

MAIL RECORDED COPY TO:
St. George City
175 East 200 North
St. George, UT 84770

Tax ID: SG--5-3-35-143; SG-5-3-26-321



CITY OF ST. GEORGE STORMWATER MANAGEMENT MAINTENANCE AGREEMENT WITH DESERT CANYONS DEVELOPMENT, INC FOR DESERT BLUFF PHASE 2 & 3

This Stormwater Management Maintenance Agreement (“Agreement”) is made and entered into this 17 day of May, 2018, by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (“City”), and Desert Canyons Development, Inc., with offices at 1472 East 3950 South, St. George, Utah 84770 (“Owner”).

RECITALS

WHEREAS, City is authorized and required to regulate and control the disposition of storm and surface waters within its boundaries, as set forth in the City of St. George Code, Stormwater Management, Title 9 Chapter 14, as amended (“Ordinance”), adopted pursuant to the Utah Water Quality Act, and pursuant to City’s MS4 Permit which requires stormwater runoff to be managed by the use of Stormwater Facilities and best management practices; and

WHEREAS, Owner owns real property located in the City of St. George, Washington County, Utah and more particularly described in Exhibit A and incorporated herein as part of this Agreement (“Property”); and

WHEREAS, Owner recognizes that post construction storm water facilities (“Facilities”) shall be installed or were installed pursuant to the approved development plans and specifications for the Property and must be maintained; and

WHEREAS, City and Owner have determined that it is in the best interest of the health, safety and welfare of the citizens of the City that the Facilities be constructed and maintained on the property and that Owner must maintain those Facilities.

AGREEMENT

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

1. **RECITALS.** The Recitals above are hereby incorporated as part of this Agreement and are binding on the parties.
2. **FACILITIES.** The Facilities shall be or have been constructed by Owner in accordance with the approved plans and specifications for the development. Owner shall, at its sole cost and expense, operate and maintain the Facilities in good working condition and in

accordance with the Schedule of Long Term Maintenance Activities agreed hereto and attached as Exhibit B. Owner shall report annually to the City on the City's approved forms or City's online reporting system detailing compliance with the requirements of this Agreement.

3. **ACCESS AND INSPECTIONS.** Owner hereby grants permission to City, its authorized agents and employees, to enter upon the Property to inspect the Facilities whenever City deems necessary. City shall not unreasonably interfere with the business operations on Property. Except in case of an emergency, City shall give at least a 24 hour notice to Owner prior to entry. Notice may be given by posting the Property. Facilities shall be maintained in a manner that makes them available for inspection and maintenance. All inspections shall be conducted in a reasonable manner and at reasonable times. The purpose of the inspection shall be to determine and insure that the Facilities are adequately maintained, are continuing to perform in an adequate manner, and are in compliance with all City requirements.
4. **FAILURE TO MAINTAIN.** In the event Owner fails to maintain the Facilities in good working order and in a manner that makes them available for inspection, City shall give written notice to Owner to cure such defects or deficiencies with a reasonable time frame for compliance. If Owner fails to comply within the timeframe, City may enter the Property to cure the defects.
5. **RIGHT TO CURE DEFECTS.** Owner hereby authorizes City, its authorized agents and employees, to enter upon the Property to cure the defects if Owner has failed to cure them within the reasonable time frame given for compliance. In case of an emergency, City may enter the Property immediately, without notice, and make the repairs. Owner is solely liable for maintenance of the Facilities. It is agreed that City shall have the right, but not the obligation, to elect to perform any or all of the maintenance activities if, in the City's sole judgment, Owner has failed to perform the same. City makes no representation that it intends to or will perform any of the maintenance activities and any election by City to perform any of the maintenance activities, shall in no way relieve Owner of its continuing maintenance obligations under this Agreement. If City elects to perform any of the maintenance activities, City shall be deemed to perform such work without warranty or representation as to the safety or effectiveness of such work, the work shall be deemed to be accepted by Owner "as is", and shall be covered by Owner's indemnity provisions below. If City performs any of the necessary maintenance activities Owner shall pay all of City's reasonable costs incurred in performing those necessary maintenance activities. Owner's obligation to pay City's costs of performing necessary maintenance activities is a continuing obligation.
6. **COSTS.** Owner shall reimburse City within thirty (30) days of receipt of an invoice for the costs incurred by City in performing necessary maintenance activities. If not paid within the prescribed time period, City shall have the right to file a lien against the Property in the amount of such reasonable costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to City as a result of Owner's failure to maintain the Facilities.

