

**STORMWATER DRAINAGE AND MAINTENANCE
AGREEMENT**

between

CITY OF SALEM,

STATE OF OREGON,

acting by and through the Department of Administrative Services,

and

MILL CREEK CORPORATE CENTER OWNERS ASSOCIATION, INC.

THIS AGREEMENT (this "Agreement") is entered into the 31st day of December, 2007, by and between the CITY OF SALEM (the "City"), THE STATE OF OREGON, acting by and through the Department of Administrative Services (the "State") and the MILL CREEK CORPORATE CENTER OWNERS ASSOCIATION, INC. (the "Association").

RECITALS

A. The City, State and the Association are subject to the Declaration of Covenants, Conditions and Restrictions for Phase IA, IC and Phase II of Mill Creek Corporate Center (the "Property"), effective as of December 6, 2007 (the "Declaration"), which the City has an interest in by virtue of its oversight role as a member of the Mill Creek Implementation Committee and based on the role of the Urban Renewal Agency of the City of Salem.

B. Section 5 of the Declaration provides that the Association is responsible for the inspection of the bioswales (singly a "Bioswale" and collectively "Bioswales") located on the Property and, under certain circumstances, the maintenance, repair and replacement of the Bioswales on the Property.

C. The approximate locations of the Bioswales and points of discharge of stormwater into the wetlands on the Property are set forth in the Mill Creek Industrial Park – Stormwater Management Plan, Otak Project No. 12155, dated October 16, 2006, which is attached hereto as Attachment A (the "Stormwater Management Plan"). All parties to this Agreement acknowledge and agree that the approximate locations of the Bioswales as depicted in the Stormwater Management Plan are, by necessity, conceptual in nature and that the actual locations of the Bioswales is dependent in part on how the Property is developed. That being the case, the parties agree that the actual locations of the Bioswales will be determined, over a period of time, as the Property and the wetlands are developed. When the construction of a Bioswale has been completed (e.g., constructed and planted so that they are functioning as designed), the Parties shall modify Attachment A hereto with "as built" drawings showing the precise locations of the Bioswale. Upon such modification to the Stormwater Management Plan, the term "Bioswales" shall refer to the bioswales shown on the "as built" drawings.

D. Because the Bioswales will discharge into wetlands constructed, maintained, and initially owned by the State, and will ultimately discharge into Mill Creek, a waterway over which the City has regulatory authority, the State and the City have an interest in ensuring that the Bioswales are constructed and maintained in a manner that, to the extent possible, does not cause the degradation to the water quality of the wetlands and Mill Creek.

E. The purpose of this Agreement, therefore, is to set forth the specific obligations of the Association with respect to the Bioswales.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 Maintenance Obligations

The Association is responsible for the inspection of the Bioswales. Additionally, if the owners of the portion of the Property over which a Bioswale is located (an "Owner") fails to maintain, repair or replace a Bioswale, as required, the Association shall take all actions necessary to ensure that such Bioswale complies with the maintenance provisions set forth in the Mill Creek Industrial Park Operation and Maintenance of Stormwater Facilities dated December 2006, attached hereto as Attachment B (the "Maintenance Obligations").

SECTION 2 Record Keeping

The Association shall maintain a log of inspections, and such log shall include a written description of all maintenance, repair and replacement activities performed by the Association (the "Maintenance Log"). At the request of the City or the State, the City or the State shall have the right to inspect the Maintenance Log at a time and place reasonably acceptable to the Parties. Copies of the Maintenance Log shall be maintained for a minimum of three years.

SECTION 3 Right of Access for Inspection

Upon reasonable written notice to an Owner, the City, the State, the Association, or any combination thereof, shall have the right to inspect the Bioswales and other on-site stormwater treatment facilities to ensure that they are being maintained consistent with the Maintenance Obligations. The written notice of inspection shall include the date and approximate time that the City, State, or Association will make such inspection. An Owner, or a representative of the Owner, shall have the right to be present during any such inspection. In the case of an emergency, such notice shall be given to an Owner in any manner reasonably likely to be received by the Owner, and if such notice is not reasonably possible, as soon as practicable after the inspection.

