

## STORMWATER MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **City of Holland**, a municipal corporation with offices located at 270 S. River Avenue, Holland, Michigan 49423, hereinafter referred to as "the City" and \_\_\_\_\_, [of][a \_\_\_\_\_ with principal offices located at] \_\_\_\_\_, its assigns and successors in interest, hereinafter referred to as "the Owner."

The Owner of the property described below, in accordance with the City Stormwater Ordinance, agrees to install stormwater management practices, hereinafter referred to as the "Stormwater Management System," on the subject property in accordance with approved plans and conditions. The Owner shall complete the installation by \_\_\_\_\_.

The Owner further agrees to operate and maintain the Stormwater Management System, and agrees to the terms stated in this document to ensure that the Stormwater Management System continues serving the intended function in perpetuity.

This Agreement includes the following exhibits:

**Exhibit A:** Legal description of the real estate for which this Agreement applies ("Property").

**Exhibit B:** Location map(s) showing a location of the Property and an accurate location of each Stormwater Management System facility or feature affected or required by this Agreement.

**Exhibit C:** Long-term Maintenance Plan ("Maintenance Plan") that prescribes those activities that must be carried out to maintain compliance with this Agreement.

Through this Agreement, the Owner hereby agrees to and subjects the Property to the following covenants, conditions, and restrictions:

1. **Construction of Stormwater Management System.** The Owner shall be solely responsible for the installation, maintenance and repair of the Stormwater Management System, drainage easements and associated landscaping identified and required in Exhibit B in accordance with the Maintenance Plan (Exhibit C) and the City Stormwater Ordinance.
2. **Alterations to Stormwater Management System.** No alterations or changes to the Stormwater Management System identified in Exhibit B shall be permitted unless they are deemed to comply with this Agreement and are approved in writing by the City.
3. **Easements.** The Owner, at its expense, shall secure from any affected owners of land all easements and releases of rights-of-way necessary for utilization of the Stormwater Management System identified in Exhibit B and shall record them with the County Register of Deeds. These easements and releases of rights-of-way shall not be altered, amended, vacated, released or abandoned without prior written approval of the City.

4. **Right of Access by City.** The Owner hereby conveys to the City, its authorized agents and employees an easement over, on and in the property described in Exhibit A to enter upon the property for the purpose of access to the Stormwater Management System for inspections to ascertain compliance with the intent of this Agreement and the activities prescribed in the Maintenance Plan attached as Exhibit C, and for maintenance and repair thereof, should the Owner fail to properly inspect, maintain and repair the Stormwater Management System.
5. **Inspection.** The Owner shall retain the services of a qualified inspector to operate and ensure the maintenance of the Stormwater Management System identified in Exhibit B in accordance with the Maintenance Plan attached as Exhibit C. Inspections are required annually at a minimum.
6. **Maintenance Report.** Every five (5) years the Owner shall, by December 30<sup>th</sup>, provide to the City a maintenance report consisting of records of inspections (logs, invoices, reports, data, etc.), maintenance, and repair of the Stormwater Management System identified in Exhibit B, in accordance with the Maintenance Plan attached as Exhibit C. At any time upon request by the City, the Owner shall provide the annual inspection reports for review.
7. **Notification.** Upon written notification by the City or their designee of required maintenance or repairs, the Owner shall complete the specified maintenance or repairs within a reasonable time frame determined by the City. The Owner shall be liable for the failure to undertake any maintenance or repairs so that the public health, safety and welfare shall not be endangered nor road improvements damaged.
8. **Corrective Action.** If the Owner does not (a) keep the Stormwater Management System in reasonable order and condition, (b) complete maintenance activities in accordance with the Maintenance Plan attached as Exhibit C, (c) comply with the City Stormwater Ordinance, (d) comply with the reporting required above, or (e) comply with the required maintenance or repairs within the specified time frames, the City is authorized after notice and hearing pursuant to Section 29-149 of the City Stormwater Ordinance, but is not required, to perform the specified inspections, maintenance or repairs in order to preserve the intended functions of the Stormwater Management System and prevent the Stormwater Management System from becoming a threat to public health, safety, general welfare or the environment.
  - a. In the case of an emergency, as determined by the City pursuant to Section 29-150 of the City Stormwater Ordinance, no notice shall be required prior to the City performing emergency maintenance or repairs.
  - b. The City at the time of entering upon said Property for the purpose of inspection, maintenance or repair of the Stormwater Management System may file a notice of lien in the office of the County Register of Deeds upon the property affected by the lien. If said costs and expenses are not paid by the Owner, the City may pursue the collection of same through appropriate court actions and in such a case, the Owner shall pay in addition to said costs and expenses all costs of litigation, including attorney fees.
  - c. Alternatively, the City may bring an action for injunctive relief requiring that the Owner cure any violations of this Agreement, or the design and performance standards as adopted by the City.
  - d. The City may levy the costs and expenses of such inspections, maintenance or repairs and legal action (including attorney fees and costs) plus a ten percent (10%) administrative fee against the Owner. The parties agree that such costs and fees incurred by the City to inspect, maintain or repair or legal action shall be charged to the Owner and shall be a lien against the premises and constitute charges for services to the property for purposes of Section 29-152 of the City Stormwater Ordinance and the Revenue Bond Act at MCL 141.121 (3).

