: New Salem Vision 1, LLC
8417 S. Etienne Way
Sandy, UT 84093
Attention: Boyd Brown
boydbrownkw@gmail.com

7.6. **Amendments.** This Agreement may only be amended or modified by a writing executed by the Parties.

7.7. **Severability.** If any portion of this Agreement is declared by any court of competent jurisdiction to be illegal, void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such illegal, void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

7.8. **Governing Law/Venue.** This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Utah, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Utah. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located.

7.9. **No Assignment.** This Agreement may not be assigned by either Party and any attempt to do so shall be null and void.

7.10. **Authority.** By execution hereof, the District and the Developer represent and warrant that their representative signing hereunder has full power and lawful authority to execute this Agreement and to bind the respective Party to the terms hereof.

7.11. **Entire Agreement.** This Agreement constitutes and represents the entire, integrated agreement between the Parties with respect to the matters set forth herein, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to those matters, whether written or oral. This Agreement shall become effective upon the date set forth above.

7.12. **Inurement.** The terms of this Agreement shall be binding upon and inure to the benefit of the Parties as well as their respective successors.

7.13. **Legal Existence.** The District will maintain its legal identity and existence so long as any of the advanced amounts contemplated herein remain outstanding. The foregoing statement shall apply unless, by operation of law, another legal entity succeeds to the liabilities and rights of the District without materially adversely affecting the Developer's privileges and rights under this Agreement.

7.14. **Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Governmental Immunity Act of Utah, [Utah Code Section 63G-7-101](#), *et. seq.*

7.15. **Negotiated Provisions.** This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

7.16. **Parties Interested /No Third-Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any other third parties. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

7.17. **Electronic Storage and Execution.** The Parties agree that the transactions described herein may be conducted and related documents may be signed and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of electronically signed and stored documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. Without limiting the foregoing, the Parties agree that in the event that any individual or individuals who are authorized to execute or consent to this Agreement on behalf of the District or the Developer are not able to be physically present to manually sign this Agreement or any amendments or consents thereto, that such individual or individuals are hereby authorized to execute the same electronically via an electronic signature. Any electronic signature so affixed to this Agreement or any amendments or consents thereto shall carry the full legal force and effect of any original, handwritten signature.

7.18. **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

DISTRICT:
NS PUBLIC INFRASTRUCTURE DISTRICT
NO. 1, an independent political subdivision of the
State of Utah

By: _____
Officer of the District

Attest:

By: _____
Secretary

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

General Counsel to the District

DEVELOPER:
NEW SALEM VISION 1, LLC, a Utah limited
liability company

By: _____

Printed Name

Title

EXHIBIT A

Application for Acceptance of District Eligible Costs Dedicated Public Infrastructure

Applicant Name: _____

Applicant Address: _____

State: _____ **Zip:** _____ **Daytime Phone #:** _____

Alt. Phone / Cell: _____

Email: _____

Please complete the table below and attach the materials specified in Schedule 1 hereto:

Category	Entity that will own, operate, and/or maintain the Public Infrastructure	Final, preliminary or conditional acceptance by the applicable governmental entity (Yes/No)	Proposed District Eligible Costs
Street			
Parks and Recreation			
Water			
Sanitation/Storm Sewer			
Transportation			
Mosquito			
Safety Protection			
Fire Protection			
Television Relay and Translation			
Security			

By its signature below, the Applicant certifies that this Application for Acceptance of District Eligible Costs - Dedicated Public Infrastructure and all documents submitted in support of this application are true and correct, that the Applicant is authorized to sign this application, and that the costs submitted for reimbursement herein qualify as District Eligible Costs in accordance with the Infrastructure Acquisition and Reimbursement Agreement.

Signature: _____

Date: _____

Schedule 1

Documentary Requirements

In addition to the requirements set forth in Article III of this Agreement, the following additional documentary requirements apply in connection with the Application for Acceptance of District Eligible Costs – Dedicated Public Infrastructure, per Exhibit A:

Requirements Applicable to Public Infrastructure that has been finally accepted by the applicable governmental entity

1. Contracts and approved change orders;
2. Copies of all invoices, statements and evidence of payment thereof equal to the proposed District Eligible Costs;
3. A letter from the governmental entity to which the Public Infrastructure is being dedicated evidencing the governmental entity's final acceptance of such Public Infrastructure;
4. Such information as the District Engineer and District Accountant may determine is necessary in order for such entities to provide the certifications set forth in Section 3.2 of this Infrastructure Acquisition and Reimbursement Agreement.

Requirements Applicable to Public Infrastructure conditionally accepted by the applicable governmental entity

1. Contracts and approved change orders;
2. Copies of all invoices, statements and evidence of payment thereof equal to the proposed District Eligible Costs;
3. A letter from the governmental entity to which the Public Infrastructure is being dedicated evidencing the governmental entity's conditional acceptance of such Public Infrastructure;
4. Submission of a letter agreement in form and substance satisfactory to the District addressing: a) the Developer's obligation to undertake all steps necessary to achieve final acceptance of the Public Infrastructure by the appropriate governmental entity, and b) to the extent not otherwise performed by the governmental entity having conditionally accepted such Public Infrastructure, the Developer's obligation to maintain such Public Infrastructure until final acceptance thereof by the applicable governmental entity;
5. Such information as the District Engineer and District Accountant may determine is necessary in order for such entities to provide the certifications set forth in Section 3.2 of the Infrastructure Acquisition and Reimbursement Agreement.

