

Appendix B

Maintenance Agreements



POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, Party Responsible for Maintenance recognizes that stormwater treatment facilities (hereinafter referred to as “the facility” or “facilities” or “STF’s”) must be maintained for the development called Development/Project Name located in the jurisdiction of the City of Kearney, Buffalo County, Nebraska; and,

WHEREAS, the Property Owner (whether one of more) is the owner of Property Name (hereinafter referred to as “the Property”), and,

WHEREAS, the City of Kearney (hereinafter referred to as “the City”) requires and the Property Owner, and its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property, and,

WHEREAS, the Post-Construction Stormwater Management Plan, Project Number and Name, (hereinafter referred to as “PCSMP”), should be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the property owner agrees as follows:

- 1.) The facility or facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Kearney or its designee.
- 2.) The Property Owner must develop and provide the “STF Maintenance Requirements”, attached here to as Exhibit “B”, which have been reviewed and accepted by the City of Kearney or its designee. The STF Maintenance Requirements shall describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these practices. The Plan shall indicate that the facility or facilities shall be inspected by a professional qualified in stormwater STF function and maintenance at least annually to ensure that it is operating properly. A written record of inspection results and any maintenance work shall be maintained and available for review by the City.
- 3.) The Property Owner, its administrators, executors, successors, heirs, or assigns, shall construct and perpetually operate and maintain, at its sole expense, the facilities in strict accordance with the attached BMP Maintenance Requirements accepted by the City of Kearney or its designee.
- 4.) The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. The City shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. The City will require the Property Owner to provide, within 7 calendar days, a written response addressing what actions will be taken to correct any deficiencies and provide a schedule of repairs within a reasonable time frame. Whenever possible, the City shall provide notice prior to entry. The City shall indemnify and hold the Property Owner harmless from any damage by reason of the City’s negligent acts during such entry upon the property.
- 5.) The Property Owner its administrators, executors, successors, heirs, or assigns, agrees that should it fail to correct any defects in the facility or facilities within reasonable time frame agreed to in the

response by the Property Owner for corrective actions, or shall fail to maintain the structure in accordance with the attached BMP Maintenance Requirements and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Kearney or its designee in its sole discretion, the City of Kearney or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City of Kearney or its designee deems necessary. Notwithstanding the foregoing, the City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent acts during such entry upon the property.

The City of Kearney or its designee shall have the right to recover from the Property Owner any and all reasonable costs the City of Kearney expends to maintain or repair the facility or facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to negligent acts of the City. Failure to pay the City of Kearney or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Kearney or its designee shall thereafter be entitled to bring an action against the Property Owner to pay, or foreclose upon the lien hereby authorized by this agreement against the property, or both. Interest, collection costs, and reasonable attorney fees shall be added to the recovery to the successful party.

- 6.) The Property Owner shall not obligate the City of Kearney to maintain or repair the facility or facilities, and the City of Kearney shall not be liable to any person for the condition or operation of the facility or facilities.
- 7.) The Property Owner, its administrators, executors, successors, heirs, or assigns, hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Property Owner. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim unless due solely to the negligence of the City in which event the City shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the City of Kearney and the Property Owner, each will be required to defend any such suit or claim against it at its own expense. Each shall be responsible for payment of any recovery to the extent determined in such suit. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith except to the extent of the negligent act of the City.
- 8.) The Property Owner shall not in any way diminish, limit, or restrict the right of the City of Kearney to enforce any of its ordinances as authorized by law.
- 9.) This Agreement shall be recorded with the Register of Deeds of Buffalo County, Nebraska and shall constitute a covenant running with the land and shall be binding on the Property Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.
- 10.) The City and Property Owner acknowledge that this Agreement pertains to the property located at INSERT LEGAL DESCRIPTION OF PROPERTY HERE.

IN WITNESS WHEREOF, the Property Owner (s) has/ have executed this agreement this ____ day of _____, 20__

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

Name of Individual, Partnership and/or Corporation

 Name

 Title

 Signature

Name of Individual, Partnership and/or Corporation

 Name

 Title

 Signature

Name of Individual, Partnership and/or Corporation

 Name

 Title

 Signature

Name of Individual, Partnership and/or Corporation

 Name

 Title

 Signature

ACKNOWLEDGMENT

_____) State

_____) County

On this ____ day of _____, 20__ before me, a Notary Public, in and for said County, personally came the above named:

who is (are) personally known to me to be the identical person(s) whose name(s) is (are) affixed to the above instrument and acknowledged the instrument to be his, her (their) voluntary act and deed for the purpose therein stated.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

Notary Seal

Exhibit “A”

Insert Real Property Depiction

Exhibit “B”

Insert STF Maintenance Requirements

(See Guidance Document for Information Needed)



POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT

This Agreement is made and entered into as of this ____ day of _____, 20__ by and between the City of Kearney, a municipal corporation (“City”), and _____.

