

**STORM WATER MAINTENANCE AGREEMENT**

This STORM WATER MAINTENANCE AGREEMENT dated \_\_\_\_\_, 2020 (this "Agreement") is by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota (the "City"), and Lotus Realty Services Inc., a Minnesota corporation ("Lotus Realty").

WHEREAS, the City and Duluth Gospel Tabernacle, a Minnesota non-profit corporation, entered into a Development Agreement dated April 5, 2019 (the "Development Agreement") and registered in the Office of the St. Louis County Registrar of Titles on January 23, 2020 as Document No. 1019871.

WHEREAS, the purpose of the Development Agreement is to set forth certain terms and conditions regarding the development of the plat of Harbor Light, St. Louis County, Minnesota.

WHEREAS, at the time the Development Agreement was signed, Duluth Gospel Tabernacle was the fee owner of all lots in the plat of Harbor Light, but certain lots in the plat of Harbor Light have since been sold or conveyed to other parties, including Outlot A, Harbor Light, St. Louis County, Minnesota ("Outlot A"), which is owned by Lotus Realty.

WHEREAS, Section 8.F. of the Development Agreement requires construction of certain storm water improvements on Outlot A (the "Improvements").

WHEREAS, Section 7.D. of the Development Agreement requires that Outlot A be conveyed to the City at no cost to the City.

WHEREAS, in Section 7 of the Development Agreement, Duluth Gospel Tabernacle warranted that it had marketable fee title to the lots in the plat of Harbor Light, free and clear of all mortgages, liens, and other encumbrances.

WHEREAS, the Certificate of Title for Outlot A has several encumbrances and the City will not accept title to Outlot A until all encumbrances have been satisfied, terminated or released.

WHEREAS, until such time as the City accepts title to Outlot A, the Improvements must be properly maintained and Lotus Realty desires to perform such maintenance.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

**I. MAINTENANCE OF STORM WATER IMPROVEMENTS**

Lotus Realty shall take all steps necessary to keep the Improvements in good order and condition and state of repair in accordance with the Stormwater Operations and Maintenance Plan attached as Exhibit A (the "Plan"), including but not limited to the following: (i) inspecting

the Improvements in accordance with the "Inspection Activities" schedule listed in the Plan, no less often than the frequency stated in the Plan; (ii) performing or causing to be performed all maintenance, repair, and replacement activities listed on the "Maintenance Activity" schedule listed on the Plan, no less often than the frequency stated on the Plan; (iii) keeping an inspection and maintenance log (the "(Maintenance Log)") detailing and certifying that all inspection activities and maintenance activities have occurred; and (iv) providing the Maintenance Log to the City on a quarterly basis. The City may access Outlot A from time to time for the purpose of inspecting the Improvements and Lotus Realty's compliance with this Agreement. Lotus Realty shall complete any additional maintenance, repair, and replacement activities on the Improvements as reasonably requested by the City. Lotus Realty shall perform all activities under this Agreement at its sole cost and expense. In the event Lotus Realty fails to perform the activities required by this Agreement, the City may, in its sole discretion, perform the activities and invoice Lotus Realty for the City's expenses incurred in performing the activities (including staff salary expenses), which Lotus Realty shall pay within 15 days of receipt of invoice.

## **II. TERM AND PROPERTY TAXES**

Notwithstanding the date of execution of this Agreement, the term of this Agreement shall commence on November 1, 2020 and shall terminate automatically upon the conveyance of Outlot A to the City (the "Term"). Lotus Realty shall remain responsible for all property taxes and assessments relating to Outlot A until Outlot A is conveyed to the City.

## **III. LAWS, RULES AND REGULATIONS**

Lotus Realty will conduct its activities related to this Agreement in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and City of Duluth.

## **IV. NO THIRD PARTY RIGHTS**

This Agreement is to be construed and understood solely as an agreement between the parties hereto regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

## **V. NOTICES**

Notices sent pursuant to this Agreement shall be sufficient if sent by regular United States mail, postage prepaid, addressed to:

City  
City of Duluth  
Attn: Director of Public Works  
411 W. First Street, Room 274  
Duluth, Minnesota 55802

Lotus Realty Services Inc.  
Lotus Realty Services Inc.  
Attn: Bradley C. Johnson  
P.O. Box 235  
Chanhassen, MN 55317

or to such other persons or addresses as the parties may designate to each other in writing from time to time.

## **VI. APPLICABLE LAW**

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those state courts located within St. Louis County, Minnesota.

## **VIII. AMENDMENTS**

Any amendments to this Agreement shall be in writing and shall be executed by the same individuals who executed this Agreement or their successors in office.

## **IX. SEVERABILITY**

If any term or provision of this Agreement is declared by a court of competent-jurisdiction to be illegal or in conflict with any law, then the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **X. INDEMNIFICATION**

Lotus Realty agrees that it shall defend, indemnify and hold harmless the City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of the City or Lotus Realty, by reason of death of or injury to person or persons or the loss of or damage to property arising out of Lotus Realty's performance of its obligations under this Agreement. On ten (10) days written notice from the City, Lotus Realty will appear and defend all lawsuits against the City relating to or arising from such injuries or damage.

