

OPERATIONS AND MAINTENANCE AGREEMENT FOR POST-CONSTRUCTION STORMWATER BEST MANAGEMENT PRACTICES

BACKGROUND

THIS OPERATIONS & MAINTENANCE AGREEMENT FOR POST-CONSTRUCTION STORMWATER BEST MANAGEMENT PRACTICES (“Agreement”) made and entered into this day of _____, by _____ (hereafter referred to as the “Owner”), together with its successors and assigns, and in favor of the City of New Orleans (hereafter referred to as the “City”), together with its successors and assigns, acting through the City Planning Commission (hereafter referred to as the “CPC”),

WHEREAS, the Property Owner is the owner of certain real property at

New Orleans, Louisiana, Orleans Parish Assessor’s Office Tax Bill Number(s): _____, as described more particularly in Legal Description in Exhibit A attached hereto do incorporate by reference (hereafter referred to as the “Property”);

WHEREAS, the Property Owner is developing or redeveloping the Property pursuant to approved plans for _____, recorded with Mortgage and Conveyance Records for the Parish of Orleans on _____, Instrument Number: _____;

WHEREAS, pursuant to **Article 23. Landscape, Stormwater Management, and Screening** of the Comprehensive Zoning Ordinance, Property Owner is required to construct and maintain on-site stormwater best management practices in order to reduce the volume of stormwater runoff into the municipal stormwater system by retaining, detaining and filtering the first one and one quarter (1.25) inch of stormwater runoff during each rain event, and improve water quality by promoting filtration, plant uptake, absorption, and infiltration into sub-soils.

WHEREAS, the City requires that on-site stormwater best management practices as listed in Exhibit B, attached hereto do incorporate by reference, be constructed and adequately maintained by the Property Owner in order to protect public health, safety and welfare, reduce stormwater runoff, and improve water quality.

WHEREAS, to comply with Article 23, Section 23.2 of the City of New Orleans Comprehensive Zoning Ordinance, pertaining to this project, the Owner has agreed to maintain the stormwater Best Management Practices in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing Background, which is incorporated herein as if set forth below in full, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

AGREEMENT

1. Construction.

- (a) Property Owner shall construct the on-site stormwater best management practices (“BMPs”) in strict accordance with the Stormwater Management Plan that was approved by the CPC on _____, recorded with the Mortgage and Conveyance Records for

the Parish of Orleans on _____, Instrument Number: _____.

2. Operation & Maintenance Responsibility.

- (a) This Agreement shall serve as the signed statement by the Owner accepting responsibility for operation and maintenance of the Property's BMPs as set forth in this Agreement until the responsibility is legally transferred to another person (mutual or juridical), as provided in 2(b) below.
- (b) This Agreement shall serve as notice to all successors and assigns of the title to Property of the obligations herein set forth. At such time as the Property is transferred, the new owner of the Property shall have the rights and responsibilities of the Owner under this Agreement.
- (c) The Owner shall provide an Operation and Maintenance Plan, attached to this agreement as Exhibit C do incorporate by reference to, for all of the Post-Construction Best Management Practices located on the Property as identified within this agreement with the City. The Operation and Maintenance Plan shall contain the following:
 - i. Identify the entity responsible for Best Management Practice inspection and maintenance responsibilities;
 - ii. The maintenance tasks to be undertaken;
 - iii. A schedule for the owner-required inspection and maintenance;
 - iv. Any necessary legally binding maintenance easements and agreements; and
 - v. A site plan showing the location of the Best Management Practices and all access and maintenance easements.
- (d) Owner, at Owner's sole expense, and for the duration of this agreement, agrees to maintain the Best Management Practices in accordance with the approved Operation and Maintenance Plan described above and in Exhibit C attached hereto, in a manner that will permit the Best Management Practices to perform the purposes for which they were designed and constructed, and in accordance with the standards by which they were designed and constructed, all as shown and described in the CPC approved Stormwater Management Plan pertaining to the Property. This includes all pipes and channels built to convey stormwater to the Best Management Practices, as well as structures, improvements, and vegetation provided to control the quantity and quality of the stormwater runoff.
- (e) The Owner shall perform all maintenance in accordance with the Operation and Maintenance Plan and shall complete all repairs identified through regular inspections, and any additional repairs as requested in writing by the City.

3. Destruction and Removal; Changes and Alterations

- (a) Owner shall not destroy or remove or allow to be destroyed or removed the BMPs from the Property or modify the BMPs in a manner that materially lessens their effectiveness.
- (b) Owner covenants and agrees that for the term of this Agreement, no change in grades or other alterations within the lines of the BMPs area shall be made and that no buildings and/or other structures either overhead, underground or upon the surface, shall be constructed within the lines of or abutting the BMPs area unless the plans for such changes of grades, alterations or structures shall first be submitted to and approved in writing by the CPC.

4. Inspection by Property Owner.

- (a) Property Owner shall conduct inspections of the stormwater BMPs, as needed, but not less than once per year. The purpose of the inspection is to ensure safe and proper

functioning of the stormwater BMPs. The inspection shall cover all BMPs and all BMPs-associated structures and areas, including, but not limited to, all berms, outlet structures, ponds, and access roads.