SECTION 4 Failure to Maintain Bioswales

Should the City and/or the State reasonably determine that the Bioswales have not been maintained, repaired or replaced in compliance with the Maintenance Obligations, or the Association has not timely performed any other obligation set forth herein, then the City and/or the State shall notify the Association in writing of such deficiencies and shall provide the Association with a period of twenty (20) days in which to commence the correction of the deficiency. Should the Association or the Owner fail to commence the correction of such deficiency within such time period, or provide the City and/or the State, depending on which entity(ies) notified the Association of deficiencies, with reasonable assurances that such deficiencies will be promptly initiated, then such failure will be deemed an event of default under this Agreement. Notwithstanding the above, if the City and/or the State reasonably determines that the failure to maintain the Bioswales constitutes (i) an emergency, or (ii) that such failure will negatively impact the wetlands or connected waterways, or (iii) that such failure will impair the ability of the City to comply with any associated permits, including, but not limited to, its MS4 permit, the City and/or the State may take immediate remedial action if the Association does not do so within 24 hours of receiving notice from the City and/or the State, which notice

may be made in any reasonable manner. So long as the Association and/or an Owner is diligently and in good faith taking any and all appropriate action to correct any deficiencies with respect to the upkeep, maintenance and repair of the Bioswales, the Association shall not be in default under this Agreement.

SECTION 5 Remedies upon Default

Should an event of default occur under this Agreement, the City or the State shall have the following rights and remedies, together with any additional remedy available to the City or the State, including the right of specific performance and injunctive relief:

5.1 The City or the State may undertake any action it deems reasonably necessary to remedy the event of default and may then charge the Association for any and all reasonable costs incurred by the City or the State in conjunction with such remedy. The City and the State shall have the right to access the Bioswales to perform their rights under this Section upon reasonable notice to the Association and the Owner; or

5.2 The City or the State may seek damages or injunctive relief or exercise any other legal or equitable remedy available to the City or the State.

5.3 Notwithstanding the foregoing, no party to this Agreement, nor any Owner, shall be liable for punitive damages.

SECTION 6 Other On-Site Stormwater Treatment Facilities

This Agreement shall not be construed to require that all portions of the Property be developed with Bioswales for the treatment of stormwater relating to the portion of the Property being developed. An Owner shall have the right to use other on-site stormwater treatment methods and facilities with respect to the development of portions of the Property as contemplated in the Stormwater Management Plan where circumstances, such as the topography of the portion of the Property involved, make the use of Bioswales impracticable. Any such alternative on-site stormwater treatment facilities shall be designed, constructed, operated and maintained in accordance with all applicable regulations and standards, and shall be subject to the prior approval of the City and the State.

SECTION 7 Miscellaneous Provisions

7.1 All obligations of the Owner, as defined in the applicable Mill Creek Corporate Center Covenants, Conditions, and Restrictions ("CCRs"), to comply with the requirements of this Agreement and with the CCRs shall automatically pass to a subsequent owner upon the sale or other transfer of the covered property, except that the sale or other transfer shall not relieve the prior Owner of any liability or other responsibility of the prior Owner incurred during or arising out of that prior ownership.

7.2 The Parties retain all remedies available at law or equity to enforce this Agreement, including claims for damages resulting from any breach of this Agreement and the equitable right of specific performance.

7.3 Except as expressly provided otherwise herein, any notice herein required or permitted to be given, shall be given in writing and may be given by hand delivery or by United States mail, first class postage prepaid, or by overnight mail, addressed to the parties as follows:

TO THE CITY:

City of Salem, Urban Development Dept.
350 Commercial Street NE
Salem, OR 97301-3412
Phone: (503) 588-6178
Fax: (503) 589-2054

TO THE STATE:

Oregon Department of Administrative Services-
Facilities Division
1225 Ferry St. SE U100
Salem, OR 97301-4281
Phone: (503) 378-2865
Fax: (503) 373-7210

TO THE ASSOCIATION:

Mill Creek Corporate Center Owners' Association
c/o Oregon Department of Administrative
Services-Facilities Division
1225 Ferry St. SE U100
Salem, OR 97301-4281
Phone: (503) 378-2865
Fax: (503) 373-7210

TO AN OWNER:

The address to which real property tax statements are sent, as such address is maintained in the Office of the County Assessor for the County of Marion, Oregon

Notice shall be deemed given when actually received or three (3) days after mailing as set forth above. Any party may change its address for notice purposes, such notice to be given pursuant to this Section.

