
STORMWATER MAINTENANCE AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 20 __, by and between the City of Faribault, a Minnesota municipal corporation (the “City”) and [REDACTED], under the laws of the state of Minnesota (the “Owner”).

WITNESSETH:

WHEREAS, the Owner is the fee owner of certain real property located in Rice County, Minnesota, which parcels are legally described on Exhibit A attached hereto (collectively, the “Property”); and

WHEREAS, the Owner has agreed to construct and maintain certain stormwater facilities (the “Stormwater Improvements”) for the benefit of the Property; and

WHEREAS, the Stormwater Improvements which are the subject of this Agreement include, but are not limited to a stormwater basin, stormwater drainage structures, vegetated swales, and accompanying structures. The location of the Stormwater Improvements are shown on final approved plans dated [REDACTED] as on file with the City of Faribault and last revision date [REDACTED] and as shown on Exhibit B attached hereto; and

WHEREAS, the City requires permanent provisions for handling of stormwater runoff, including terms and conditions for operation and maintenance of all Stormwater Improvements, and requires such provisions to be set forth in an agreement to be recorded against the Property; and

WHEREAS, the City and the Owner intend to comply with certain conditions, including entering into this Agreement regarding the operation and ongoing maintenance of the Stormwater Improvements.

NOW, THEREFORE, in consideration of the mutual covenants of the parties set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Maintenance of the Stormwater Improvements. The Owner, for itself and its

successor or assigns, agrees to maintain the Stormwater Improvements to retain the design performance capacity and observe all drainage laws governing the operation and maintenance of the Stormwater Improvements. The Owner shall make periodic inspection and perform maintenance of the Stormwater Improvements as described in Exhibit C attached hereto. The Owner shall make all such scheduled inspections and maintenance, keep record of all inspections and maintenance activities, and submit such records annually to the City. The cost of all inspections and maintenance, including debris removal and vegetation restoration of the Stormwater Improvements, shall be the obligation of the Owner and its successors or assigns as the fee owner of the Property.

2. City's Maintenance Rights. The City may, but shall not be obligated to, maintain the Stormwater Improvements, as provided in this paragraph, if the City reasonably believes that the Owner or its successors or assigns has failed to maintain the Stormwater Improvements such that the Stormwater Improvements are not operating as designed in accordance with applicable drainage laws and other requirements and such failure continues for 30 days after the City gives the Owner written notice of such failure or, if such tasks cannot be completed within 30 days, after such time period as may be reasonably required to complete the required tasks provided that Owner is making a good faith effort to complete said task. The City's notice shall specifically state which maintenance tasks are to be performed. If Owner does not complete the maintenance tasks within the required time period after such notice is given by the City, the City shall have the right to enter upon such portions of the Property as may reasonably be necessary to gain access to perform such maintenance tasks. In such case, the City shall send an invoice of its reasonable maintenance costs to the Owner or its successors or assigns, which shall include all reasonable staff time, engineering and legal and other reasonable costs and expenses incurred by the City. If the Owner or its successors or assigns fails to reimburse the City for its costs and expenses in maintaining the Stormwater Improvements within 30 days of receipt of an invoice for such costs, the City shall have the right to assess the full cost thereof against the Property. The Owner, on behalf of itself and its successors and assigns, acknowledges that the maintenance work performed by the City regarding the Stormwater Improvements benefits the Property in an amount which exceeds the assessment and hereby waives any right to hearing or notice and the right to appeal the assessments otherwise provided by Minnesota Statutes, Chapter 429. The Owner hereby consents to the levy of such special assessments without notice or hearing and waives its rights to appeal such assessments pursuant to Minnesota Statutes, Section 429.081, provided the amount levied, does not exceed the expenses actually incurred by the City. Further, the City may, at its option, as an additional remedy, recover expenses actually incurred by the City as service charges, in the manner provided by Minnesota Statutes, Section 415.01, 366.011 and 366.012, and the Owner hereby consents to the levy of such assessments without notice or hearing and waives its rights to appeal such assessments pursuant to such Minnesota Statutes, provided the amount levied, does not exceed the expenses actually incurred by the City pursuant to this Agreement. Notwithstanding the foregoing, in the event of an emergency, as determined by the city engineer, the 30-day notice requirement to the Owner for failure to perform maintenance tasks shall be and hereby is waived in its entirety by the Owner, and the Owner shall reimburse the City and be subject to assessment for any expense so incurred by the City in the same manner as if written notice as described above has been given.

3. Hold Harmless. The Owner hereby agrees to indemnify and hold harmless the City and its agents and employees against any and all claims, demands, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or resulting from the Owner's, or the Owner's

agents' or employees' negligent or intentional acts, or any violation of any safety law, regulation or code in the performance of this Agreement, without regard to any inspection or review made or not made by the City, its agents or employees or failure by the City, its agents or employees to take any other prudent precautions. In the event the City, upon the failure of the Owner to comply with any conditions of this Agreement, performs said conditions pursuant to its authority in this Agreement, the Owner shall indemnify and hold harmless the City, its employees, agents and representatives for its own negligent acts in the performance of the Owner's required work under this Agreement, but this indemnification shall not extend to intentional or grossly negligent acts of the City, its employees, agents and representatives.

4. Costs of Enforcement. The Owner agrees to reimburse the City for all costs prudently incurred by the City in the enforcement of this Agreement, or any portion thereof, including court costs and reasonable attorneys' fees.

5. Rights Not Exclusive. No right of the City under this Agreement shall be deemed to be exclusive and the City shall retain all rights and powers it may have under Minnesota Statutes, sections 444.16 to 444.21 to acquire, construct, reconstruct, extend, maintain and otherwise improve the Stormwater Improvements.

6. Notice. All notices required under this Agreement shall either be personally delivered or be sent by United States certified or registered mail, postage prepaid, and addressed as follows:

a) as to Owner:

b) as to City: City of Faribault
208 NW First Avenue
Faribault, MN 55021-5105
Attn: City Administrator

with a copy to: Scott J. Riggs
Kennedy & Graven
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

or at such other address as either party may from time to time notify the other in writing in accordance with this paragraph.

7. Successors and Assigns. All duties and obligations of Owner under this Agreement shall also be duties and obligations of Owner's successors and assigns. The terms and conditions of this Agreement shall run with the Property.

8. Effective Date. This Agreement shall be binding and effective as of the date first written above.

By: _____
Kevin F. Voracek, Mayor

By: _____
Timothy C. Murray, City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by Kevin F. Voracek and Timothy C. Murray, the mayor and the city administrator, respectively, of the City of Faribault, a Minnesota municipal corporation, by and on behalf of the municipal corporation.

Notary Public

This instrument drafted by:

City of Faribault Engineering Department
1200 Belview Trail
Faribault, MN 55021

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DRAFT COPY

**EXHIBIT A TO
STORMWATER MAINTENANCE AGREEMENT**

Legal Description of the Property

PID

Legal Description

DRAFT COPY

**EXHIBIT B TO
STORMWATER MAINTENANCE AGREEMENT
Depiction of Location of Stormwater Improvements**

DRAFT COPY

**EXHIBIT C TO
STORMWATER MAINTENANCE AGREEMENT**

Inspection and Maintenance Schedule

Inspection and maintenance shall be made consistent with the inspection schedule and checklist below, or with the most recent version of the Minnesota Stormwater Manual or other subsequent manual(s) as dictated by the City.