

**PARTICIPATION AGREEMENT
FOR THE
VINEYARD DRAINAGE IMPROVEMENT PROJECT**

This PARTICIPATION AGREEMENT FOR THE VINEYARD DRAINAGE IMPROVEMENT PROJECT (the "Agreement") is made on or as of the ____ day of March, 2023, by and between THE CITY OF NORMAN, an Oklahoma Municipal Corporation (the "City"); THE VINEYARD ASSOCIATION, INC., an Oklahoma Not for Profit Corporation ("HOA"); and David E. and Brenda J. Yeakley ("Yeakleys") which are collectively herein referred to as "Parties."

WITNESSETH:

WHEREAS, The Vineyard Addition was Preliminary Platted on August 30, 1998, and all final plats were accepted and filed by February 1, 2000. The Vineyard Addition is located in the City of Norman to the east of Porter Avenue, and south of Tecumseh Road; and

WHEREAS, as platted, the Vineyard Addition contained a detention pond area designed to receive stormwater runoff from development upstream as well as runoff from Porter Avenue in Norman; and

WHEREAS, for several years, residents of The Vineyard Addition have experienced property damage due to flooding; and

WHEREAS, in July 2015, the City hired Meshek and Associates to perform an analysis of flooding issues reported by the residents of The Vineyard Addition. Recommendations and project plans finally resulted from this contract, and the most recent project cost estimate is \$893,590.45; and

WHEREAS, the Vineyard Drainage Improvement Project was submitted for consideration, with City Manager approval, of a Hazard Mitigation Grant Program (HMGP) grant in the summer of 2019. On January 19, 2022 the City was notified that the Vineyard Detention Pond Project was selected and approved by the Oklahoma Department of Emergency Management and Homeland Security for 75%/25% grant in the total reimbursable amount of \$893,590.45, resulting in a local match of no less than \$223,397.61 ("Project"); and

WHEREAS, engineering plans implementing the project as designed have been finalized and the Project is preparing for public bid pursuant to the Oklahoma Competitive Bidding Act by the City; and

WHEREAS, the parties have agreed to certain conditions as a means of facilitating the repair and continued maintenance of the areas affected by the Project and wish to memorialize those terms in this Agreement; and

WHEREAS, the City requires temporary construction access to certain properties to construct the Project, which the parties desire to convey within this Agreement. The infrastructure finally installed by the City as a part of the Project will be entirely contained within an existing permanent drainage easement conveyed by the final plat filed on February 1, 2000, and which is demonstrated in Exhibit A hereto ("Drainage Easement"); and

WHEREAS, City Stormwater Master Plan recommends public and private participation in order to ensure that necessary maintenance to key stormwater infrastructure occurs, especially in cases where property owners associations are unable to perform such functions; and

WHEREAS, this Project presents an opportunity for the participation of these private parties to participate and cooperate with the City to ensure the maintenance of key stormwater infrastructure in The Vineyard Addition.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which are hereby acknowledged, and as reflected in the attached exhibits, the parties hereby agree as follows:

I. OBLIGATIONS RELATED TO THE PROJECT

SECTION 1.1. IMPROVEMENTS TO BE COMPLETED. Engineering plans have been completed by Meshek & Associates detailing the scope of required repairs in order to complete the Project in accordance with the HMGP Grant. Those plans are attached as Exhibit B.

- (a) The cost of necessary repairs is estimated to be \$893,590.45. The HMGP Grant should ultimately reimburse 75% (or \$670,192.84), leaving a local match of 25% (or \$223,397.61). The City has budgeted funding for the local match.
- (b) Any improvements requested or made to any properties subject to this agreement that are not shown on the final plans attached as Exhibit B will be the sole responsibility of the applicable property owner.
- (c) City will administer the improvement project as a Public Construction project, as currently budgeted, through the Oklahoma Competitive Bidding Act, including appropriate bonding which may include, if available, a three (3) year maintenance bond in an amount of 100% of the cost of the Project for the first year, and 25% for two years thereafter that may be activated if Project repairs do not perform as anticipated due to construction defects. To the extent a competitive bid within reasonable range of the current estimate is not received by the City, this Agreement may be subject to further modification or termination.

SECTION 1.2. YEAKLEY TEMPORARY CONSTRUCTION EASEMENT. In addition to the Drainage Easement, the Yeakleys hereby agree to and do herein grant the City a Temporary Construction Easement and right-of-access ("TCE") to construct the Project. The purpose of this easement is to grant the City of Norman the right to work their property, a tract with an address of 3099 N. Porter Ave, Norman OK 73071 (and within the TCE area designated on Exhibit C hereto), and includes the right to use and remove any and all sand, rock, dirt, gravel, and other materials from the above-described tract). It is a condition of this TCE that it shall not be filed of record and that all rights conveyed to the City by this TCE shall terminate upon completion of the Project. As necessary for the purposes of the Project, this TCE shall also inure to the benefit of the City's successors and assigns until completion of the Project. Compensation for this TCE shall be \$3,000.00, and shall be paid within three (3) weeks of approval of this Agreement.

