

City of Shawnee
Stormwater Treatment Facility Maintenance Agreement

This Agreement made and entered into this _____ day of _____, 20____, by _____, (hereinafter referred to as "Landowner") and the City of Shawnee, Kansas, (hereinafter referred to as "City").

RECITALS:

WHEREAS, the Landowner is the owner of the following described real property (hereinafter, the "Property") located in the City of Shawnee, Johnson County, Kansas, to wit:

(Attachment A: Legal Description)

WHEREAS, the term "Landowner" as used in this Agreement shall refer to the current owner of the Property described above, as well as all subsequent owners of any portion of the Property. This shall include, without being limited to, subsequent owners of individual lots developed for single family ownership, a Homeowners or Business Association that may own any property held in common, or any other owners of land within the Property; and,

WHEREAS, Shawnee Municipal Code, Title 11, ("SMC Provisions") requires that on-site stormwater treatment facilities be constructed and adequately maintained by the Landowner; and,

WHEREAS, SMC Provisions require that a "Final Stormwater Treatment Report" be prepared and which for purposes of this Agreement includes but is not limited to site maps, design plans, specifications, engineering certifications, location maps, maintenance requirements, repair plans, landscaping plans, copies of dedicated tracts and easements, maintenance responsibilities, maintenance schedules and projected cost, signage requirements, inspection and certification requirements; and,

WHEREAS, SMC Provisions require the Landowner to place certain restrictions and responsibilities on the use and maintenance of stormwater treatment facilities; and,

WHEREAS, in order to insure the proper and adequate maintenance of the stormwater treatment facilities in compliance with legal requirements, it is necessary to establish binding covenants, conditions, and restrictions applicable to the Property; and

WHEREAS, the Landowner does hereby establish the following regulations, stipulations, easements, covenants, conditions and restrictions pursuant to SMC Provisions, on the Property.

1.0 Maintenance Requirements: Property governed by a Homeowners or Business Association ("Association") shall fulfill the conditions of Section 1.1 below. Property not governed by an Association shall fulfill the conditions of Section 1.2 below.

1.1 Homeowners or Business Association Requirements: The Landowner hereby states that Landowner will fulfill the following conditions related to formation of an Association:

- A. Prior to the sale of any lot in the subdivision, the Landowner shall cause the subdivision's Association to be duly formed.
- B. Prior to the sale of any lot in the subdivisions, the Landowner shall cause to be recorded with the Register of Deeds of Johnson County, Kansas, an Association declaration covering all of the platted lots within the subdivision that includes this Agreement by reference.
- C. Prior to the sale of any lots within any future phases of the subdivision, the Landowner will cause to be recorded with the Register of Deeds of Johnson County, Kansas, an Association declaration

covering all of the platted lots within such phase of the subdivision and containing the provisions regarding the stormwater treatment facilities set forth herein.

- D. The Association declaration shall require that the Association levy assessments against the lots within the subdivision sufficient to pay for maintenance and future replacement of the stormwater treatment facilities and for any costs incurred by reason of this Agreement. The Association will have an enforceable lien on any lot in the subdivision in the event that any individual Landowner fails to pay an assessment. All purchasers of lots will be given an outline summary of the maintenance obligations of the Association as per this Agreement.
- E. The Association declaration shall contain a provision requiring the written consent of the City to the termination of the Association declaration in its entirety or to any amendment, modification or termination of any provision thereto regarding the stormwater treatment facilities.
- F. The Association declaration shall name the City as a third-party beneficiary of all provisions therein relating to the stormwater treatment facilities and will give the City the right to enforce all restrictions, obligations and other provisions regarding the stormwater treatment facilities.

1.2 Site Plan/Single Lot requirements:

- A. When applicable, the Landowner shall be responsible for any and all assessments against the Property sufficient to pay for maintenance and future replacement of the stormwater treatment facilities and for any costs incurred by reason of this Agreement.
- B. Landowner shall assign this Agreement to any subsequent owner of the Property.

2.0 **Disclosure of Maintenance Requirements:**

- 2.1 Maintenance, inspection and certification must be done in accordance with the minimum maintenance frequency and maintenance measures required for all stormwater treatment facilities as shown in the Final Stormwater Treatment Report and any amendments thereto.
- 2.2 It is understood by the Landowner and City that actual maintenance costs and future replacement costs are variable; however, for budgetary purposes, the project designer is required to estimate future maintenance and replacement costs so that the Landowner may better plan future required expenditures. Based on the project designer's estimates, the anticipated maintenance, replacement costs and expected lifespan of the facility are shown in the Final Stormwater Treatment Report and any amendments thereto.

3.0 Maintenance Enforcement by the City: If the required facility certifications, inspections, maintenance and repairs are not completed in accordance with the SMC Provisions, Final Stormwater Treatment Report and as required by the written notice issued by the City, the City may perform all necessary work to place the facility in proper working condition. The Landowner(s) of the lands served by the facility, excluding public Right of Way, shall be assessed the cost of the work, including administrative costs, materials, personnel, and any penalties. Costs shall be proportioned to each Landowner based on a ratio of the area of land owned to the total area of land assessed. This assessment may be accomplished by placing a special assessment on the property(ies), which may be placed on the tax bill and collected in the same manner as ordinary taxes.

4.0 Hold Harmless: The Landowner shall defend and hold the City harmless from any and all damage, loss, claims or liability of any kind whatsoever arising from the installation, maintenance, repair, operation or use of the stormwater treatment facility including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur, except such damage, loss, claims or liability arising due to the negligence or wilfull misconduct of City, and its employees or agents. In addition, the Landowner shall pay all costs and expenses involved in defending all actions arising there from.

This Agreement may not be amended or modified in any way without the prior written approval of the City and that approval must be indicated on the face of any subsequently recorded document amending or modifying this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed the day and year first written above.

LANDOWNER

Signature

Print Name

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This Instrument was acknowledged before me on this _____ day of _____, 20__ by _____ as _____ of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Commission Expires: _____

Notary Public

CITY OF SHAWNEE

Signature

Print Name

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This Instrument was acknowledged before me on this _____ day of _____, 20__ by _____ as _____ of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last bove written.

Commission Expires: _____

Notary Public