

Prepared by:
 David A. Ives, Deputy City Attorney
 City of Murfreesboro, Tennessee
 111 W. Vine Street
 Murfreesboro, TN 37130

**INSPECTION AND MAINTENANCE AGREEMENT
 FOR PRIVATE STORMWATER MANAGEMENT FACILITIES – PARTNERSHIP**

| | | | | | |
|--------------------------|--|----------|--|-----------|--|
| Property Identification: | | | | City Use: | |
| Record Bk: | | Page No: | | MWRD No.: | |
| Plat Book: | | Page No: | | Lot No: | |
| Project Name: | | | | | |
| Project Address: | | | | | |
| Owner: | | | | | |
| Owner Address: | | | | | |
| City: | | State: | | Zip Code: | |

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A.

This Inspection and Maintenance Agreement ("Agreement") is made this ____ day of _____, 20 ____, by and between _____ ("Owner", whether one or more), and the City of Murfreesboro ("City").

WHEREAS, the City is required by federal and state surface water quality regulations and its National Pollutant Discharge Elimination System (NPDES) permit to prevent surface water quality degradation from development or redevelopment activities within its jurisdiction, and the City has adopted surface water quality regulations as required and such regulations are contained in the Stormwater Management chapter of the City Code; and

WHEREAS, the Owner owns the Property identified above and has or will construct certain stormwater management facilities on the Property, and has developed a Stormwater Maintenance Plan (SWMP No. _____, as may be amended from time to time, the "Plan") for the maintenance of those facilities, which the City has reviewed and approved, and a copy of which will be maintained at the Murfreesboro Water Resources Department. A drawing showing the general area of the facilities covered by the Plan is attached to this Agreement for ease of identification.

THEREFORE, in consideration of the benefits received by the Owner as a result of the approval by the City of the Plan, the Owner does hereby covenant and agree with the City as follows:

1. The Owner shall provide adequate long-term maintenance and continuation of the stormwater control measures described in the Plan, to ensure that all stormwater facilities are and remain in proper working condition. The Owner shall perform inspection and preventative maintenance activities in accord with the Plan.
2. The Owner shall maintain a copy of the Plan on site, together with a record of inspections and maintenance actions required by the Plan. The Owner shall document the times of inspections, remedial actions taken to repair, modify or reconstruct the system, the state of control measures, and notification of any planned change in responsibility for the system. All inspection and maintenance records shall be maintained on-site, and made readily available to The City upon request, for a period of at least five (5) years.
3. If it is later determined that the City’s NPDES permit clearly directs Owners or the City to manage stormwater treatment systems differently than specified in the Plan, the direction of the NPDES permit shall override the provisions of the Plan.
4. The Owner hereby grants to the City the right of ingress, egress and access to enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing the facilities. The Owner hereby grants to the City the right to install and maintain equipment to monitor or test the performance of the stormwater control system for quality and quantity upon reasonable notice to Owner.
5. If the City finds that the Owner has not maintained the facilities, the City may order the Owner to make repairs or improvements to bring the facilities up to the standards set forth in the Plan. If the work is not performed within the time specified by the City, the City may enter the property and take any action necessary to maintain or repair the stormwater management facilities; PROVIDED, HOWEVER, that the City shall in no event be deemed obligated to maintain or repair the stormwater management facilities, and nothing in this Agreement shall ever be construed to impose or create any such obligation on the City.
6. If the City incurs expenses in maintaining the stormwater control facilities, and the Owner fails to reimburse the City for such expenses within 45 days after a written notice, the City may collect said expenses from the Owner through appropriate legal action, and the Owner shall be liable for the reasonable expenses of collection, including all court costs and attorney fees.

