

**SECTION G**  
**STORMWATER MAINTENANCE AGREEMENT**

AFTER RECORDING RETURN TO:

The City of Gig Harbor  
Attn: City Clerk  
3510 Grandview St.  
Gig Harbor, WA 98335

**WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM**

**Document Title(s) (or transactions contained therein):**

Agreement to Maintain Stormwater Facilities and to Implement a Pollution Source Control Plan

**Grantor(s) (Last name first, then first name and initials)**

\_\_\_\_\_

**Grantee(s) (Last name first, then first name and initials)**

City of Gig Harbor

**Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)**

\_\_\_\_\_

**Assessor's Property Tax Parcel or Account Number:** \_\_\_\_\_

**Reference Number(s) of Documents assigned or released:** \_\_\_\_\_

## AGREEMENT TO MAINTAIN STORMWATER FACILITIES AND TO IMPLEMENT A POLLUTION SOURCE CONTROL PLAN

THIS AGREEMENT TO MAINTAIN STORMWATER FACILITIES AND TO IMPLEMENT A POLLUTION SOURCE CONTROL PLAN is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_, (hereinafter the "Owner").

### R E C I T A L S

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as \_\_\_\_\_ located at \_\_\_\_\_ (hereinafter the "Property") and legally described in **Exhibit A**, which is attached hereto and incorporated herein by this reference; and

WHEREAS, in connection with the Owner's proposed development of the Property, the City has required and the Owner has agreed to construct stormwater facilities, a drawing of which is attached hereto as **Exhibit B** and incorporated herein by this reference, and to implement a pollution source control plan. The stormwater facilities and pollution source control plan were prepared by the engineering firm of \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, for the Owner's Property; and

WHEREAS, the upkeep and maintenance of stormwater facilities and the implementation of pollution source control best management practices ("BMPs") is essential to the protection of water resources. All property owners are expected to conduct business in a manner that promotes environmental protection. This Agreement contains specific provisions with respect to maintenance of stormwater facilities and use of pollution source control BMPs; and

WHEREAS, Owner has constructed improvements, including but not limited to, buildings, pavement, and stormwater facilities on the Property, and in order to further the goals of the City to ensure the protection and enhancement of water resources, the City and Owner hereby enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City hereby agree as follows:

1. **MAINTENANCE.** Grantor shall perform the following:

1.1 Implement the stormwater facility maintenance program included herein as **Exhibit C**.

1.2 Implement the pollution source control program included herein as **Exhibit D**.

1.3 Execute the following periodic major maintenance on the subdivision's stormwater facilities: sediment removal from ponds, managing vegetation in wet ponds, resetting orifice sizes and elevations if damaged, and adding baffles unless the facilities have been dedicated to and accepted by the City.

1.4 Maintain a record (in the form of a log book) of steps taken to implement the programs referenced in (1) and (2) above. The log book shall be available for inspection by City staff at \_\_\_\_\_, during normal business hours. The log book shall catalog the action taken, who took it, when it was done, how it was done, and any problems encountered or follow-on actions recommended. Maintenance items ("problems") listed in **Exhibit C** shall be inspected as specified in the attached instructions or more often if necessary. Owner is encouraged to photocopy the individual checklists in **Exhibit C** and use them to complete its inspections. These completed checklists would then, in combination, comprise the log book.

1.5 Submit an annual report to the City regarding implementation of the programs referenced in 1.1 and 1.2 above. The report should be submitted to Gig Harbor Public Works Department, 3510 Grandview Street, Gig Harbor, WA 98335. The report must be submitted on or before May 15 of each calendar year and shall contain, at a minimum, the following:

(a) Name, address, and telephone number of the businesses, the persons, or the firms responsible for plan implementation, and the person completing the report.

(b) Time period covered by the report.

(c) A chronological summary of activities conducted to implement the programs referenced in section 1.1 and 1.2 above. A photocopy of the applicable sections of the log book, with any additional explanation needed, shall normally suffice. For any activities conducted by paid parties, include a copy of the invoices for services.

(d) An outline of planned activities for the next year.

1.6 Prevent any unauthorized modifications to the drainage system and prevent it from being dismantled, revised, altered or removed except as necessary for

maintenance, repair or replacement. Any such actions will be covered under section 1.5 above.

1.7 The Owner is hereby required to obtain written approval from the City Engineer prior to filling, piping, cutting or removing vegetation (except in routine landscape maintenance) in open vegetated drainage facilities (such as swales, channels, ditches, ponds, etc.), or performing any alterations or modifications to the drainage system.

**2. REMEDIES.** If the facilities have not been dedicated to and accepted by the City, then:

2.1 If the City determines that maintenance, repair or retrofit work is required to be done to the stormwater facilities located in the subdivision, the City shall give notice of the specific maintenance and/or repair required. The City shall set a reasonable time in which such work is to be completed by the persons who were given notice. If the above required maintenance, repair and/or retrofit is not completed within the time set by the City, the City will assess financial penalties (chapter 12.17 of the Gig Harbor Municipal Code) and/or initiate enforcement proceedings.

2.2 If at any time the City determines that the existing system creates any imminent threat to public health, welfare or water quality, the City may take necessary measures to remedy the threat. No notice to Owner shall be required under such circumstances. All other responsibilities under this Agreement remain in effect.

**3. ACCESS AND FAILURE TO MAINTAIN.**

3.1 The Owner grants unrestricted authority to the City for access to any and all stormwater system features for the purpose of routine inspections and/or performing maintenance, repair and/or retrofit as may become necessary under section 2.2.

3.2 The Owner shall assume all responsibility for the cost of any maintenance and for repairs to the drainage system. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City under section 2. Delinquent payments will require payment of interest by the Owner at the current legal rate as liquidated damages.

**4. NOTICES.** All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt or three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

To City:

To Owner:

City Engineer  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. SUCCESSORS AND ASSIGNS.** This Agreement is intended to protect the value and desirability of the real property described above and to benefit all the citizens of the City, and is intended to be and shall constitute a covenant running with the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

**6. SEVERABILITY.** Any invalidity, in whole or in part, of any provision of this Maintenance Agreement and Covenant shall not affect the validity of any other provision.

**7. WAIVER.** No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

**8. GOVERNING LAW, DISPUTES.** Jurisdiction of any dispute over this Maintenance Agreement and Covenant shall be solely with Pierce County Superior Court, Pierce County, Washington. This Maintenance Agreement and Covenant shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Maintenance Agreement and Covenant shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

THE CITY OF GIG HARBOR

OWNER

By: \_\_\_\_\_  
City Engineer

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Print Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

Printed: \_\_\_\_\_  
Notary Public in and for Washington  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF P I E R C E )

I certify that I know or have satisfactory evidence that STEPHEN T. MISIURAK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Engineer of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

Printed: \_\_\_\_\_  
Notary Public in and for Washington  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**



**EXHIBIT B**

**STORMWATER FACILITIES DRAWING**

**EXHIBIT C**

**STORMWATER FACILITY MAINTENANCE PROGRAM**

A complete copy of the Stormwater Facility Maintenance Program is on file with the office of the Gig Harbor City Clerk.

---

**EXHIBIT D**

**POLLUTION SOURCE CONTROL PLAN**

A complete copy of the Pollution Source Control Plan is on file with the office of the Gig Harbor City Clerk.