

**LOW IMPACT DEVELOPMENT FACILITIES
MAINTENANCE AGREEMENT**
City of _____, Texas

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between _____, hereinafter called the "Landowner," and the City of _____, Texas hereinafter called the "the City."

WITNESSETH:

WHEREAS, the Landowner is the owner in fee simple of certain real property described on _____, as recorded by deed in the real property records of _____ County, Texas, Instrument Number _____, hereinafter called the "Property."

WHEREAS, the Site Plan/Subdivision Plan known as _____,

(Name of Plan/Development)

hereinafter called the "Plan," as approved by the City and which is expressly made a part hereof, provides for the management of stormwater runoff within the confines of the Property; and

WHEREAS, the Property noted above contains low impact development facilities ("LIDs"), often called Best Management Practices ("BMPs"), and their accompanying components and structures; and

WHEREAS, a plat or plan identifying such areas is attached hereto for reference; and

WHEREAS, the stormwater facilities Inspection and Maintenance schedule for such areas is attached hereto for reference; and

WHEREAS, the Landowner is proceeding to build on and develop the Property; and

WHEREAS, the City and the Landowner, its successors and assigns, including any property owner's association, agree that the health, safety, and welfare of the residents of _____, Texas, require that on-site low impact development facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site low impact development facilities, as shown on the Plan, be constructed and adequately maintained by the Landowner, its successors and assigns, including any property owner's association; and

WHEREAS, a Inspection and Maintenance schedule has been included on the Plan and is attached for reference, which details the requirements to perpetually maintain the structural integrity and the proper functioning of the LID and all of its components.

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:

1. The Landowner, its successors and assigns, shall construct the required on-site LIDs, as shown on Exhibit 1 and listed on Exhibit 2, at its sole expense and in strict accordance with the approved Plan and the associated specifications identified in the Plan.
2. The Landowner, its successors and assigns, shall, at its sole expense, make such changes or modifications to the LIDs as may, in the City's sole discretion, be determined necessary to insure that the LIDs are properly maintained and are continuing to operate as designed and approved.
3. The Landowner, its successors and assigns, including any property owner's association, shall perpetually and adequately maintain the LIDs. This includes all pipes and channels built to convey stormwater to or from the facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as that which is necessary to maintain the structural integrity of the facilities and to insure good working condition so that the facilities are performing their intended design functions. The Inspection and Maintenance Schedule is shown on Exhibit 3.
4. The Landowner, its successors and assigns, shall periodically inspect the LIDs, as shown on Exhibit 3. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the facilities in their entirety and all related components, including but not limited to berms, outlet structure, pond areas, incoming or outgoing pipes or channels, side slopes, access roads, etc. Deficiencies shall be noted in the inspection report.
5. The Landowner, its successors and assigns, shall document all inspections, maintenance activities, and repairs that are performed on the LIDs on the Inspection Checklist attached as exhibit 4. Documents shall be maintained by the Landowner, its successors and assigns, for a minimum period of five (5) years and said documents shall be made available for review by, or copies shall be provided to, the City upon request.
6. The Landowner, its successors and assigns, hereby grant to the City, its authorized agents, employees, and contractors the perpetual right of ingress and egress over the Property for the purpose of inspecting the LIDs. Such inspections shall be conducted periodically and whenever the City deems necessary. Such inspections may be conducted for a variety of reasons, including the following: (a) to insure that the LID is being properly maintained and is continuing to function as designed and

approved by the City, (b) to ensure that adequate maintenance is occurring, (c) to follow-up on reported deficiencies, and (d) to respond to citizen complaints. The City shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to commence with maintenance or repairs, if necessary. The City shall specify in the directive a time frame in which the work shall be completed.

7. In the event the Landowner, its successors and assigns, fail to maintain the LIDs in good working condition acceptable to the City, the City may enter upon the Property to correct all deficiencies, make all repairs, and to perform all maintenance, construction, and re-construction, as deemed necessary by the City, and to charge the costs of such repairs to the Landowner, its successors and assigns, and to any or all persons or entities served by the LIDs. This provision shall not be construed to allow the City to erect any permanent structure on the Landowner's land outside of the easement or property wherein the LIDs and their related components reside. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
8. The Landowner, its successors and assigns, shall perform the necessary work to comply with the attached Inspection and Maintenance Schedule, including sediment removal, and as otherwise required to keep the LIDs in good working order, as appropriate.
9. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, etc., the City may assess the Landowner, its successors and assigns, and all landowners served by the LIDs for their proportionate share of the actual costs incurred by the City hereunder. In collecting such charges, the City shall have available to it all remedies accorded by law for the collection of unpaid debts.
10. The Landowner, its successors and assigns, shall indemnify, save harmless, and defend the City against any and all claims, demands, suits, liabilities, losses, damages, and payments, including reasonable attorney fees claimed or made by persons not party to this agreement, against the City that are alleged or proved to result or arise from any construction, operation, or maintenance of the LIDs by the Landowner, its successors and assigns.
11. This Agreement and the covenants and agreements contained herein shall run with the title to the land and whenever the Property shall be held, sold, conveyed, or otherwise transferred, it shall be subject to the covenants, stipulations, agreements, and provisions of this Agreement which shall apply to, bind, and be obligatory upon the Landowner hereto, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association, and it shall bind all present and subsequent owners of the Property described herein.