- (b) Inspection reports shall be prepared for each Best Management Practice located at the Property and include the following information at a minimum:
 - i. Project address and docket number
 - ii. Inspection date
 - iii. Indicate the Best Management Practice inspected and identify the inspected components
 - iv. Summary of inspection results including necessary repairs and maintenance
 - v. Best Management Practice pictures taken during the time of the inspection

5. Recordkeeping.

Owner shall retain a record of maintenance activities and inspections related to BMPs for a period of at least ten (10) years beyond the termination of this agreement. Such records shall verify that inspection and maintenance have been conducted pursuant to this Agreement. The City may request at any time that the Owner provide copies of any or all maintenance and inspection documentation prepared during the prior ten (10) years. Owner shall comply with any such requests within thirty (30) business days after receipt of such request.

6. Inspection by City.

The Owner hereby grants permission to the City and the City's authorized agents and employees to enter upon the Property and to inspect all aspects of the stormwater BMPs whenever the City deems necessary in order to ensure BMPs are being adequately maintained and are continuing to perform the designed function. Inspection includes monitoring, sampling, testing and examination to determine proper operation of the BMPs. The City shall have the right to temporarily install and/or place on or near any BMPs such devices as are necessary to conduct monitoring, sampling and/or testing of the discharges from the BMPs or the BMP's effects. For those portions of the site that are not generally open to the public, the City shall notify the Owner of the inspection fourteen (14) days prior to the inspection.

7. Failure of Owner to Maintain BMP.

- (a) Nuisance. Owner agrees that failure to adequately maintain BMPs may constitute a public nuisance that is a threat to public health and safety and to the environment.
- (b) City may Perform Maintenance. In addition to any rights the City may have under law or this Agreement, if the City determines that the Owner has failed to adequately maintain the BMPs in good working condition as determined by the City, the City may notify the Owner in writing of any deficiencies. If Owner fails to take action to correct those deficiencies within thirty (30) business days of receipt of such notice, the City and its authorized agents and employees may enter upon the Property and take whatever steps reasonably necessary to correct deficiencies identified and charge the reasonable costs (including administrative costs) thereof to the Owner. Where deficiencies cause imminent threat to public health, safety or the environment, the City may take immediate steps necessary to protect public health, safety and/or the environment and charge the costs (including administrative costs) thereof to the Owner. When the City charges its costs to the Property Owner pursuant to this Section, such charges shall be due within thirty (30) days of the date the bill is received. Owner has the ability to appeal the

accuracy of the cost amount at an administrative hearing pursuant to Article 6 of the Code of Ordinances of the City of New Orleans.

- (c) Right to Lien. In the event the Owner fails to reimburse the City within thirty (30) days after receipt of demand under paragraph 7(b) or request an appeal, the City may place a lien on the Property for the entire amount due pursuant to Article 6 of the Code of Ordinances of the City of New Orleans.

8. No Waiver.

No delay or failure on the part of the City to exercise any rights, powers, or remedies herein provided shall be construed as a waiver thereof or acquiescence of such breach or of any future breach.

9. No Obligation by City.

Despite any other provisions of this Agreement, this Agreement does not obligate the City to appropriate or spend money at any time or for any reason. It is expressly understood and agreed that the City is under no obligation to routinely inspect, maintain or repair the BMPs, and in no event shall this Agreement be construed to impose any such obligation on the City.

10. Covenant Running with Land.

The Owner agrees whenever the Property is held, sold, conveyed or otherwise transferred, the Property shall be subject to this Agreement which shall apply to, bind and be obligatory to all current and future owner(s) of Property. This Agreement shall constitute a real covenant running with the land in perpetuity, and shall be binding on the Property Owner, its administrators, executors, heirs, assigns, and any other successors in interest, including, without limitation, any successors in title to the Property or any part thereof, whether or not they have actual notice of this Agreement and whether or not the deed of transfer specifically states that the transfer is under and subject to this Agreement.

11. Agreement to be Recorded.

The Owner shall record this Agreement in Mortgage and Conveyance Records for the Parish of Orleans at the Owner's expense and provide a copy of the recorded agreement to the City Planning Commission prior to occupancy. The City shall be the sole beneficiary of the agreements, covenants, and restrictions set forth herein and such agreements, covenants, and restrictions shall run with the land in favor of the City. Failure to record this Agreement shall not diminish the effect of this Agreement.

12. Release of Agreement.

In the event that the City determines that the BMPs located on the Property are no longer required, then the City, at the request of Owner, shall execute a release of this Agreement, which the Owner shall record in the Mortgage and Conveyance Records for the Parish of Orleans. The BMPs shall not be removed from the Property unless such a release is so executed and recorded.

