

Lindon City Storm Water Maintenance Agreement

THIS AGREEMENT, made and entered into this ___ day of _____, 20___, by and between _____ hereinafter called the "Landowner", and Lindon City, a Municipal Corporation, WITNESSETH AS FOLLOWS:

WHEREAS, the Landowner wishes to improve, develop or redevelop real property located in Lindon City, Utah County, State of Utah, which is described in more particular detail in the attached plan and incorporated herewith; and

WHERE AS, said development requires storm water detention and control facilities (hereinafter referred to as the Facilities) to be constructed according to designs and plans approved by Lindon City; and

WHERE AS, the Landowner, for and in behalf of its administrators, executors, successors, heirs, or assigns, including any homeowners association, recognizes and agrees that the health, safety, and welfare of the citizens of Lindon City require that the Facilities be constructed on the property, and that the Facilities must be adequately maintained throughout the life of the development; and,

WHEREAS, the Lindon City Code requires that the storm water facilities be constructed and adequately maintained by the Landowner, its administrators, executors, successors, heirs, or assigns including any homeowners association.

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

SECTION 1: DEFINITIONS.

For purposes of this agreement the following definitions shall apply;

1. Facilities: Facilities shall mean all storm water detention and control structures, flood control devices, or other improvements, which may include, but is not limited to all pipes, channels, or other structures and infrastructure built to convey storm water to the Facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water which are required by Lindon City in the site plan attached hereto.
2. Landowner: Landowner means the above party named herein, including its administrators, executors, successors, heirs or assigns, including any homeowners association.
3. Lindon City: Lindon City means the City of Lindon, a Utah Municipal Corporation in respect to authority to inspect and make repairs as contemplated shall include all authorized agents and employees of the City.

SECTION 2
FACILITIES CONSTRUCTION.

The Facilities shall be constructed by the Landowner in accordance with the plans and specifications for the development as contained in the attached plan. The Landowner understands and agrees that modifications may be needed to make the system work properly after the facilities are installed, and agrees to make modifications and adjustments as may be required by Lindon City.

SECTION 3:
MAINTENANCE.

The Landowner shall adequately maintain the Facilities in good working condition acceptable to Lindon City and in accordance with the schedule of long term maintenance activities agreed to by the parties and attached herewith. Adequate maintenance is herein defined as keeping the facilities in good working condition so that these facilities are performing their design functions, as maintaining the property so as to facility inspections and repairs as may be needed, and as replacing and/or modifying portions, or all of the system, as may be needed to maintain the intended function of the facility.

SECTION 4:
EASEMENT.

The Landowner hereby grants permission to Lindon City to enter upon the property and to inspect the Facilities whenever Lindon City deems it necessary. Whenever possible, the City shall provide notice prior to entry. The Landowner hereby grants a twenty five (25) foot access easement in favor of Lindon City with the midpoint of the easement lying over the midpoint of the Facilities identified in the attached plan. This easement shall be limited in scope to allow only those actions which are necessary to allow Lindon City to inspect, ensure adequate maintenance, and to cause any repairs to be made which the City deems necessary. This shall include, but not be limited to prohibiting the construction of structures or improvements that would impact or obstruct the intended purposes of the Facilities or restrict the ability of the Landowner or Lindon City to inspect, maintain, or repair the Facilities.

SECTION 5:
FAILURE TO MAINTAIN FACILITIES.

In the event the Landowner fails to maintain the Facilities in good working order acceptable to Lindon City and in accordance with the maintenance schedule incorporated in this Agreement, the City, in addition to any other remedies provided by State or City code, may, with due notice, enter the property and take whatever steps it deems necessary to return the Facilities to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the property that is not included in the attached plan, or other agreement between the parties. It is expressly understood and agreed that Lindon City is under no obligation to maintain or repair the Facilities. The decision to maintain or repair the Facilities shall be at Lindon City's sole discretion and in no event shall this Agreement be construed to

impose any such obligation on the City or to create any liability for the City refusing to undertake such a duty

**SECTION 6:
RECOUPMENT OF COSTS.**

In the event Lindon City performs work of any nature pursuant to the Agreement, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse Lindon City, with due notice, within thirty (30) days of receipt thereof for all the costs incurred by the City. If not paid within the prescribed time period, Lindon City shall be entitled to record a lien against the real property in the amount of such costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to Lindon City as a result of the Landowner's failure to maintain the Facilities.