SECTION 1.3. MAINTENANCE OF DRAINAGE IMPROVEMENTS. Once the Project has been completed in compliance with this Agreement, the HOA agrees to accept permanent and complete maintenance responsibilities for the entire Drainage Easement area demonstrated in Exhibit A. While responsible for the entire Drainage Easement, by this Agreement the HOA also accepts particular responsibility for maintenance of the Project Area demonstrated in Exhibit D (including all improvements covered by Exhibit B). These maintenance responsibilities include inspection and maintenance of installed infrastructure, general landscaping and lawn maintenance, provision and maintenance of a sprinkler system in substantial resemblance to the system installed as of December 15th, 2003, and any other maintenance of the "Jogging Trail" or "Detention Area" identified in that certain Maintenance Agreement dated December 22, 2003 and filed with the County Clerk for Cleveland County Oklahoma at Book 5533, Page 704 (Doc#: R 2016 10706) on April 7, 2016. *See* Maintenance Agreement, Exhibit E.

SECTION 1.4. RELEASE & WAIVER OF CLAIMS.

- (a) **Release & Waiver of Claims.** As consideration for letting The Vineyard Drainage Improvement Project repair work out for public competitive bidding, and as a condition to the City being obligated or bound to this Agreement, the HOA and the Yeakleys do hereby waive, release, dismiss, discharge, and relinquish all claims, demands, actions, and liabilities that may be or could be asserted against the City jointly or severally in relation to Project.
- (b) **Costs & Attorney's fees, and no admission of liability.** Each party shall be responsible for their own attorney fees and costs as related to this Agreement. For any action in which the City is named as a party relating to the Project, or any claim against or between any Party(ies) relating in any way thereto, the HOA and Yeakleys agree, jointly and severally, to fully indemnify the City, including for any costs an attorney fees arising thereunder. The parties agree that this Agreement is not an admission of guilt or liability on the part of any party under any federal, state or local law, whether statutory or common law. Liability for any and all claims is expressly denied by all parties to this Agreement.

ARTICLE II. GENERAL PROVISIONS

SECTION 2.1 COMPETITIVE BIDDING ACT. To the extent required by law, any and all contracts or portions thereof made pursuant to this Agreement shall be made in compliance with the Oklahoma Public Competitive Bidding Act of 1974, 61 O.S. §101, *et seq.*, as amended, including but not limited to any applicable bonding requirements.

SECTION 2.2 APPLICABLE LAW, SEVERABILITY AND ENTIRE AGREEMENT. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.

SECTION 2.3 THIRD PARTIES. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

SECTION 2.4 NO PARTNERSHIP CREATED OR JOINT VENTURE CREATED. This Agreement specifically does not create any partnership or joint venture between the Parties hereto, or render any party liable for any of the debts or obligations of any other party.

SECTION 2.5 FORMALITIES AND AUTHORITY. The Parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

SECTION 2.6 NOTICES AND DEMANDS. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

City: The City of Norman
P.O. Box 370
Norman, OK 73070
Attn: City Manager
With Copy to: City Attorney

The Vineyard HOA:

The Vineyard Association, Inc.
Attn: President (current: Rocky Frost)
1326 Fretz Drive
Edmond, OK 73003

The Yeakleys:

David E. and Brenda J. Yeakley
3990 N. Porter Avenue
Norman, OK 73071

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

SECTION 2.7 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns.

SECTION 2.8 MODIFICATIONS. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

SECTION 2.9 UNAVOIDABLE DELAYS. The time for performance of any term, covenant, condition, or provision of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delay" means a delay beyond the reasonable control of the party obligated to perform the applicable term, covenant, condition or provision under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to acts of God, any other party to this Agreement (for example, a delay in transfer of possession), strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty, but shall not include delays attributable to financial difficulties of such party.

SECTION 2.10 FURTHER ASSURANCES. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

SECTION 2.11 COUNTERPARTS. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same

agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

IN WITNESS WHEREOF, the City, the Authority, the POAs, and the Developer, as Parties to this Agreement, have caused this Agreement to be duly executed and delivered as of the date first above written.

THE CITY OF NORMAN, OKLAHOMA

By: _____
Larry Heikkila, Mayor

ATTEST: _____
Brenda Hall, City Clerk

(SEAL)

Approved as to form and legality this ____ day of _____, 2023.

City Attorney/ General Counsel

THE VINEYARD HOA

By: RF

Name: Rocky Frost

Title: **President, The Vineyard HOA**



STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS:

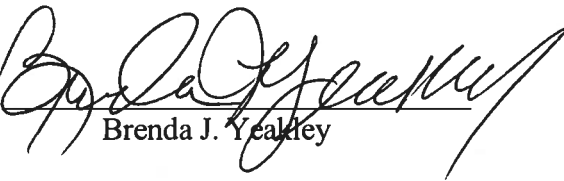
Before me, the undersigned, a Notary Public in and for said County and State, on this 20th day of April, 2023, personally appeared **Rocky Frost, President of The Vineyard HOA**, to me known to be the identical person(s) who executed the foregoing Participation Agreement and acknowledged to me that they executed the same as their free and voluntary act.

WITNESS my hand and seal the day and year last above written.

My commission expires: 07/06/2024 Notary Public: [Signature]

YEAKLEYS

By: 
David E. Yeakley

By: 
Brenda J. Yeakley

STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS:

Before me, the undersigned, a Notary Public in and for said County and State, on this 19 day of April, 2023, personally appeared **David E. Yeakley and Brenda J. Yeakley**, to me known to be the identical person(s) who executed the foregoing Participation Agreement and acknowledged to me that they executed the same as their free and voluntary act.

WITNESS my hand and seal the day and year last above written.

My commission expires: 7/31/2023 Notary Public 