15. Amendments.

This Agreement may only be amended, revised or modified by a written document

18. Miscellaneous.

- (a) *Headings.* The headings in this Agreement are for convenience only and are not a part of this Agreement. The headings do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.
- (b) *Governing Law.* This Agreement shall be governed in accordance with the laws of the State of Louisiana without regard to the conflicts of law doctrines thereof. The parties to this Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in New Orleans, Louisiana.
- (c) *No Joint Venture.* Nothing in this Agreement shall be construed as creating a joint venture or partnership between the City and the Owner.
- (d) *No Third-Party Beneficiaries.* Nothing in this Agreement is intended to confer a third-party beneficiary right upon any person or entity other than the City.
- (e) *Waiver of Jury Trial.* IT IS MUTUALLY AGREED BY AND BETWEEN THE CITY AND THE OWNER THAT THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION PROCEEDING OR COUNTER-CLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.
- (f) *Severability and Partial Invalidity.* The provisions of this Agreement shall be severable. In the event that one or more provisions of this Agreement or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid, illegal or unenforceable in any respect, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain in force to the fullest extent permitted by law.
- (g) *Background incorporated.* The Background recited above is hereby incorporated into and made a part of this Agreement.
- (h) *Exhibits incorporated.* All exhibits attached to this Agreement are hereby incorporated into and made a material part of this Agreement.
- (i) *Entire Agreement.* This Agreement sets forth all agreements and understandings between the City and the Owner relating to the BMPs and there are no agreements or understandings, either oral or written, between them other than as are set forth in this Agreement. Any agreement hereafter made shall be ineffective to change, modify or amend this Agreement in whole or part unless such agreement is in writing and has been executed by both the City and Owner. No oral representations, whenever made, by any City or CPC official, employee or agent, or by any employee, agent or contractor of Owner shall be effective to modify the terms of this Agreement.
- (j) *Approval by City.* No review, approval and/or inspection by the City of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Property Owner in connection with the Project shall constitute a representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed or approved.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Owner has caused the Agreement to be duly executed the day and year first above written.

Property Owner

By:
Name

Title

Exhibit A
(Attach Legal Description of Property)

Exhibit B

(Attach Stormwater Drainage Site Plan showing all storm drainage systems and invert elevations, including but not limited to: proposed drain lines, culverts, catch basins, headwalls, manholes, and stormwater Best Management Practices (BMPs), and location and size of proposed sub-catchment basins)

Exhibit C

(Insert Operations & Maintenance Plan)

Exhibit D

SAMPLE INSPECTION REPORT

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GENERAL INFORMATION

Inspection Date: _____ Inspector Name: _____

Project Address: _____

Best Management Practice (BMP) Inspected: _____

Instructions:

One inspection report shall be prepared for each Best Management Practice (BMP). Identify the BMP inspected as indicated on the Site Plan if multiple BMPs are present on-site. Please sign and date the inspection report. Please provide pictures taken during the inspection and attach them to the report.

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PLANTINGS & VEGETATION

- The BMP being inspected does not incorporate vegetation.
- No additional maintenance is recommended at this time.
- Several of the plants provided with the original construction of the facility appear to have died. These plants shall be removed and replaced.

Comments: _____

- The facility appears to have become overgrown. As such, the vegetation in the facility shall be thinned out.

Comments: _____

- Invasive plant species are present and need to be removed.

Comments: _____

- Additional items/comments:

INLET AND OUTLET STRUCTURES

- No additional maintenance is recommended at this time.
- The inlet/outlet areas or slopes have eroded or are structurally unsound. These eroded areas shall be stabilized and repaired.

Comments: _____

- Trash, sediment, or other debris is blocking the inlet/outlet channel. This material shall be removed.

Comments: _____

- It appears that the overflow structure is malfunctioning. Any trash, sediment, or other debris blocking the entry or passage of stormwater through the structure shall be removed.

Comments: _____

- Additional items/comments:

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PERMEABLE PAVING

- Permeable paving is not utilized on the site.
- No additional maintenance is recommended at this time.
- Pavement is not draining properly and pools of standing water are present after rain events. Vacuum sweep the pavement to reduce the risk of clogging by frequently removing fine sediments before they can clog the pavement and subsurface layers.

Comments: _____

- Vegetation growth is present on pavement surface. Remove vegetation growth.

Comments: _____

- There is missing sand, gravel or other material in spaces between pavers. Replace as needed.

Comments: _____

- Additional items/comments:

CISTERNS / RAIN HARVESTING SYSTEMS

- Cisterns or other rain harvesting is not utilized on the site.
- No additional maintenance is recommended at this time.
- There are leaks in the cistern, associated pipes or valves. Repair any leaks.

Comments: _____

- There is sediment or other debris in the gutters or downspout filters. Remove accumulated sediment or debris as needed.

Comments: _____

- Screens, spigots, valves, or level sensors (if present) are in need of replacement. Replace as needed.

Comments: _____

- Pumps and electrical equipment are functioning. Replace as needed.

Comments: _____

Additional items/comments:

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GREEN / BLUE ROOFS

Green roof is not utilized on the site.

No additional maintenance is recommended at this time.

There are leaks in the roofing membrane or roofing system. Repair any leaks.

Comments: _____

Drainage paths are clogged. Remove accumulated sediment or debris as needed.

Comments: _____

There is evidence of erosion or damage to vegetation. Remediate or replace features as needed.

Comments: _____

Pumps and electrical equipment are malfunctioning. Replace as needed.

Comments: _____

Additional items/comments:
