

AFTER RECORDING RETURN TO:
CITY OF STAYTON
362 N. Third Avenue
Stayton, Oregon 97383

CITY OF STAYTON, OREGON Stormwater Facilities Operation and Maintenance Agreement

1. PARTIES:

This Agreement is made and entered into by and between _____, hereinafter referred to as "OWNER", and the CITY OF STAYTON, a Municipal Corporation in the State of Oregon, hereinafter referred to as "CITY".

2. RECITALS:

- 2.1 WHEREAS, OWNER possesses title to real property located in the _____ 1/4 of Section ____, Township __ South, Range __ West, Willamette Meridian, located in the City of Stayton, County of Marion, State of Oregon, as described and recorded _____ in Reel _____, Page _____, Marion County Deed Records, hereinafter referred to as the "Property".

Property Address: _____, Stayton, Oregon 97383

Tax Assessor's Map and Lot No.: _____. See **EXHIBIT "A"** (Tax Assessor map with lot highlighted).

- 2.2 WHEREAS, OWNER has designed and constructed certain stormwater detention, retention, and/or stormwater quality treatment facilities (hereafter referred to as Stormwater Facilities), for the purpose of detaining, retaining, and/or treating stormwater runoff from the Property in accordance with the City of Stayton Public Works Standards.
- 2.3 WHEREAS, the Stormwater Facilities enable development of the Property while mitigating the impacts of additional surface water and the pollutants associated with stormwater runoff prior to discharge from the Property to the public stormwater system. The consideration for this Agreement is connection to the public stormwater system, where approved.
- 2.4 WHEREAS, the CITY and OWNER agree that effective maintenance of the Stormwater Facilities will best be facilitated by regular inspections in accordance with the Stormwater Operation and Maintenance (O&M) Plan as set forth in **EXHIBIT "B"**, which, by this reference, is incorporated herein. Failure to inspect and maintain the Stormwater Facilities can result in an unacceptable impact to the public stormwater system.

NOW, THEREFORE, the parties acknowledge and mutually agree to the above recitals and as follows:

3. AGREEMENTS:

- 3.1 **OWNER INSPECTIONS:** OWNER shall provide inspections of the Stormwater Facilities at least twice a year for conformity with the Operations and Maintenance Plan. At a minimum, one inspection shall occur prior to the onset of Fall rains during the period of September 1 to October 15, and a second inspection shall occur in early Spring during the period April 1 to May 31. Inspections shall also be performed following any storm event of a two year recurrence interval or greater. OWNER shall maintain a log of inspection activities; Said log shall be available to the CITY upon request.
- 3.2 **DEFICIENCIES:** All aspects in which the Stormwater Facilities fail to satisfy the Operations and Maintenance Plan shall be noted as "Deficiencies".

- 3.3 OWNER CORRECTIONS: All Deficiencies shall be corrected at OWNER'S expense within thirty (30) days after completion of the inspection. If more than 30 days is reasonably needed to correct a Deficiency, OWNER shall have a reasonable period to correct the Deficiency so long as the correction is commenced within the 30-day period and is diligently pursued to completion.
- 3.4 CITY INSPECTIONS: OWNER grants to the CITY the right to inspect the Stormwater Facilities. The CITY will endeavor to give ten (10) days prior written notice (as courtesy to OWNER), except that no notice shall be required in case of an emergency. The CITY shall determine whether Deficiencies need to be corrected. OWNER will be notified in writing of the Deficiencies and shall make corrections within 30 days of the date of the notice in accordance with 3.3.
- 3.5 CITY CORRECTIONS: If correction of all OWNER or CITY identified Deficiencies is not completed within thirty (30) days, or an extension thereof, after OWNER'S inspection or CITY notice, CITY shall have the right to have any Deficiencies corrected. The CITY shall have access to the Stormwater Facilities for the purpose of correcting such Deficiencies and shall bill OWNER for all costs reasonably incurred by CITY for work performed to correct such Deficiencies ("City Correction Costs") following OWNER'S failure to correct any Deficiencies in the Facilities. OWNER shall pay to CITY the City Correction Costs within thirty (30) days of the date of the invoice. If payment is not made within 30 days of the date of the invoice, OWNER understands and agrees that upon non-payment, City Correction Costs may be secured by a lien on OWNER'S Property for the City Correction Cost amount plus interest and penalties.
- 3.6 EMERGENCY MEASURES: If at any time the CITY reasonably determines that the Stormwater Facilities create an imminent threat to public health, safety or welfare, the CITY may immediately and without prior notice to the OWNER take measures reasonably designed to remedy the threat. The CITY shall provide notice of the threat and the measures taken to OWNER as soon as reasonably practicable, and charge OWNER for cost of these corrective measures.
- 3.7 INDEMNIFICATION: OWNER does hereby agree to defend, hold harmless and indemnify the CITY and its agents, consultants, councilors, officers and employees from and against any and all claims, demands, damages, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including without limitation reasonable attorneys' fees) arising out of the negligence, fraud or any willful act or omission of the OWNER or any of its consultants, officers, directors, agents or employees in connection with this Agreement and the OWNER's maintenance responsibilities required herein, except liability arising out of the sole negligence of the CITY and its agents or employees. Such indemnification shall also cover claims brought against the CITY and its agents, consultants, councilors, officers and employees under state and federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