WHEREAS, _____ is responsible under the dedication in the Plat for the inspections and maintenance of the Stormwater Treatment Facilities identified in the Plat; and

WHEREAS, _____ is aware of inspection and maintenance needs for the Stormwater Treatment Facilities; and

WHEREAS, _____ desires that the City inspect and maintain the Stormwater Treatment Facilities; and WHEREAS, _____ and the City desire to enter into this Agreement for a Maintenance Permit that outlines responsibilities for inspections and maintenance of Stormwater Treatment Facilities for the specified period of time.

NOW THEREFORE, in consideration of the above, and the covenants and conditions contained herein, the parties agree as follows:

1. Stormwater Treatment Facilities. The parties agree the following Stormwater Treatment Facilities shall be inspected and maintained by the City:
 - a. {Description of Stormwater Treatment Facility(s), include location graphic in Attachment A }
2. Inspection of Stormwater Treatment Facilities. The City will annually inspect the Stormwater Treatment Facilities using the Inspection Form shown in {Attachment B}. The completed Inspection Form will be submitted to the designated representative for _____ annually in _____ of each year.
3. Maintenance of Stormwater Treatment Facilities. The City will maintain the Stormwater Treatment Facilities using the below frequencies and standards of maintenance. A report will be completed at the end of each inspection and submitted to the designated representative for _____ within one month of the inspection.
 - a. {List frequency and standards of maintenance for Stormwater Treatment Facilities, Report to be submitted using the form supplied in Attachment C }
4. _____ will provide the City a designated representative as the point of contact between the City and _____ prior to the start of any inspections or maintenance activities.
5. Funding. _____ will submit \$ _____ in costs to the City for the City inspecting and maintaining the Stormwater Treatment Facilities prior to any inspections or maintenance activities. (Price to be determined based on hourly rate and amount of work performed)
6. Time Frame: This maintenance permit will commence upon the approval of this agreement and end on _____.
7. Ownership of the Stormwater Treatment Facilities. Before, during and upon completion of the Maintenance Permit, the Stormwater Treatment Facilities continue to be owned by

_____. In addition, by the execution of this Agreement, the Associations hereby authorizes the City, its representatives, designees, contractors, and subcontractors, without any further notice or authorization, to access the Stormwater Treatment Facilities properties for the purposes of inspection and maintenance.

It is agreed that City shall not be liable for trespass or any other damages or taking of any kind arising out of entering onto the Stormwater Treatment Facilities properties for the purposes provided herein. _____ shall not allow others to use the Stormwater Treatment Facilities in such manner that might interfere with the inspections and maintenance of the City during the term of this Agreement. In the event interference, damage, or tampering occurs on the Stormwater Treatment Facilities during the term of the Agreement, the party with notice shall inform the other party within five (5) business days.

8. Indemnification: To the fullest extent permitted by law, _____ shall release, waive, indemnify, defend and hold harmless City, its officers, agents, contractors, and employees from and against claims, damages, losses and expenses, including but not limited to, attorney's fees, arising out of or resulting from the performance of this Agreement that results in any claim for damage, including without limitation, any bodily injury, sickness, disease, death, or damage to tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the acts or omission of _____, its employees, agents, contractors or other duly authorized representatives or designees. City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any activities authorized by this Agreement. This section survives termination of this Agreement.
9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns. Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.
10. Amendment: This Agreement may only be amended or modified in writing signed by the parties to this Agreement.
11. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.
12. Execution in Counterparts. This Agreement may be executed on two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.
13. Governing law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

14. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretations of contracts generally. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
15. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the City, or by any third person to create the relationship of partnership or of joint venture or any association between the parties, other than contractual relationships stated in this Agreement.
16. Assignment. In the case of the assignment of this Agreement to other parties, prompt written notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other party to this Agreement.
17. Description. The City of Kearney and _____ acknowledge that this Agreement pertains to the property located at INSERT LEGAL DESCRIPTION HERE.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

<u>City of Kearney Representative:</u>	<u>Land Owner/Developer Representative:</u>
<u>Notary:</u>	<u>Notary:</u>