9. **Recording.** The Owner agrees that this Agreement shall be recorded and that the land described in Exhibit A shall be subject to the covenants and obligations contained herein, and this agreement shall bind all current and future owners of the property. After construction of the Stormwater Management System has been verified and approved or accepted by the City, this executed Agreement and all exhibits shall be recorded with the County Register of Deeds by the Owner, and a copy of the recorded document provided to the City.
10. **Successors and Assigns.** The Owner agrees, in the event that the Property is sold, transferred, or leased, to provide information to the new owner, operator, or lessee regarding proper inspection, maintenance and repair of the Stormwater Management System. The information shall accompany the first deed transfer and include Exhibits B and C and this Agreement. The transfer of this information shall also be required with any subsequent sale, transfer or lease of the Property.
11. **Indemnification.** The Owner, its agents, representatives, successors and assigns shall defend, indemnify and hold the City harmless from and against any claims, demands, actions, damages, injuries, costs or expenses of any nature whatsoever, hereinafter "Claims", fixed or contingent, known or unknown, arising out of or in any way connected with the design, construction, use, maintenance, repair or operation (or omissions in such regard) of the Stormwater Management System referred to as Exhibit B hereto, appurtenances, connections and attachments thereto which are the subject of this Agreement. This indemnity and hold harmless shall include any costs, expenses and attorney fees incurred by the City in connection with such Claims or the enforcement of this Agreement.
12. **Governing Law and Venue.** This Agreement is governed by the laws of the State of Michigan. Any dispute that cannot be resolve by discussions between the parties shall be subject exclusively to the jurisdiction and venue of the Circuit Court for the County in which the property is located. The parties understand that they may have a right to a jury trial in any dispute under this Agreement and agree to waive their right to a jury trial.
13. **Headings.** Headings are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
14. **Amendments.** No amendment to this Agreement, including this Section, shall be valid and binding unless set forth in writing and signed by the parties.
15. **Integration.** This Agreement is the complete agreement of the parties and supersedes all prior representations, negotiations and agreements on the subject matter herein.
16. **Commencement.** The Owner agrees that the rights, obligations and responsibilities hereunder shall commence upon execution of the Agreement.
17. **Authority to Sign.** The parties whose signatures appear below hereby represent and warrant that they have the authority and capacity to sign this agreement and bind the respective parties hereto.

{Signatures on next page}

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written:

**City of Holland**

**[The Owner]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

its Mayor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

its City Clerk

STATE OF: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_

STATE OF: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
before me personally appeared

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
before me personally appeared

\_\_\_\_\_  
and \_\_\_\_\_  
title of Mayor and City Clerk.

\_\_\_\_\_  
and \_\_\_\_\_  
title of \_\_\_\_\_.

\_\_\_\_\_  
Signature

Date

\_\_\_\_\_  
Signature

Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

I hereby state I am a Notary in the County  
of \_\_\_\_\_, and my commission expires  
on \_\_\_\_\_.

I hereby state I am a Notary in the County  
of \_\_\_\_\_, and my commission expires  
on \_\_\_\_\_.

DRAFTED BY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEN RECORDED RETURN TO:

City of Holland  
270 S. River Avenue  
Holland, Michigan 49423