

**CONSTRUCTION, REPAIR AND MAINTENANCE AGREEMENT FOR
STORMWATER UTILITIES, SANITARY SEWER AND WATER MAIN
FOR PROJECT TIMBER WOLF**

THIS CONSTRUCTION, REPAIR AND MAINTENANCE AGREEMENT FOR STORMWATER UTILITIES, SANITARY SEWER AND WATER MAIN FOR [Insert plat name] (“Agreement”) is made, entered into and effective this ____ day of _____, 202__, by and among the City of Baxter, a Minnesota municipal corporation (“City”), and _____, a _____ (“Developer”). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Improvements. Improvements, collectively, means the **private stormwater utilities, private sanitary sewer and private water main** constructed and installed by Developer on the Subject Land, as depicted on Exhibit A, attached hereto and incorporated herein.

1.2 Subject Land. Subject Land means the following real property located in the City of Baxter, Crow Wing County, State of Minnesota, legally described as follows:

[Insert legal description]

**ARTICLE 2
RECITALS**

Recital No. 1. Developer owns the Subject Land.

Recital No. 2. The Developer will construct, own, operate, maintain and manage the Improvements on the Subject Land.

Recital No. 3. By this Agreement the parties seek to:

- a. Impose upon the Developer the responsibility of constructing, maintaining, repairing and restoring the Improvements, as provided herein;
- b. Provide a mechanism where the City may charge-back to the Subject Land any maintenance, repair or restoration work that the City performs in the event the Developer fails to perform its obligations to reconstruct, repair and restore the Improvements.

ARTICLE 3
RESPONSIBILITY FOR MAINTENANCE OF IMPROVEMENTS

3.1 Maintenance of Improvements. The Developer shall construct, maintain, repair, reconstruct and restore the Improvements at its cost, as needed, so that the Improvements are functional and operational in conformance with the purpose of the Improvements.

3.2 Notice of Non-Compliance; Cure Period. If the City determines, in its sole discretion, that the Developer has not complied with Sections 3.1 of this Agreement, it shall provide written notice to the Developer of such failure to comply. This notice shall specify that the Developer will have thirty (30) days to comply with Sections 3.1, unless thirty (30) days is not practicable for the Developer to cure the default, in which case the Developer shall be given a reasonable time, as determined by the City, to cure the default provided the Developer has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Developer to comply with Sections 3.1, in the event of an emergency as determined by the City, the City may perform the work to be performed by the Developer without giving any notice to the Developer and without giving the Developer thirty (30) days to comply with Sections 3.1. If the City performs emergency service work, the Developer shall be obligated to repay the City the costs incurred to perform the emergency service work, and the City shall follow those procedures set forth in Sections 3.3 and 3.4 with respect to the billing, collection and/or tax certification of such costs.

3.3 Payment of Costs Incurred by City. If the Developer fails to comply with Section 3.1 of this Agreement within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as determined by the City, the City may perform those tasks necessary for compliance and the City shall have the right of access to the Subject Land to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance to the Developer. The amount of costs charged by the City to the Developer shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with Section 3.1 of this Agreement. The Developer shall make payment directly to the City within twenty (20) days after invoicing by the City. Bills not paid by the date stated on the invoice shall incur the standard penalty and interest established by the City for utility billings within the City.

3.4 Certification of Costs Payable With Taxes; Special Assessments. If payment is not made pursuant to Section 3.3, the City may certify to Crow Wing County the amounts due as payable with the real estate taxes for the Subject Land in the next calendar year; such certifications

may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The charges shall be equally allocated among the Subject Land.

The Developer hereby waives any and all procedural and substantive objections to special assessments for the costs and expenses incurred by the City including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Subject Land. The Developer waives any appeal rights otherwise available pursuant to Minnesota Statute §429.081. The Developer acknowledges that the benefit from the performance of tasks by the City to ensure compliance with Section 3.1 of this Agreement equals or exceeds the amount of the charges and assessments for the costs that are being imposed hereunder upon the Subject Land.

3.5 Grant of Easement For Maintenance and Repair. The Developer agrees that its obligations relating to the Improvements set forth in Sections 3.1 of this Agreement exist. The Developer hereby grants the City a right of access and easement to access and enter the Subject Land for the purposes of performing the rights and obligations of the City to perform service work pursuant to Section 3.2.

ARTICLE 4 **MISCELLANEOUS**

4.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Subject Land and shall be binding upon the parties and the successors and assigns of the parties.

4.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

4.3 Option. If the Subject Land is conveyed to more than one owner and the Improvements will serve multiple properties with different owners, then the Developer shall provide notice of the sale to the City and the City shall decide in its sole discretion, if: (i) this Agreement should be modified or amended; or (ii) this Agreement should be terminated, in which case the Developer shall convey an easement to the City over the Improvements, thereby making the Improvements public infrastructure. Developer shall cooperate and comply with the City's decision in order to effectuate the modification or amendment to this Agreement or the conveyance of the Improvements.

4.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

[The remainder of this page was intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first stated above.

CITY:
CITY OF BAXTER

By: _____
Darrel Olson
Mayor

By: _____
Kelly Steele
Assistant City Administrator / City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF CROW WING)

On this ____ day of _____, 202__, before me a Notary Public within and for said County, personally appeared Darrel Olson and Kelly Stelle, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and the Assistant City Administrator / City Clerk of the City of Baxter, the Minnesota municipal corporation named in the foregoing instrument, and that it was signed on behalf of said municipal corporation by authority of its City Council and said Mayor and Assistant City Administrator / City Clerk acknowledged said instrument to be the free act and deed of said municipal corporation.

Notary Public

DEVELOPER:

[Insert name]

By: _____

Its:

STATE OF MINNESOTA)

) ss.

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 202__, by _____, the _____ of _____, a _____, on behalf of said _____.

Notary Public

**This instrument drafted by
And after recording, please return to:**
Greta Bjerkness (#0390575)
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
651-451-1831

EXHIBIT A
DEPICTION OF IMPROVEMENTS