**SECTION 7:
LIMITATION OF LIABILITIES.**

It is the sole intent of this Agreement to insure the proper maintenance of the Facilities by the Landowner. As the facilities are not part of Lindon City's Storm Water Collection System, this agreement does not create or extend any rights to immunity or liability protections provided by law to municipalities. ; This Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or caused by storm water runoff, or to constitute a waiver of any immunity provided to Lindon City through the Utah State Code or Constitution.

**SECTION 8:
SEDIMENT ACCUMULATION.**

Adequate maintenance shall include control of sediment accumulation resulting from the normal operation of the Facilities. The Landowner will make accommodation for the removal and appropriate disposal of all accumulated sediments.

**SECTION 9:
ADOPTION AND INCORPORATION OF UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY STANDARDS AND LINDON CITY'S STORM WATER MANAGEMENT PLAN.**

The Parties agree to follow and comply with all requirements applicable to storm water detention and control facilities as by the Utah Department of Environmental Quality, Division of Water Quality, including the Small MS4 General UPDES Permit requirements, and by Lindon City's Storm Water Management Plan as existing at the time of executing this agreement and as may be amended from time to time. The parties agree that these requirements and regulations are incorporated herein by this reference and that this agreement shall be deemed automatically amended to incorporate any and all changes and amendments made thereto after the signing of this agreement.

SECTION 10:
INSPECTIONS.

The Landowner shall perform an annual inspection of the Facilities. Lindon City may require more frequent inspections should it have reason to believe that such inspections are necessary. All inspections shall be conducted by a qualified inspector. The results of all inspection shall be reported to Lindon City using Maintenance Inspection Report attached to this agreement. All annual inspections shall be completed no later than September 1 of any given year. In addition, Lindon City shall perform and inspection of the Facilities at least once every five years or more frequently as Lindon may determine is necessary to ensure that adequate maintenance is being performed.

SECTION 11:
INDEMNITY.

The Landowner indemnifies and holds harmless Lindon City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Landowner. In the event a claim is asserted against the City, its authorized agents or employees, Lindon City shall promptly notify the Landowner and the Landowner shall defend at its own expense any suit based on such claim. If any judgment or claims against Lindon City, its authorized agents or employees shall be allowed, the Landowner shall pay for all costs and expenses in connection herewith.

SECTION 12:
COVENANT RUNNING WITH THE LAND.

This Agreement shall be recorded at the Utah County Recorder's Office and shall constitute a covenant running with the land and shall be binding on the Landowner, its administrators, executors, heirs, assigns and any other successors in interest, including any homeowners association.

SECTION 13:
REMEDIES.

This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest. Any rights or remedies contained in this Agreement shall be in addition, and non-exclusive, to any rights existing under the Utah Code or that may exist under the common law.

SECTION 14:
ATTORNEYS FEES.

If any party retains, consults, or uses an attorney because of any breach, default, or failure to perform as required by this Agreement, the non-breaching/defaulting party shall be entitled to reasonable attorney's fees incurred before litigation is filed. In the event that any litigation is commenced to enforce or interpret this Agreement the prevailing party shall be entitled to its attorneys fees, expert witness expenses, and litigation related expenses, including but not limited to court costs.

SECTION 15:
THIRD PARTY BENEFICIARIES.

This Agreement shall be binding upon and inure solely to the benefit of the parties herein and is not intended to create contractual rights in any third party.

SECTION 16:
NO PARTNERSHIP.

Nothing contained in this Agreement shall be deemed to create any form of a partnership or joint-venture between Lindon and Adventure Giving.

SECTION 17:
UTAH LAW.

This Agreement shall be interpreted pursuant to the laws of the State of Utah.

SECTION 18:
INTEGRATED AGREEMENT.

This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that exists between the parties regarding the subject matter of this Agreement.

SECTION 19:
AMENDMENTS.

Except as expressly provided elsewhere in this Agreement, no provision of this Agreement may not be modified except in writing agreed to by both parties.

DATED THIS DAY OF , 20 .

LINDON CITY

Lindon City Public Works Director

Attest: Lindon City Recorder.

DATED THIS DAY OF , 20 .

LANDOWNER

NOTARIZATION

STATE OF UTAH)
) :ss
COUNTY OF UTAH)

The above Agreement was executed on this _____ day of _____, 20__ by
_____, for and on behalf of _____, the
Landowner identified in the above signed Agreement. In executing this Agreement, the signer
did swear before me that he is duly authorized to sign the agreement on behalf of the Landowner.

NOTARY PUBLIC