

AGREEMENT CONCERNING DETENTION POND
LOCATED ON PRIVATE PROPERTY

This Agreement Concerning Detention Pond Located on Private Property ("Agreement") is made and entered into this ____ day of _____, 202__, (the "Effective Date") by and between the **City of Loganville**, a Georgia Municipal Corporation (the "City"), and _____ (the "Property Owner") (collectively hereinafter referred to as the "Parties").

WITNESSETH:

WHEREAS, the Property Owner is the owner of that certain property commonly known as _____, Loganville, [Walton/Gwinnett] County, Georgia 30052, Map/Parcel No. _____ (the "Property"); and,

WHEREAS, wholly or partially located on the Property is a detention pond (the "Detention Pond"); and,

WHEREAS, the Detention Pond is purposed to collect, convey, detain, and discharge stormwater in a safe and consistent manner for the health, safety, and general welfare of the public; and,

WHEREAS, the Detention Pond is failing to substantially discharge stormwater in a safe and consistent manner for the health, safety, and general welfare of the public; and,

WHEREAS, pursuant to City Ordinance Section 34-238(a) "All property owners and developers of developed real property within the city shall provide, manage, maintain, and operate on-site stormwater systems sufficient to collect, convey, detain, and discharge stormwater in a safe manner consistent with all city development regulations and the laws of the state and the United States of America"; and,

WHEREAS, the Property Owner is responsible for the maintenance and upkeep of the Detention Pond; and,

WHEREAS, pursuant to City Ordinance Section 34-238(b) "Any failure to meet this obligation shall constitute a nuisance and be subject to an abatement action filed by the city in the municipal court of the appropriate county. In the event a public nuisance is found by the court to exist, which the owner fails to properly abate within such reasonable time as allowed by the court, the city may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof assessed against the owner in the same manner as a tax levied against the property".

WHEREAS, the Property Owner has failed to properly maintain and upkeep the Detention Pond in accordance with Section 34-238(a) of the City's Ordinance; and,

WHEREAS, the Property Owner is one of several property owners that appear to benefit from the Detention Pond since that said Detention Pond appears to handle stormwater for all or a majority of the _____ Subdivision; and,

WHEREAS, the Detention Pond was likely constructed on the Property prior to the City's amended and updated Development Regulations (the "Regs") prohibiting the installation of detention ponds in such a manner; and,

WHEREAS, pursuant to Article 8.2.4(g) of the Regs, residential subdivisions are now required to establish a Property Owner's Association for the purpose of maintaining and upkeeping detention ponds; and,

WHEREAS, in light of the City's amended and updated Regs, the City finds that it would be unjust and inequitable to require the Property Owner to incur the costs associated with fixing the Detention Pond which serves multiple residents located within the City; and,

WHEREAS, the City has an interest in the public health, safety, and general welfare of its citizens; and,

WHEREAS, the City desires to be just and equitable and provide a one-time service to the Property Owner by fixing and incurring the costs of correcting the issues with the Detention Pond, and,

WHEREAS, the City desires to perform a one-time service to fix and bring the Detention Pond into compliance with the Regs; and,

WHEREAS, the Property Owner desires for the City to provide said one-time service to the Detention Pond to bring it into compliance with the Regs; and,

WHEREAS, the Property Owner understands that all future maintenance, costs, and upkeep of the Detention Pond shall be the sole responsibility of the Property Owner (or several property owners depending on the location of the Detention Pond).

NOW THEREFORE, to avoid further expenses and for and in consideration of the covenants and promises stated herein below, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. OBLIGATIONS OF THE PARTIES

The City shall hire a contractor to perform the necessary corrective measures to bring the Detention Pond into compliance with the Regs. The City shall be responsible for all costs incurred to correct and fix the Detention Pond, including but not limited to the costs to clean and remove debris, remove overgrowth, remove sediment build-up, correct filter stones, correct outfall issues, grout headwall pipes, and all other corrections which may be necessary to bring the Detention Pond into compliance with the Regs. The City shall provide this one-time service to the Property Owner,

but shall not be required to maintain or upkeep the Detention Pond thereafter in any capacity whatsoever.

The Property Owner shall provide reasonable ingress and egress across the Property to and from the Detention Pond for the purpose of correcting and fixing the Detention Pond. The Property Owner shall not deter, obstruct, interfere with, or otherwise hinder the City, its employees or representatives, or its contractors from accessing and working on the Detention Pond. The Property Owner (or several property owners depending on the location of the Detention Pond) shall be solely responsible for all future maintenance, repairs, upkeep, and work on the Detention Pond to ensure compliance with the Regs. Further, after the City's one-time service of correcting and fixing the Detention Pond, the Property Owner shall not rely on or otherwise depend on or expect the City to maintain or upkeep the Detention Pond in any capacity or manner whatsoever in the future and acknowledges that the Detention Pond shall be the sole responsibility of the property owners that benefit from the Detention Pond.