7.4 Each of the Parties and signatories to this Agreement represents and warrants that each has the full right, power, legal capacity and authority to enter into and perform the Parties' respective obligations, that the Owner is the record owner of the Property, and that no approval or consents of any other persons are necessary.

7.5 Nothing in this Agreement will be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained and any present or future statute, law, ordinance, or regulation contrary, then the latter prevails. Any affected provision of this Agreement will be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

7.6 Each Party will execute and deliver any additional papers, documents, or other assurances, and do any act and thing reasonably necessary to perform their obligations and carry out the intent of the Parties. The Parties will execute and deliver all supplemental agreements and other instruments and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between the Parties, and as against third parties. This Agreement requires the Parties to agree upon various items at different times in the future. The Parties will cooperate in good faith, and will deal fairly with one another, in an attempt to fulfill the expectations of the Parties as reflected in this Agreement and to facilitate the full performance of this Agreement.

7.7 If a suit, action, arbitration or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy code, is instituted, or the services of an attorney are retained to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party is entitled to recover from the losing party its attorney fees, paralegal fees, accountant fees, and other expert fees, and all other fees, costs and expenses actually incurred and reasonably necessary. The amount of fees will be determined by the judge or arbitrator and include fees and expenses incurred on any appeal or review.

7.8 Failure of any Party at any time to require performance of any provision of this Agreement does not limit the Party's right to enforce the provision. No waiver of any breach of any provision is a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provisions.

7.9 Time is of the essence in the performance of the duties and obligations of this Agreement.

7.10 This Agreement may be executed in several counterparts, each of which is an original, but all of which constitute the same Agreement.

7.11 In order to expedite the transaction contemplated herein, telecopied and PDF signatures may be used in place of original signatures on this Agreement or any document delivered pursuant hereto. The parties intend to be bound by the signatures on the telecopied document or such PDF copies, and are aware that the other parties will rely on the telecopied or PDF signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on such telecopied or PDF signature.

7.12 The captions and headings of this Agreement are for convenience only and will not be construed or referred to in resolving questions of interpretation or construction. The recitals at the beginning of this Agreement are contractual and are considered or referred to in resolving questions of interpretation or construction.

7.13 No amendment, change, or modification of this Agreement is valid, unless in writing and signed by the Parties.

7.14 Nothing in this Agreement shall be construed as a release of the City's or the State's authority to regulate stormwater in accordance with city, state, and federal laws, and the doctrine of home rule, including, but not limited to the inherent right to pass ordinances, rules and regulations, regulating stormwater.

7.15 All of the terms and provisions inure to the benefit of and are binding upon the Parties and their respective heirs, legal representatives, successors and assigns.

7.16 Except as provided herein, unless sooner terminated or otherwise amended by mutual agreement of the Parties, this Agreement shall terminate upon the expiration of the Declaration. The State's rights under this agreement shall terminate immediately upon certification of the wetlands by the Army Corps of Engineers.

IN WITNESS WHEREOF, the undersigned City, the State, and the Association have executed this Agreement, effective as of the date first above written.

[SIGNATURES ARE ON FOLLOWING PAGE]

THE CITY OF SALEM, an Oregon
municipal corporation

By: Linda Norris
Name: LINDA NORRIS
Title: Interim City Manager

THE STATE OF OREGON,
acting by and through the
Department of Corrections

By: [Signature]
Name: Robin E. Harpster
Title: Administrator

MILL CREEK CORPORATE CENTER
OWNERS ASSOCIATION, INC.
an Oregon not-for-profit corporation

By: [Signature]
Name: Robin E. Harpster
Title: Officer