

STORMWATER LONG-TERM OPERATION AND MAINTENANCE AGREEMENT

Project Name: _____

Primary function or description of the private stormwater management system/facilities to be constructed and maintained at the site:

Entity that will be responsible for operation and maintenance of the post-construction stormwater management system/facilities:

_____ / _____

(name of Homeowners Association Inc. or other long-term maintenance party)

This AGREEMENT, made and entered into on _____, by and between _____ (the “Owner”) and Clark County, Indiana, acting by and through the Clark County Drainage Board (the “CCDB”).

WHEREAS, the Clark County Stormwater Management Ordinance No. 40-2024, adopted December 19, 2024, by the Clark County Commissioners, and any amendments thereto (the “Ordinance”) establishes requirements for stormwater quality Best Management Practices (BMPs) to manage the quality of stormwater discharged from areas of development and redevelopment that are regulated under the Ordinance; and

WHEREAS, under the Ordinance, the CCDB has the authority to inspect private stormwater management systems/facilities/structures (collectively the “Stormwater Management System”) within the jurisdiction of the CCDB, and to order such corrective actions to such Stormwater Management System as are necessary to maintain properly the Stormwater Management System; and

WHEREAS, the Ordinance requires BMPs to be implemented and maintained by the property owner/developer, or their assigns, under the terms of a maintenance agreement to provide assurance as to the proper long-term functioning of the Stormwater Management System; and

WHEREAS, the CCDB has adopted and approved technical guidelines relating to BMPs in the areas of Clark County, Indiana, under its jurisdiction; and

WHEREAS, the Owner is the title-holder of certain real property, briefly described as:

_____, (the "Property")

pursuant to the deed of record as Instrument Number _____, in the Office of the Recorder of Clark County, Indiana; and

WHEREAS, the Owner is proceeding to build on, develop, or redevelop the Property; and

WHEREAS, the Stormwater Pollution Prevention Plan ("SWPPP") submitted on behalf of the

Owner by _____, dated _____, and the submitted Long-Term Operation and Maintenance Plan ("OMP"), are on file with the CCDB, which are expressly made part hereof, provides for the implementation of BMPs within the confines of the Property; and

WHEREAS, the CCDB requires that the Stormwater Management System, in accordance with the SWPPP, be adequately designed, constructed, installed, operated, and maintained in accordance with the OMP, by the Owner or the Owner's successors or assigns (the "Responsible Party");

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and condition, the parties hereto agree as follows:

1. The Stormwater Management System shall be constructed by the Owner in accordance with the SWPPP and OMP.
2. If the Owner assigns responsibility for the long-term maintenance of the Stormwater Management System to another person or entity, the Owner shall provide a copy of such assignment to the CCDB.
3. The Owner or the Owner's assign (the "Responsible Party") shall operate and maintain the Stormwater Management System as outlined in the OMP in good working order acceptable to the CCDB during its useful life and implement the BMPs.
4. The Responsible Party shall conduct regular inspections and that required inspections will be performed by a Qualified Professional, as defined in the Ordinance.
5. The required inspections will be documented and include the following information:
 - a. A description of the current operational or functional status of the Stormwater Management System and BMPs. And, where there are structures that accumulate sediment, trash, debris, or other form of potential pollution, an indication of used and remaining capacity (fraction, percentage, depth or volume) of such structures

shall be documented to identify when a structure that is part of the Stormwater Management System must be cleaned or otherwise repaired.

b. Identification of any necessary repairs, sediment, or debris removal, or replacement of all or portions of the Stormwater Management System.

c. The results of any field or laboratory analyses performed on the Stormwater Management System.

d. Other relevant or unusual observations related to the Stormwater Management System.

e. If appropriate, an action plan to prevent the premature failure the Stormwater Management System which may exceed the OMP provisions, but which are necessary to prevent stormwater pollution from leaving the site.

