

## **STORMWATER FACILITY OPERATION AND MAINTENANCE AGREEMENT**

**THIS STORMWATER FACILITY OPERATION AND MAINTENANCE AGREEMENT** ("Agreement"), is made and entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, hereinafter referred to as "Landowner," and the **CITY OF JOSHUA, TEXAS**, hereinafter referred to as "City." It is intended that the term "Landowner" shall apply to the fee simple owner, from time to time, of the Property (as defined below).

**WHEREAS**, Landowner is the owner of certain real property described as \_\_\_\_\_, a description of which is attached hereto as Exhibit A and incorporated by reference, and which is located in the City (the "Property"); and

**WHEREAS**, Landowner is proceeding to build on and develop the Property according to the Site Plan/Subdivision Plat known as \_\_\_\_\_, hereinafter referred to as the "Plan," which is expressly incorporated by reference, as approved or to be approved by the City and Landowner shall provide for the management of stormwater within the confines of the Property; and

**WHEREAS**, the City and Landowner, and Landowner's successors and assigns, agree that the health, safety and welfare of the residents of the City require that on-site Stormwater Management Facilities be constructed and maintained on a portion of the Property; and

**WHEREAS**, the City requires that on-site Stormwater Management Facilities ("Facility"), as shown on the Plan, be constructed and adequately maintained by Landowner, its successors and assigns, the approximate location and dimensions of which are shown in the attached Exhibit B ("Facility Property").

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. Landowner, its successors and assigns, shall adequately construct and maintain the on-site Stormwater Management Facility ("Facility") at no expense to the City in accordance with the approved design specifications for the Facility, and the current standards then in force and effect in the City and with the Operation and Maintenance Plan attached to this Agreement as Exhibit C. The Stormwater Facility includes all pipes, channels or other conveyances built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their designed functions. The Detention Pond Maintenance Checklist, attached to this Agreement as Exhibit D, is to be used to establish what good working condition is acceptable to the City.

2. Landowner, its successors and assigns, shall inspect the Facility and submit

an inspection report to the City annually, on or before the anniversary of the date of execution of this Agreement. The purpose of the inspection is to assure safe and proper functioning of the Facility. The inspection shall cover the entire Facility, berms, outlet structure, pond areas, access roads, etc. Components of the Facility, which need maintenance or replacement to perform their design function, shall be noted in the inspection report along with the corrective actions taken or a schedule to be taken.

3. Landowner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Facility Property whenever the City deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The City shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs, if necessary.

4. In the event Landowner, its successors and assigns, fail to maintain the Facility in good working condition as specified herein and such failure continues for a period of thirty (30) consecutive days after written notice from the City identifying the deficiency (though in a situation involving potential immediate danger to persons or property, such time shall be shortened as necessary to prevent such damage), the City, its authorized agents and employees, may enter upon the Facility Property and take whatever steps reasonably necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Landowner, its successors and assigns. It is expressly understood and agreed that the City is under no obligation to routinely inspect, maintain, or repair said Facility, and in no event shall this Agreement be construed to impose any such obligation on the City as such obligation is Landowner's.

5. Landowner, its successors and assigns, will perform the work necessary to keep the Facility in good working order, as appropriate. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, Landowner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) calendar days of receipt thereof for all actual costs incurred by the City hereunder. In the event that Landowner or its successors or assigns fail to pay the City for the costs incurred under this Agreement, the City may impose a lien for the costs of such work upon the Property or other lots owned by Landowner; provided, however, that such lien shall be subordinate to any deed of trust or mortgage lien now or hereafter encumbering all or part of the Property. Such lien shall be perfected by filing in the office of the County Clerk of Johnson County, Texas, an affidavit identifying the property to be charged with such lien, stating the amount thereof, and make reference to this Agreement.

6. This Agreement imposes no liability of any kind whatsoever on the City. **LANDOWNER AGREES TO HOLD THE CITY HARMLESS FROM ANY LIABILITY IN THE EVENT THE FACILITY FAILS TO OPERATE PROPERLY. LANDOWNER COVENANTS AND AGREES AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF JOSHUA, ITS AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ALL COSTS, EXPENSES, LOSSES, DAMAGES, CLAIMS OR**

**CAUSES OF ACTION WHATSOEVER ARISING, OR WHICH MIGHT ARISE, FROM THE FAILURE OF LANDOWNER OR ANY FUTURE OWNERS OF THE ABOVE FACILITY PROPERTY TO MAINTAIN THE FACILITY, INCLUDING, BUT NOT LIMITED TO, THE BED AND BANKS OF THE DETENTION POND; ANY DAMAGES CAUSED TO PERSON OR PROPERTY DUE TO FAILURE OF THE DRAINAGE ON THE PUBLIC RIGHT-OF-WAY (1) DUE TO LACK OF MAINTENANCE, (2) SILTING OF THE SWALE OR RIP-RAP OR (3) FAILURE TO OPERATE IN A MANNER CONSISTENT WITH CITY CRITERIA OR LANDOWNER'S FAILURE TO PERFORM ANY OTHER DUTIES OR OBLIGATIONS HEREUNDER.**

7. This Agreement shall be recorded in the land records of Johnson County, Texas, shall constitute a covenant running with the land, and shall be binding on Landowner, its administrators, executors, assigns, heirs and any other successors in interests, including any property owners association.

8. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

9. With respect to any sale or transfer of the Property, Landowner shall notify the City in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Landowner has the right (from time to time without the consent of the City, but upon written notice to the City) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Landowner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Landowner. Landowner may assign this Agreement to a non-affiliate third party with approval from the City. Each assignment shall be in writing executed by Landowner and the Assignee and shall obligate the Assignee to be bound by this Agreement with respect to the portion of the Property transferred to Assignee. If the Property is transferred or owned by multiple parties, this Agreement shall only apply to, and be binding on, such parties to the extent of the Property owned by such successor landowner, and if Landowner or any Assignee is in default under this Agreement, such default shall not be an event of default for any non-defaulting Assignee which owns any portion of the Property separate from the defaulting Landowner or Assignee. A copy of each assignment shall be provided to the City within ten (10) business days after execution. Provided that the successor owner assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement with respect to the Property transferred to the successor landowner, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the City. No assignment by Landowner shall release Landowner from any liability that resulted from an act or omission by Landowner that occurred prior to the effective date of the assignment. Landowner shall maintain true and correct copies of all assignments made by Landowner to Assignees, including a copy of each executed assignment and the Assignee's Notice information. Any sale, transfer or conveyance of any part of the Property after City

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**OWNER:**

By: \_\_\_\_\_

Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF TEXAS** )

)

**COUNTY OF** \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of such Owner.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**(Property Description)**

**EXHIBIT B**  
**(Facility Property Description)**

**EXHIBIT C**  
**(Operation and Maintenance Plan)**



**EXHIBIT D**  
**(Detention Pond Maintenance Checklist)**