2. RELEASE

In consideration of the sums paid herein and other promises contained herein, the Property Owner, for himself/herself, his/her agents, executors and administrators, successors and assigns, hereby irrevocably and unconditionally releases and forever discharges the City, the City's insurers, successors and assigns, related or affiliated entities or individuals, stockholders, officers, directors, members, owners, employees, former employees, agents, representatives, attorneys, from all complaints, claims, charges, liabilities, obligations, promises, agreements, suits, costs, expenses, expert fees, any attorney's fees, litigation expenses and causes of action of any nature whatsoever, whether known or unknown, accrued or unaccrued, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, matured or unmatured, developed or undeveloped, discoverable or undiscoverable, that the Property Owner has or might have against the City, including but not limited to, any and all claims relating to the Detention Pond.

3. COVENANT NOT TO SUE

The Property Owner, for himself/herself, his/her agents, attorneys, successors and assigns, hereby irrevocably and unconditionally covenant not to sue the City, its insurers, related or affiliated entities or individuals, stockholders, officers, directors, members, owners, employees, former employees, agents, representatives, attorneys, successors and assigns for any and all claims relating to the Detention Pond, or any matter related thereto, and any claims which were or could have been asserted in any action or lawsuit relating to the Detention Pond.

4. AUTHORIZATION

The City and the Property Owner each warrant and represent that they have the authority and power to execute this Agreement.

5. ADDITIONAL DOCUMENTS

The Parties agree to execute and deliver to one another from time to time such reasonable additional instruments or documents and to perform such other reasonable acts as may be necessary or desirable to effectuate this Agreement.

6. ENTIRE AGREEMENT

The Parties agree that this Agreement contains the entire agreement between the Parties with respect to the claims or causes of action which were raised, or could have been relative to the Detention Pond, or any matter related thereto, and that the terms of this Agreement are contractual and not mere recitals. This Agreement revokes and supersedes all prior agreements between the Parties. In executing and delivering this Agreement, the Property Owner warrants that he/she/it has relied upon his/her/its own judgment and that the Property Owner has in no way relied upon or been induced by any representation, statement, or act by the City or its representatives, except as expressly contained or referred to herein. This Agreement may not be changed, modified, amended, or altered except by written agreement signed by the Parties.

7. NO ASSIGNMENT OR TRANSFER OF RELEASED CLAIMS

The Property Owner warrants and represents that as of the date of execution of this Agreement, he/she/it has not assigned or transferred or purported to assign or transfer, to any person, firm, corporation, association or entity whatsoever any claim being released herein.

8. ADVICE OF COUNSEL

The Parties agree that they have obtained or had the opportunity to obtain the advice of legal counsel prior to the execution of this Agreement, that they have read this Agreement carefully, that they have obtained or had the opportunity to obtain advice from counsel regarding this Agreement's meaning and consequences, and that the Parties have signed this Agreement willingly, freely, knowingly, voluntarily and under no duress or incapacity.

9. GOVERNING LAW

This Agreement shall be construed, interpreted and enforced according to the laws of the State of Georgia; provided, however, that if Georgia conflict or choice of law rules would choose the law of another State, the Parties hereby waive such rules and agree that Georgia substantive, procedural and constitutional law shall nonetheless govern.

10. CONSTRUCTION

As used in this Agreement, singular or plural numbers shall be deemed to include the other whenever the context so indicates or requires. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not a part of this Agreement. This Agreement was negotiated

among the Parties, and for purposes of construction, no party will be deemed to be the primary drafter.

11. SURVIVAL

The representations and warranties contained herein or in any other document delivered pursuant hereto or in connection herewith shall not be extinguished upon execution hereof, but shall survive the execution and may be asserted without limitation, except as otherwise provided by law.

12. COUNTERPARTS

This Agreement may be executed in counterparts, and such execution may be evidenced by signatures delivered by facsimile or electronic transmission.

13. EFFECTIVE DATE

This Agreement shall be effective on the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have affixed their signatures hereto on the date first written above.

PROPERTY OWNER:

_____(SEAL)

_____(SEAL)

_____(SEAL)

CITY:

_____(SEAL)

By: Danny Roberts, City Manager