

Permanent Operation and Maintenance (O&M) Agreement (Trustee)

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____ hereinafter called the "Landowner", and the City of Boise City, hereinafter called the "City". WITNESSETH, that

WHEREAS, the Landowner is the owner of certain real property whose address is _____, whose Parcel Number is _____ as recorded by deed in the land records of Ada County, Idaho, Instrument Number _____ hereinafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Stormwater Management Plan known as _____, hereinafter called the "Plan", which is attached hereto and includes all approved site grading and drainage plans and Operation and Maintenance Manual and expressly made a part hereof, as approved or to be approved by the City, provides for retention and/or detention of stormwater within the confines of the property; and

WHEREAS, the City and the Landowner, its successors and assigns, including any homeowner's association, agree that the health, safety, and welfare of the residents of Boise, Idaho, require that on-site stormwater management/Best Management Practice (BMP) facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that onsite stormwater management/BMP facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns, including any owner's association.

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:

1. The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the plans and specifications identified in the Plan.
2. The Landowner, its successors and assigns, including any homeowner's association, shall adequately maintain the stormwater management/BMP facilities in accordance with the approved Operation and Maintenance Manual. This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions as described in the approved Operation and Maintenance Manual.
3. The Landowner, its successors and assigns, shall inspect the stormwater management/BMP facility annually or as specified in the Operation and Maintenance Manual. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover all drainage facilities including but not limited to swales, outlet structures, ponds, access roads, etc. Deficiencies shall be noted in the inspection report. The Annual Inspection Report form included in the Operation and Maintenance Manual is to be used to establish what good working condition is acceptable to the City.
4. The Landowner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever the City deems necessary. Reasonable access shall be provided to all drainage facilities. The purpose of inspection is to follow-up on reported deficiencies, determine the general condition of stormwater facilities, and/or to respond to citizen complaints. The City shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.
5. In the event the Landowner, its successors and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the City, the City may enter upon the Property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Landowner, its successors and assigns. This provision shall not be construed to allow the City to erect any structure of permanent nature on the Landowner property. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

6. In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder. Costs will be charged on a time and materials basis at rates not exceeding local industry standards.

7. This Agreement imposes no liability of any kind whatsoever on the City, its elected officials, officers, employees, agents, and volunteers and the Landowner agrees to hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any liability.

8. This Agreement shall be recorded among the land records of Ada County, Idaho, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowner's association.

9. If the drainage system(s) as referenced in this Agreement are removed, modified or replaced by new drainage facilities, this Agreement will become VOID and be replaced by a new Agreement based upon a City approved Drainage Plan and Operation and Maintenance Manual.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

CITY OF BOISE

LANDOWNER

By: _____
(Signature)

By: _____
(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

CORPORATION ACKNOWLEDGMENT

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20____, before me, a Notary Public in and for the state of Idaho, personally appeared _____ known or identified to me to be the _____ of the Trust that executed the instrument, and acknowledged to me such trust executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal, the date first written.

Notary Public for Idaho
Residing at _____
My Commission Expires: _____

CITY ACKNOWLEDGMENT

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20____, before me, a Notary Public in and for the state of Idaho, personally appeared _____, known or identified to me to be, the _____ Boise City, Idaho, who executed and attested the within instrument, and acknowledged to me that Boise City, Idaho executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and affix my official seal, the date first written.

Notary Public for Idaho
Residing at _____
My Commission Expires: _____