7. **NO ADDITIONAL LIABILITY**. It is the intent of this Agreement to insure the proper maintenance of the Facilities by the Owner. 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.
8. **EXHIBITS**. All exhibits/figures attached hereto are incorporated as part of this Agreement.
9. **AGREEMENT TO RUN WITH THE LAND**. This Agreement shall be recorded at the Recorder's Office of Washington County and shall constitute a covenant running with the land and shall be binding on Owner only for such time as Owner holds title to the Property and shall run with the land and pass to subsequent owners while they own the Property.
10. **COMPLIANCE WITH APPLICABLE LAWS**. Owner expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Owner from any obligation to comply with all applicable requirements of City, state and federal law including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of City, except as modified, waived or declared in this Agreement.
11. **INTEGRATION**. This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto. In the event of a conflict between this Agreement and any other documents with Owner, this Agreement shall govern.
12. **RESERVED LEGISLATIVE POWERS**. Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land use plans, policies, ordinances and regulations after the date of this Agreement. This Agreement is not intended to and does not bind the St. George City Council in the independent exercise of its legislative discretion with respect to such zoning regulations.
13. **INDEMNITY AND LIABILITY**. City shall not be liable for Owner's stormwater or the Facilities. Owner shall indemnify, defend and hold harmless City, employees, elected officials, officers, and agents to the extent each of them is acting in their official capacity on behalf of the City (collectively "City") against all claims, demands, causes or action, suits or judgments, including but not limited to all claims, demands, causes of action, suits or judgments for death or injuries to persons or for loss of or damage to property, arising out of Owner's breach of this Agreement. Notwithstanding, this indemnification obligation shall not include an indemnification of the City for claims, demands, causes or action, liabilities, damages, suits or judgments arising out of the City's negligence. In the event of any such claims made or suits filed against City, City shall give Owner prompt written notice. Owner agrees to defend against any such claims brought or actions filed against City, whether such claims or actions are rightfully or wrongfully brought or filed. Owner agrees that City may

employ attorneys of its own selection to appear and defend the claim or action on its own behalf at the expense of Owner. Said attorney fees shall be reasonable and subject to review by Owner. Owner shall be responsible for all reasonable costs associated with any claim, demand, action, suit or judgment including reasonable attorney fees for which they indemnify or defend City. If any judgment or claims are entered against City, its authorized agents or employees, Owner shall pay for all reasonable costs and expenses in connection herewith.

14. **COMMON INTEREST DEVELOPMENTS.** If the Property is developed as a Common Interest Development which is defined as membership in or ownership of an "Association" which is responsible for some or all of the commonly owned or controlled area, then the following provisions shall apply during such time as the Property is encumbered by a "Declaration", and the Common Area is managed and controlled by the Association:
- (a) The Association, through its Board of Directors, shall assume full responsibility to perform the maintenance activities required pursuant to this Agreement, and shall undertake all actions and efforts necessary to accomplish the maintenance activities, including but not limited to, levying regular or special assessments against each member of the Association sufficient to provide funding for the maintenance activities, conducting a vote of the membership related to such assessments if required.
 - (b) No provision of the Declaration, nor any other governing document of the Association or grant of authority to its members, shall grant or recognize a right of any member or other person to alter, improve, maintain or repair any of the Property in any manner which would impair the functioning of the Facilities. In the event of any conflict between the terms of this Agreement and the Declaration or other Association governing documents, the provisions of this Agreement shall prevail.
15. **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this Agreement is intended to, or shall be deemed to be a waiver of the City's governmental immunity as set forth in applicable statutory law and case law except as otherwise set forth herein.
16. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that jurisdiction and venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court, Washington County, State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.
17. **LEGAL FEES.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney's fees incurred for appeals and bankruptcy proceedings. If either party commences legal action to interpret any term of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action.