6. The Owner hereby grants permission to the CCDB, its authorized agents and employees, to enter the Property to inspect the Stormwater Management System and the functionality of the BMPs, whenever it is deemed necessary. The permission granted herein shall be a covenant running with the Property and binding on the Responsible Party. Unless an emergency exist, the CCDB shall notify the Responsible Party prior to entering the Property.

7. If the Responsible Party fails to maintain the BMPs in accordance with the SWPPP and OMP in a condition acceptable to the CCDB, the CCDB may, after notice and hearing, enter the Property with persons and equipment and take whatever steps it deems necessary to repair or maintain the BMPs. This provision shall not be construed to allow the CCDB to erect any structure of a permanent nature on the Property without first obtaining written approval of the then owner of the Property. It is expressly understood and agreed that the CCDB is under no obligation to maintain or repair any part of the Stormwater Management System, and this Agreement shall not be construed to impose any such obligation on the CCDB.

8. If the CCDB, pursuant to this Agreement, performs maintenance, repairs, or other work, of any nature, or expends any funds in performance of such maintenance, repairs, or other work, for labor, use of equipment, supplies, materials, and the like, the Responsible Party shall reimburse the CCDB, within 90 days of receipt of notice thereof and demand, for all costs incurred by the CCDB for such maintenance, repairs, or other work and for providing notice. If the Responsible Party does not reimburse the CCDB within 90 days of receipt of notice and demand; the CCDB may apply a lien upon the Property for double the expense incurred by the CCDB. If the Responsible Party does not reimburse the CCDB within one year from the application of such lien, the CCDB may take legal action to recover costs, including associated legal fees, incurred by the CCDB.

9. It is the intent of this Agreement to guarantee the proper maintenance of the Stormwater Management System by the Responsible Party; provided, however, that this Agreement shall not be deemed to create or affect any additional liability on any party for damage alleged to result from or be caused by functioning of the Stormwater Management System.

10. The Responsible Party shall indemnify and hold the CCDB and its agents and employees

harmless for any and all damages, accident, casualties, occurrences, or claims which might arise or be asserted against the CCDB from the construction, presence, existence, operation, or maintenance of the Stormwater Management System by the Responsible Party or the CCDB.

11. If a claim is asserted against the CCDB, its agents, or employees for the construction, presence, existence, operation, or maintenance of the Stormwater Management System in accordance with the BMPs by the Responsible Party, the CCDB shall notify the Responsible Party and the Responsible Party shall defend, at its own expense, any suit based on such claim. If any judgment or claims against the CCDB, its agents, or employees shall be allowed, the Responsible Party shall pay all costs and expenses thereof.

12. This Agreement shall be recorded in the Office of the Recorder of Clark County, Indiana, and shall constitute a covenant running with the Property, and shall be binding on the Owner, its successors or assigns and the Responsible Party, its successors or assigns.

IN WITNESS WHEREOF, the Owner and the CCDB have caused the execution hereof by their respective duly authorized representative, on the date set forth beside such representative's signature.

Owner

By: _____

Dated: _____

Printed: _____

Title: _____

STATE OF INDIANA COUNTY OF _____)

Before me, a Notary Public in and for said County and State, on _____, 20____, personally appeared _____ as Authorized Representative of _____, who swore to the truth of the representations contained herein and who acknowledged the free and voluntary execution hereof on behalf of said entity.

Notary Public
Printed: _____
Resident of _____ County, Indiana
My Commission Expires: _____
My Commission Number: _____

Clark County Drainage Board

By: _____

Dated: _____

Printed: _____

Title: _____

STATE OF INDIANA COUNTY OF _____)

Before me, a Notary Public in and for said County and State, on _____, 20____, personally appeared _____, as _____ of the Clark County Drainage Board, who swore to the truth of the representations contained herein and who acknowledged the free and voluntary execution hereof on behalf of said entity.

Notary Public
Printed: _____
Resident of _____ County, Indiana
My Commission Expires: _____
My Commission Number: _____

Prepared by Culler Law Office, LLC, Ronald D. Culler, Attorney, 2123 Veterans Parkway, Jeffersonville, Indiana 47130, phone 812-284-2685.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, _____.
Person's name presenting for recording