

**When recorded, mail to:**

Kaysville City Recorder  
23 East Center Street  
Kaysville, Utah 84037

**Subdivision/Development** \_\_\_\_\_

**Affects Parcel No(s):** \_\_\_\_\_

**KAYSVILLE CITY**  
**STORM WATER FACILITIES**  
**MAINTENANCE AGREEMENT**

This Storm Water Facilities Maintenance Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Kaysville City, a Utah municipal corporation ("City"), and \_\_\_\_\_, a \_\_\_\_\_ ("Owner").

**RECITALS**

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City pursuant to the Utah Water Quality Act, as set forth in *Utah Code Ann.* §§ 19-5-101, *et seq.*, as amended ("Act"); and

WHEREAS, the Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, the Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and/or adjacent lands; and

WHEREAS, in order to accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Owner desires to build and maintain at Owner's expense a storm and surface water management facility or improvements ("Storm Water Facilities"); and

WHEREAS, the Storm Water Facilities are more particularly described and shown in the final site plan or subdivision approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the City and are hereby incorporated herein by this reference ("Development Plan"); and

WHEREAS, as a condition of Development Plan approval, and as required as part of the City's Small MS4 UPDES General Permit from the State of Utah, Owner is required to enter into this Agreement addressing the maintenance requirements for the Storm Water Facilities and control measures installed on the Property.

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the City's approval of the Development Plan, and the mutual covenants contained herein, the parties agree as follows:

1. Owner's Obligations to Construct, Maintain and Inspect Storm Water Facilities. The Owner Shall, at its sole cost and expense:
  - (a) Construct the Storm Water Facilities in strict accordance with the plans and specifications identified in the Development Plan, and any amendments thereto which have been approved by the City.
  - (b) Adequately maintain the Storm Water Facilities. Owner's maintenance obligations shall include all pipes and channel built to convey storm water, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance, for purposes of this Agreement, is defined as good working condition so that the Storm Water Facilities are performing their design functions. The Owner shall, at its sole cost and expense, perform all work necessary to keep the Storm Water Facilities in good working condition. In the event that a maintenance schedule is set forth in the Development Plan, such maintenance schedule shall be followed.
  - (c) Inspect the Storm Water Facilities and submit an inspection report and certification to the City annually. The purpose of the inspection and certification is to assure safe and proper functioning of the Storm Water Facilities. The annual inspection shall cover all aspects of the Storm Water Facilities, including, but not limited to, the structural improvements, berms, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the inspection report. The report shall also contain a certification as to whether adequate maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification shall be due by June 30<sup>th</sup> of each year and shall be on forms acceptable to the City.
2. City Oversight Inspection Authority. The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Storm Water Facilities whenever deemed necessary by the City. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspection shall be to determine and ensure that the Storm Water Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Development Plan.

3. Notice of Deficiencies. If the City finds that the Storm Water Facilities contain any defects or are not being maintained adequately, the City shall send Owner written notice of the defects or deficiencies and provide Owner with a reasonable time to cure such defects or deficiencies. Such notice shall be hand-delivered to the Owner or sent certified mail to the Owner at the Property address.
4. Owner to Make Repairs. The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the Storm Water Facilities as may be determined as reasonably necessary by the City within the required cure period to ensure that the Storm Water Facilities are adequately maintained and continue to operate as designed and approved.
5. City's Corrective Action Authority. In the event the Owner fails to adequately maintain the Storm Water Facilities in good working condition acceptable to the City, after due notice of deficiencies as provided in Section 5, the City may enter upon the Property and take whatever steps necessary to correct deficiencies and to charge the costs of such repairs to the Owner. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Storm Water Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. 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 provided by law for Owner's failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.
6. Reimbursement of Costs. 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 Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City. After said thirty (30) days, such amount shall be deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. Owner shall also be liable for any collection costs, including attorneys' fees and court costs, incurred by the City in collection of delinquent payments.
7. Successor and Assigns. This Agreement shall be recorded in the Davis County Recorder's Office and the covenants and agreements contained herein shall run with the land and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Owner hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.
8. Severability Clause. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Owner, its successors and assigns, is held invalid, the remainder of this Covenant shall not be affected thereby.
9. Utah Law and Venue. This Agreement shall be interpreted under the laws of the State of Utah. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Davis County, Utah.

10. Indemnification. This Agreement imposes no liability of any kind whatsoever on the City, and the Owner agrees to hold the City harmless from any liability in the event the Storm Water Facilities fail to operate properly. The Owner shall indemnify and hold the County harmless 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 Storm Water Facilities.
  
11. Amendments. This Agreement shall not be modified except by written instrument executed by the City and the Owner of the Property at the time of modification, and no modification shall be effective until recorded in the Davis County Recorder's Office.

**[Signature page to follow]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**OWNER:**

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**OWNER'S SIGNATURE**

(Signature must be notarized on following pages)

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**OWNER'S NAME & TITLE**

**KAYSVILLE CITY:**

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**JOSHUA D. BELNAP  
PUBLIC WORKS DIRECTOR**

**CITY ACKNOWLEDGMENT**

STATE OF UTAH

:ss.

COUNTY OF DAVIS

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me JOSHUA D. BELNAP, who being duly sworn, did say that he/she is the PUBLIC WORKS DIRECTOR of KAYSVILLE CITY, a municipal corporation of the State of Utah, and that the foregoing Storm Water Facilities Maintenance Agreement was signed in his/her capacity as land use authority on behalf of the City for approval of Storm Water Facilities Maintenance Agreements.

\_\_\_\_\_  
Notary Public

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**OWNER NOTARY**

**(Complete only if signing as an Individual)**

STATE OF \_\_\_\_\_

:ss.

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who being duly sworn, did say that he/she is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that he/she has executed this Agreement with full authority to do so.

\_\_\_\_\_  
Notary Public

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**(See Following Page for Corporation/Partnership and Limited Liability Company Notaries)**

(Complete only if signing on behalf of a Corporation/Partnership)

STATE OF \_\_\_\_\_  
:ss.  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ who being by me duly sworn did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation/partnership, and that \_\_\_\_\_ is the legal property owner of record of the property subject to this Storm Water Facilities Maintenance Agreement and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said corporation/partnership by authority of its Board of Directors/by-laws, and he/she acknowledged to me that said corporation/partnership executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

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(Complete only if signing on behalf of a Limited Liability Company)

STATE OF \_\_\_\_\_  
:ss.  
COUNTY OF \_\_\_\_\_

On this \_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ who being by me duly sworn did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a limited liability company, and that the foregoing Storm Water Facilities Maintenance Agreement was signed in behalf of said company by authority, and he/she acknowledged to me that said company executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

**\*\*IF ADDITIONAL SIGNERS AND/OR NOTORIAL WORDING ARE NECESSARY, PLEASE NOTATE ANY ADDITIONS ON THIS NOTARY PAGE AND ATTACH A STATE APPROVED NOTARIAL CERTIFICATE, WHICH IDENTIFIES THE DOCUMENT THE ATTACHED NOTARIAL CERTIFICATE RELATES TO, AS WELL AS, THE NUMBER OF PAGES IN THE DOCUMENT\*\***

**Exhibit “A”:** Property Legal Description