18. **NOTICES.** All notices required herein, and subsequent correspondence in connection with this Agreement shall be mailed to the following:

City of St. George
Attn: City Attorney
175 East 200 North
St. George, Utah, 84770

Desert Canyons Development, Inc.
Attn: Curt Gordon
1472 East 3950 South
St. George, UT, 84770

Such notices shall be deemed delivered following the mailing of such notices in the United States mail. Adequate notice shall be deemed given at the addresses set forth herein unless written notice is given by either party of a change of address.

19. **SUCCESSORS AND ASSIGNS.** Owner shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement, including to any type of owner's association, without assigning the rights and the responsibilities under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
20. **NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the parties. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
21. **SEVERABILITY.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions shall not be affected, and shall remain in full force and effect.
22. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this Agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this Agreement.
23. **SURVIVAL.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
24. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
25. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
26. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and

represent that they are duly authorized to do so in the capacity stated.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY: CITY OF ST. GEORGE

OWNER: Desert Canyons Development, Inc.

Jonathan T. Pike
Jonathan T. Pike, Mayor



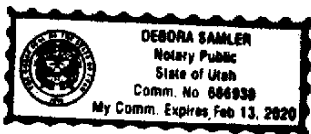
Curt Gordon
Curt Gordon, President

ATTESTED:
Christina Fernandez
Christina Fernandez, City Recorder

Approved as to form:
Victoria Hales 6/15/18
Victoria Hales, Assistant City Attorney

STATE OF UTAH)
 SS.
County of Washington)

On the 17 day of May 2018 before me, Debra Samler, a notary public, personally appeared Curt Gordon proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he/she executed the same voluntarily for its stated purpose.



Debra Samler
Notary Public

STORMWATER MANAGEMENT MAINTENANCE AGREEMENT

EXHIBIT A

Legal Description(s)

(Parcel SG ~~4-3-35-149~~;
SG-5-3-26-321)

LEGAL DESCRIPTION – DESERT BLUFF PHASE 2 BOUNDARY DESCRIPTION

BEGINNING AT A POINT NORTH 01°10'49" EAST ALONG THE SECTION LINE, A DISTANCE OF 2287.630 FEET AND NORTH 88°49'11" WEST 2694.652 FEET FROM THE EAST ONE-QUARTER CORNER OF SECTION 35, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN, (BASIS OF BEARING BEING NORTH 01°10'49" EAST ALONG THE EASTERLY SECTION LINE BETWEEN THE EAST ONE-QUARTER CORNER AND THE NORTHEAST CORNER OF SAID SECTION 35), AND RUNNING THENCE NORTH 27°22'57" WEST 20.082 FEET; THENCE NORTH 20°52'39" WEST 68.402 FEET; THENCE NORTH 14°21'40" WEST 40.057 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 11°09'52" WEST); THENCE ALONG THE ARC OF A 432.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 09°42'47", A DISTANCE OF 73.319 FEET; THENCE NORTH 69°07'21" EAST 195.026 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 282.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 16°51'50", A DISTANCE OF 83.149 FEET; THENCE NORTH 52°15'31" EAST 90.289 FEET; THENCE SOUTH 31°51'34" EAST 90.719 FEET; THENCE SOUTH 35°30'19" EAST 101.847 FEET; THENCE SOUTH 52°13'58" EAST 571.609 FEET; THENCE SOUTH 32°09'09" EAST 126.232 FEET; THENCE SOUTH 31°35'07" WEST 174.774 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 31°35'07" EAST); THENCE ALONG THE ARC OF A 650.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 01°42'48", A DISTANCE OF 19.436 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 650.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 45°55'04", A DISTANCE OF 520.919 FEET TO THE SOUTHEASTERLY CORNER OF THE DESERT CANYONS PARKWAY ROADWAY DEED OF DEDICATION, DOC NO. 20170047377, AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID DEDICATION BOUNDARY AND LINE EXTENDED THE FOLLOWING (2) TWO COURSES: (1) NORTH 12°37'08" WEST 33.000 FEET; AND (2) NORTH 20°52'38" WEST 434.611 FEET; THENCE SOUTH 69°08'05" WEST 224.618 FEET TO THE POINT OF BEGINNING.