12. Initially, the Landowner is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, upon the recordation of a deed or other instrument of sale, transfer, or other conveyance of fee simple title to the Property or any portion thereof (a "Transfer") to a third party (the "Transferee"), the Landowner shall be released of all its obligations and responsibilities under this Agreement accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the Property included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of the City. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument, or agreement shall be provided to the City. The provisions of the preceding three sentences shall be applicable to the original Landowner and any successor Transferee who has assumed the obligations and responsibilities of the Landowner under this Agreement, as provided above.
13. Nothing in this Agreement shall be construed to prohibit a transfer of the Property by the Landowner to subsequent owners and assigns.
14. Provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision is declared unconstitutional, or the applicability thereof to Landowner held invalid, the remainder of this Agreement shall not be affected thereby.
15. This Agreement shall be recorded among the real property records of _____ County, Texas, at the expense of the Landowner.
16. In the event that the City shall determine, at its sole discretion at any future time, that the LIDs are no longer required, the City shall, at the request of the Landowner, execute a release of this Low impact development facilities Maintenance Agreement.
17. In the event of any dispute arising under the provisions of this Agreement, the laws of the State of Texas shall apply and jurisdiction over such dispute shall be in the _____ County, Texas.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on their behalf.

LANDOWNER:

(Full Name of Company, Corporation, or Partnership)

By: _____ **(SEAL)**
(Duly Authorized Officer Signature)

As: _____ **(TITLE)**
(Duly Authorized Officer Title)

LANDOWNER ACKNOWLEDGMENT

State of Texas,

City of: _____, **to wit:**

The foregoing instrument was acknowledged before me this _____, day of _____, _____,

by: _____ as _____ on
(Duly Authorized Officer Printed Name) (Duly Authorized Officer Printed Title)

behalf of _____
(Insert Full Name of Company/Corporation/Partnership)

(Notary Public Signature) / _____
(Notary Public Printed Name)

My Commission expires: _____ Registration # _____

Approved as to Content and Form:

_____ By: _____(SEAL)
City Attorney

CITY ACKNOWLEDGMENT

State of Texas

City of _____, to wit:

The foregoing instrument was acknowledged before me this _____, day of _____, 20__

by _____ on behalf of the City of _____, Texas.

_____/_____
(Notary Public Signature) (Notary Public Printed Name)

My Commission expires: _____ Registration # _____

EXHIBIT 1

Plat or Plan Depicting Location of Low impact development facilities

〔 INSERT A PLAT OR A PLAN THAT CLEARLY SHOWS THE LOCATION OF ALL LOW IMPACT DEVELOPMENT FACILITIES FOR THE SITE. LEAVE “EXHIBIT 1” AT THE TOP OF THIS PAGE. 〕

EXHIBIT 2
Listing of Low impact development facilities

<i>Facility Name as Shown on the Plan</i>	<i>Facility Type</i>	<i>How many?</i>	<i>Tax Map/Parcel I.D.</i>
Ex., LID- 1 or BMP-1	Ex., Bioretention	2	000.00-00-00.00-0000

EXHIBIT 3
Inspection and Maintenance Schedule

[PROVIDE AN INSPECTION AND MAINTENANCE SCHEDULE FOR EACH **TYPE** OF LOW IMPACT DEVELOPMENT FACILITY SERVING THE SITE. MANUFACTURER'S MAINTENANCE LITERATURE MAY BE SUBMITTED FOR MANUFACTURED TREATMENT DEVICES.]

Low Impact Development Facility Type: _____

EXHIBIT 4
Inspection and Maintenance Checklist

[PROVIDE A MAINTENANCE AND INSPECION CHECKLIST FOR EACH **TYPE** OF LOW IMPACT DEVELOPMENT FACILITY SERVING THE SITE. MANUFACTURER'S MAINTENANCE LITERATURE MAY BE SUBMITTED FOR MANUFACTURED TREATMENT DEVICES.]

Low Impact Development Facility Type: _____