4. GENERAL PROVISIONS:

- 4.1 NOTICES: Whenever any notice, consent, approval, demand or request is required or permitted under this Agreement, such notice, consent, approval, demand or request shall be in writing and shall be delivered by hand, sent by registered or certified mail, return receipt requested, or send by pre-paid nationally recognized overnight courier service to the addresses set out below or to such other addresses as are specified by written notice given in accordance herewith.

CITY: City of Stayton
362 N. Third Avenue
Stayton, OR 97383

Attn: _____

OWNER: _____

Attn: _____

with a copy to:

Attn: _____

All notices, consents, approvals, demands or requests delivered by hand shall be deemed given upon the date so delivered. Those given by mailing as hereinabove provided shall be deemed given on the date which is three (3) business days after the date on which such notice, demand, or request is so deposited with the United States Postal Service. Those given by pre-paid nationally recognized overnight courier service shall be deemed given on the next business day after being sent via such courier.

- 4.2 **NO OBLIGATION TO THIRD PARTIES:** None of the responsibilities and obligations of the OWNER or the CITY under this Agreement shall in any way or in any manner be deemed to create any liability to, or any rights in, any person or entity other than the specific parties to this Agreement.
- 4.3 **ASSIGNMENT:** This Agreement shall not be assigned by the OWNER to anyone without the prior written consent of the CITY, and any such assignment by the OWNER without the prior written consent of the CITY shall be null, void and of no force and effect. This Agreement shall not be assigned by the CITY without the prior written consent of the OWNER. Upon any permitted assignment of this Agreement by the OWNER or CITY, the assigning party shall cause the assignee to expressly assume in writing the assigning party's obligations under this Agreement first arising or accruing after the date of the assignment.
- 4.4 **AMENDMENTS:** The terms of this Agreement may be amended only by mutual agreement of the parties. Any amendments shall be in writing, shall refer specifically to this Agreement, and shall be valid only when executed by both parties to this Agreement and recorded in the official Deed Records of Marion County, Oregon.
- 4.5 **REMEDIES:** In addition to all other remedies allowed by law, the parties, their successors and assigns, shall have the right to seek injunctive relief for the enforcement of the terms and conditions of this Agreement.
- 4.6 **DISPUTE RESOLUTION:** In the event a dispute arises by reason of the terms of this Agreement, the parties agree that the exclusive remedy is to resolve the issues by mandatory mediation. If the matter is not resolved by mediated settlement, then it shall be submitted to binding arbitration in accordance with Oregon law, and the prevailing party may be awarded attorneys' fees and costs at the discretion of the Arbitrator.
- 4.7 **FORCE AND EFFECT:** The parties agree and it is so declared that this Agreement and the covenants and representations made herein constitute covenants running with the land and a burden upon the Property herein described and the terms, conditions and provisions of this Agreement shall extend to, be binding upon and inure to the benefit of the heirs, personal representatives and assigns of the parties.
- 4.8 **SEVERABILITY:** The invalidity of any section, clause, sentence, or provision of this Agreement shall not affect the validity of any other part of this Agreement, which can be given effect without such invalid part or parts.
- 4.9 **GOVERNING LAW:** This Agreement is to be governed and construed in accordance with the laws of the State of Oregon. Venue for any action regarding this Agreement shall be in Marion County, Oregon.

CITY:

CITY OF STAYTON

by _____
Keith D. Campbell, City Administrator

STATE OF OREGON }
 } ss
COUNTY OF MARION }

Personally appeared before me this _____ day of _____, 20_____, and Keith D. Campbell, City Administrator and authorized agent of the CITY OF STAYTON, has acknowledged the foregoing instrument to be his and the CITY OF STAYTON's voluntary act and deed, and has entered into this Agreement on behalf of the CITY OF STAYTON.

Notary Public for OREGON
My Commission expires:

EXHIBIT "A"

INSERT TAX ASSESSOR MAP WITH LOT HIGHLIGHTED

EXHIBIT "B"

INSERT STORMWATER OPERATIONS AND MAINTENANCE PLAN