DESERT BLUFF PHASE 3 BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY OF THE DESERT CREST – PHASE 5 SUBDIVISION AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER’S OFFICE, SAID POINT BEING NORTH 01°10’49” EAST ALONG THE SECTION LINE, A DISTANCE OF 2448.724 FEET AND NORTH 88°49’11” WEST 3108.775 FEET FROM THE EAST ONE-QUARTER CORNER OF SECTION 35, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN, (BASIS OF BEARING BEING NORTH 01°10’49” EAST ALONG THE EASTERLY SECTION LINE BETWEEN THE EAST ONE-QUARTER CORNER AND THE NORTHEAST CORNER OF SAID SECTION 35), AND RUNNING THENCE ALONG SAID SUBDIVISION BOUNDARY THE FOLLOWING (4) FOUR COURSES: (1) NORTH 04°02’31” WEST 204.952 FEET; (2) NORTH 36°51’42” WEST 103.052 FEET; (3) NORTH 64°06’07” WEST 112.089 FEET; AND (4) SOUTH 74°49’12” WEST 91.085 FEET; THENCE NORTH 04°10’34” WEST 212.161 FEET; THENCE NORTH 85°49’26” EAST 746.023 FEET; THENCE SOUTH 24°34’54” EAST 212.995 FEET; THENCE SOUTH 42°38’49” EAST 259.875 FEET; THENCE SOUTH 31°51’34” EAST 66.629 FEET; THENCE SOUTH 52°15’31” WEST 90.289 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 282.500 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 16°51’50”, A DISTANCE OF 83.149 FEET; THENCE SOUTH 69°07’21” WEST 195.026 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 432.500 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 34°49’04”, A DISTANCE OF 262.823 FEET; THENCE NORTH 76°03’35” WEST 184.672 FEET TO THE POINT OF BEGINNING.

STORMWATER MANAGEMENT MAINTENANCE AGREEMENT

Exhibit B

Schedule of Long Term Maintenance Activities
City of St. George, Utah

Activity	Frequency	Notes
Inspection	Annually	Owner shall report annually to the City on the City's approved forms or City's online reporting system at www.sgcity detailing compliance with the requirements of this Agreement.
Mowing and maintenance of vegetation	Variable, depending on vegetation and desired aesthetics	Landscaping and vegetation should be cared for throughout the year to ensure that proper sediment removal and infiltration is maintained. All trimmings shall be removed from the Property.
Remove trash and debris	As needed or following each storm	Trash and debris shall be removed from the Property regularly to ensure that the Facilities function properly and operate effectively. Trash often collects at inlet and outlet structures. These need to be cleaned regularly.
Inspect and maintain inlet and outlet structures	Annually	The inlet and outlet structures should be inspected for damage and proper operation.
Sediment removal	Variable (2-5 years is typical)	The removal of sediment is necessary if the Facilities begin to lose capacity or effectiveness. The Owner will remove and dispose of all accumulated sediments which shall be disposed of properly, offsite.