## **XI. ENTIRE AGREEMENT**

This Agreement, including its exhibits, together with the Development Agreement and the Memorandum of Understanding dated May 15, 2019 between the City, Lotus Realty and Duluth Gospel Tabernacle constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party. This Agreement may be executed in counterparts, which together shall form one original.

**XII. BINDING EFFECT**

This Agreement shall extend to and bind the successors and assigns of Lotus Realty and the City and shall run with the land.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as indicated below.

LOTUS REALTY SERVICES, INC.

By: Bradley C. Johnson

Its: President

STATE OF MINNESOTA    )  
                                      ) SS  
COUNTY OF ST. LOUIS    )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of October, 2020, by Bradley C. Johnson, the President of Lotus Realty Services, Inc., a Minnesota corporation.



Danielle Erjavec  
Notary Public

CITY OF DULUTH:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

STATE OF MINNESOTA    )  
                                      ) SS  
COUNTY OF ST. LOUIS    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
by Emily Larson and Chelsea Helmer, Mayor and City Clerk, respectively, of the City of Duluth,  
a municipal corporation organized and existing under the laws of the State of Minnesota.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:  
Office of the City Attorney  
City of Duluth  
411 West 1st Street, Room 440  
Duluth, MN 55802

# **EXHIBIT A**

Harbor Light- Pond #4 Permanent Stormwater Management  
June 17, 2019

LHB, INC.  
Project No. 150732

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## **STORMWATER OPERATIONS AND MAINTENANCE PLAN**

This Operations and Maintenance Plan is for stormwater treatment best management practices (BMPs) located at the Harbor Light Development in Duluth, Minnesota. The Owner is responsible for maintenance and shall inspect stormwater BMPs on a regular basis as outlined in the plan. Refer to the attached Inspection and Maintenance Log.

### **BIOFILTRATION BASIN**

The performance of biofiltration basins and underdrains for removing sediment and other pollutants depends on routine maintenance. This retains the storage available in the basins in order to capture the sediment quantities they were designed for.

- Debris shall be removed from basins quarterly.
- Sediment shall be managed on site to the maximum extent practicable.
- Mow @ 8" height to control weeds twice per year, if applicable.
- Clean out subdrain pipes (e.g., by jetting) once every two years or as needed.
- Excavate bottom sediment every 6 months or when one-third full of sediment.
- Collect sediment resulting from cleaning operations and dewater and dispose of in accordance with local and state regulations. Test sediment that has a heavy oil sheen and/or odors to determine the appropriate disposal.
- Repair/seal cracks in structures. Replace when repair is insufficient.
- Refer to attached Inspection and Maintenance Activities for Infiltration/Filtration Basins.
- Keep an inspection and maintenance log.

### Inspection Activities for Infiltration / Filtration Basins

Inspection Activity	Recommended Inspection Frequency	Actions
Trash and debris in pretreatment, basin area, inlet and outlet/overflow	Weekly and following large storm events	Notify maintenance staff of need for site clean-up
Erosion in pretreatment, basin area, inlet and outlet/overflow	Monthly and following large storm events	Notify maintenance staff of need for erosion repairs
Sediment accumulation in pretreatment, basin area, inlet and outlet/overflow	Monthly and following large storm events	Notify maintenance staff of need to remove sediment when drainage capabilities are reduced
Vegetation and mulch	Annual inspection for dead or strained plants and void areas; Monthly inspections during growing season for weeds and vegetation damage	Notify maintenance staff of need for vegetation maintenance
Inlet and outlet/overflow structural components (if applicable)	As part of all inspection visits	Notify maintenance staff of any observed structural damage
Dewatering	Annually and following large storm events	Notify maintenance staff if there is standing water at the surface or in underdrain systems 48-72 hours after storm event

### Maintenance Activities for Infiltration / Filtration Basins

Maintenance Activity	Recommended Maintenance Frequency	Actions
Trash and debris removal from pretreatment, inlets, basin area, and outlets	Weekly as per inspection or as needed	Remove sediment and debris
Erosion repair	As needed	
Sediment removal	As required when infiltration capacity is reduced	
Vegetation management	As needed based upon inspection; Irrigate as needed; Cutback grass and prune overgrowth 1-2 times per year	Follow appropriate vegetation management guidelines; Replant per original planting plan; Remove weeds and plant debris
Mulching	Replace all mulch every 2-3 years and as needed to cover eroded or void areas	
Dewatering	As needed based upon failure to drain within 48-72 hours of a storm event	Sediment removal; surface raking core/disc aeration; etc.
Soil Replacement	When infiltration capacity is reduced	Remove clogged layer of soil from basin area with appropriate equipment and replace with new material
Repair structural components	As needed per inspection	Dependent on type of damage; Repair structure per manufacturer's recommendations