

Stormwater Controls Maintenance Agreement

**WHEREAS**, the Property Owner \_\_\_\_\_ recognizes that the post construction storm water controls (hereinafter referred to as “The Controls” )must be maintained for Utah County Parcel Number \_\_\_\_\_

**WHEREAS**, the Property Owner is the owner of real property more particularly described on the attached Exhibit A; and,

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

**WHEREAS**, the City requires that The Controls as shown on the approved development plans and specifications, which are more specifically described in Exhibit B hereto, be constructed and maintained by the Property Owner, its administrators; executors, successors, heirs, or assigns.

**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:

**SECTION 1.**

The Controls shall be constructed by the Property Owner in accordance with the plans and specifications for the development and in accordance with Highland City specifications.

**SECTION 2.**

The Property Owner, its administrators, executors, successors, heirs or assigns shall maintain the Controls in good working condition acceptable to the City and in accordance with the Private Stormwater Management Operation and Maintenance Manual (hereinafter referred to as the “O&M Manual”) as adopted by Highland City. In the event that an O&M Manual does not cover site specific requirements, those requirements shall be added as Special Provisions, attached as Exhibit D. The Owner agrees to cause inspection of the Controls, at the Owner’s expense, by a person experienced in the inspection of stormwater facilities. Inspections shall occur as required in the O&M Manual. An annual report shall be submitted in writing to the City prior to July 15<sup>th</sup> of each year for the Controls. The annual report shall be in accordance with the requirements set forth the O&M Manual. The Owner agrees to perform promptly all needed maintenance and report maintenance activities in accordance with the requirements set forth in the O&M Manual.

**SECTION 3.**

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 Controls whenever the City deems necessary. Whenever possible, the City shall provide

notice prior to entry. The Property Owner shall execute a public access easement(s) in favor of the City of Highland to allow the City to inspect, observe, maintain, and repair the Controls as deemed necessary. It is expressly understood and agreed that Highland City is under no obligation to maintain or repair the Controls and in no event shall this Agreement be considered to impose any such obligation on the City. A fully executed original easement(s) is attached to this Agreement as Exhibit C and by reference made a part hereof.

#### **SECTION 4.**

In the event the Property Owner, its administrators, executors, successors, heirs or assigns fails to maintain the Controls as shown on the approved plans and specifications in good working order acceptable to the City and in accordance with the maintenance schedule incorporated in this Agreement, the City, with due notice, may enter the property and take whatever steps it deems necessary to return the Controls to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the property. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Controls and in no event shall this Agreement be construed to impose any such obligation on the City.

#### **SECTION 5.**

In the event the City, pursuant to Section 4 above, performs work of any nature, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, for the maintenance of The Controls, the Property Owner shall reimburse the City upon demand within thirty (30) days of receipt thereof for all the costs incurred by the City for this work. The Property Owner hereby specifically agrees that If the City is not paid for this work within 30 days from the demand by the City, that , the City may file a lien against the real property in the office of the County Recorder in the amount of such costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to the City as a result of the Property Owner's failure to maintain the Controls.

#### **SECTION 6.**

It is the intent of this agreement to ensure the proper maintenance of the Controls by the Property Owner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or caused by stormwater runoff.

#### **SECTION 7.**

The Property Owner will make accommodation for the sediment accumulation resulting from the normal operation of the Controls via removal and disposal of all accumulated sediments. Disposal will be provided onsite in a reserved area(s) or will be removed from the site to a licensed land fill. Reserved area(s) shall be sufficient to accommodate for a minimum of two dredging cycles. The annual report shall provide documentation on disposal of sediment.

#### **SECTION 8.**

The Property Owner shall inspect the property and Controls by a qualified inspector in accordance with the O&M Manual.

**SECTION 9.**

The Property Owner, its administrators, executors, successors, heirs and assigns hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of The Controls by the Property Owner or the City. 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. 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.

**SECTION 10.**

The Owner, its successors and assigns shall indemnify and hold harmless Highland City, its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City arising out of or resulting from the construction, presence, existence maintenance or use of the Controls.

**SECTION 11.**

The Owner agrees that it will not at any time dedicate the Controls to the public, to public use or to the City without the City's written consent, nor will it subdivide or convey the property without covenant providing that a proportionate share of the cost of maintenance and other costs associated with other of the obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.

**SECTION 12.**

The City shall not pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Controls, including access to the Controls.

**SECTION 13.**

This Agreement shall be recorded in the Utah County Clerk and Recorder's Office and shall constitute a covenant running with the land and shall be binding on the Property Owner, its administrators, executors, heirs, assigns and any other successors in interest.

**SECTION 14.**

This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest.

**SECTION 15.**

Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

## **MAINTENANCE AGREEMENT**

SO AGREED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

### **PROPERTY OWNER**

BY: \_\_\_\_\_ Attest: \_\_\_\_\_

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

Approved as to form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney

### **HIGHLAND, UTAH**

Attest: \_\_\_\_\_  
City Recorder

(SEAL)

Attachments:

- Exhibit A (Plat, Legal Description,)
- Exhibit B (Facilities Site Plan)
- Exhibit C (Access Easement)
- Exhibit D (Special Provisions)