Requirements for Public Infrastructure prior to conditional by the applicable governmental entity

An Application for Acceptance for Dedicated Public Infrastructure that has not received conditional acceptance from the applicable governmental entity shall only be permitted: a) if the District has proceeds available to fund the full amount thereof from the issuance of Bonds, and b) the District agrees to accept such Application.

For Public Infrastructure that is to be dedicated to another governmental entity in advance of conditional acceptance, the Developer shall satisfy the following additional documentary requirements:

1. Construction Drawings.
2. Copies of all invoices, statements and evidence of payment thereof equal to the proposed District Eligible Costs, including lien waivers from any suppliers and subcontractors. In the alternative with respect to lien waivers, upon the request of the Developer, and subject to the District's agreement thereto (in its sole discretion), the Developer may provide an indemnification agreement in form and substance acceptable to the District (which may include provisions for security) whereby the Developer agrees to indemnify the District for any mechanic or materialman's liens from suppliers and subcontractors;
3. A letter agreement in form and substance satisfactory to the District establishing:
a) the Developer's obligation to undertake all steps necessary to achieve dedication to and final acceptance of the Public Infrastructure by the appropriate governmental entity and, b) the Developer's obligation to maintain such Public Infrastructure until final acceptance thereof by the applicable governmental entity;
4. Evidence satisfactory to the District that any and all real property interests necessary for the use and occupancy of the Public Infrastructure have been granted either to the District or to the governmental entity accepting such Public Infrastructure; or, in the discretion of the District, assurances acceptable to the District that the Developer will execute or cause to be executed such instruments as shall satisfy this requirement;
5. An executed Bill of Sale in form and substance acceptable to the District conveying the Public Infrastructure to the District, which Bill of Sale shall provide for its automatic termination upon final acceptance of the Public Infrastructure by the appropriate governmental entity.;
6. A license agreement or equivalent document from the jurisdiction to which the Public Infrastructure are to be dedicated, authorizing the District to enter onto public right-of-way to conduct any maintenance in the event the Developer fails to do so.
7. Such information as the District Engineer and District Accountant may determine is necessary in order for such entities to provide the certifications set forth in Section 3.2 of the Infrastructure Acquisition and Reimbursement Agreement;

8. When ultimately produced, a complete set of digital record drawings of the Public Infrastructure which is certified by a professional engineer registered in the State of Colorado or a licensed land surveyor, showing accurate dimensions and location of all Public Infrastructure. Such drawings shall be in form and content reasonably acceptable to the District;

9. Any operation and maintenance manuals, if available, and otherwise a commitment to provide when available;

10. Evidence that any underground facilities are electronically locatable (if applicable);

11. Test results for improvements conforming to industry standards (compaction test results, concrete tickets, hardscape test results, cut-sheets, etc.) (if applicable);

21. Pressure test results for any irrigation system (if applicable).

The District may, in its sole discretion, retain up to 10% of the Certified District Eligible Costs otherwise being paid for Public Infrastructure that is being reimbursed in this fashion and may require security in such amount as the District may reasonable determine is necessary pending preliminary, conditional or final acceptance.

EXHIBIT B

Application for Acceptance of District Eligible Costs Capital Services Costs

Applicant Name: _____

Applicant Address: _____

State: _____ **Zip:** _____ **Daytime Phone #:** _____

Alt. Phone / Cell: _____

Email: _____

Description of the nature of the Eligible Service Costs and the relation to Public Infrastructure, as applicable: _____

Category	Proposed District Eligible Costs
Organizational Costs	
Street	
Parks and Recreation	
Water	
Sanitation/Storm Sewer	
Transportation	
Mosquito	
Safety Protection	
Fire Protection	
Television Relay and Translation	
Security	

By its signature below, the Applicant certifies that this Application for Acceptance of Eligible Service Costs and all documents submitted in support of this application are true and correct, that the Applicant is authorized to sign this application, and that the costs submitted for reimbursement herein qualify as District Eligible Costs in accordance with the Infrastructure Acquisition and Reimbursement Agreement.

Signature: _____

Date: _____

Schedule 1

Documentary Requirements

In addition to the requirements set forth in Section 3.4 of this Agreement, the following additional documentary requirements apply in connection with the Application for Acceptance of District Eligible Costs – Service Costs, per Exhibit B:

1. Copies of all invoices, statements and evidence of payment thereof equal to the proposed District Eligible Costs;
2. Such information as the District Accountant may determine is necessary in order for such entities to provide the certification set forth in Section 3.4 of the Infrastructure Acquisition and Reimbursement Agreement.