7. The Owner and the Owner's heirs, administrators, executors, assigns, and any other successor in interest shall indemnify and hold the City harmless from any and all damages, accidents, casualties, occurrences, claims or attorney's fees which might arise or be asserted, in whole or in part, against the City from the construction, presence, existence, or maintenance of the stormwater control facilities subject to the Plan and this Agreement. In the event a claim is asserted against the City, its officers, agents or employees, the City shall notify the Owner, who shall defend at Owner's expense any suit or other claim. If any judgment or claims against the City shall be allowed, the Owner shall pay all costs and expenses in connection therewith. The City will not indemnify, defend or hold harmless in any fashion the Owner from any claims arising from any failure, regardless of any language in any attachment of other document that the Owner may provide.
8. No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
9. The City, at Owner's expense, shall record this Agreement with the Register of Deeds of Rutherford County, Tennessee; this Agreement shall constitute a covenant running with the land, and shall be binding upon the Owner and the Owner's heirs, administrators, executors, assigns, and any other successors in interest.
10. The Owner shall have a Tennessee-licensed engineer, surveyor or landscape architect inspect the facilities and certify to the City that the constructed facilities conform substantially to the approved Plan. If the constructed condition varies significantly from the approved Plan, appropriately revised calculations shall be provided to the City and the Plan shall be amended accordingly. If, at any time, the constructed condition of the stormwater facilities varies from the approved Plan, adequate maintenance of the facilities as constructed shall supersede the maintenance provisions of the Plan.
11. The Owner agrees that the failure to follow the provisions and requirements of the Plan may result in the revocation of previously approved credits to stormwater user fees or the imposition of such stormwater user fees or of additional stormwater user fees.
12. The Owner agrees that for any systems to be maintained by a property owner's association, deed restrictions and covenants for the subdivision or other development will include mandatory membership in the property owner's association responsible for providing maintenance of the system, will require the association to maintain the stormwater system, will prohibit termination of this covenant by unilateral action of the association, and provide for unpaid dues or assessments to constitute a lien upon the property of an owner upon recording a notice of non-payment
13. This Agreement must be re-approved and re-executed by the City if all or a portion of the Property is subdivided or assembled with other property.
14. (If applicable) _____ ("Creditor") is the holder of a promissory note dated _____ in the total principal sum of \$ _____ secured by a Deed of Trust of record at **Record Book** _____, **Page** _____, Register's Office of Rutherford County, Tennessee. Creditor hereby joins herein solely for the purpose of subordinating, and does hereby subordinate, the lien of the said Deed of Trust to this **INSPECTION AND MAINTENANCE AGREEMENT FOR PRIVATE STORMWATER MANAGEMENT FACILITIES** in favor of the City; but said Deed of Trust shall not be otherwise affected hereby, and shall continue in full force and effect as before the execution and delivery hereof, subject and subordinate only to said **INSPECTION AND MAINTENANCE AGREEMENT FOR PRIVATE STORMWATER MANAGEMENT FACILITIES**.

Partnership
Name:

Signature by Partner, representing a Partnership

Title: _____

Date: _____

Creditor Name (if applicable)

Date: _____

By: _____
Signature Printed Name Title

Accepted by:

For the City of Murfreesboro
Water Resources Department

[NOTARY BLOCKS ON FOLLOWING PAGE]

PARTNERSHIP:

State of _____ County of _____

Personally appeared before me, the undersigned Notary Public of the state and county mentioned, _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) as a partner of _____ for the purposes contained herein.

Witness my hand and official seal at office in _____, this _____ day of _____, of the year _____.

Notary Public: _____

My Commission Expires: _____

CREDITOR (IF APPLICABLE):

State of _____ County of _____

Before me, the undersigned authority, a Notary Public in and for said County and State mentioned, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) in _____ capacity as _____ of _____ for the purposes contained herein.

Witness my hand and official seal at office in _____, this _____ day of _____, of the year _____.

Notary Public: _____

My Commission Expires: _____

CITY:

State of _____ County of _____

Personally appeared before me, the undersigned Notary Public of the state and county mentioned, _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) on behalf of the City of Murfreesboro Water Resources Department for the purposes contained herein.

Witness my hand and official seal at office in _____, this _____ day of _____, of the year _____.

Notary Public: _____

My Commission Expires: _____