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Skagit County Auditor

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COVER SHEET FOR RECORDING

Return To: City Of Mount Vernon
Community and Economic Development
P.O. Box 809
Mount Vernon, WA 98273

DOCUMENT TITLE: Stormwater Facility Service Agreement

GRANTORS: City of Mount Vernon

GRANTEES: Brad Watson

ABBREVIATED LEGAL DESCRIPTION: located within a portion of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ Section 18, Township 34 North, Range 04 East

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER(S): P26254

When recorded, please return to:

City of Mount Vernon
Community & Economic Development Department
P.O. Box 809
Mount Vernon, WA 98273

STORMWATER FACILITY SERVICE AGREEMENT

THIS AGREEMENT is made between the City of Mount Vernon, a municipal corporation, hereinafter referred to as "City", and Brad Watson the undersigned Owners(s), hereinafter referred to as "Owner".

SECTION 1. DEFINITIONS.

Unless otherwise specifically stated in this Agreement, the following terms shall have the following meanings:

- 1.1 The term "property" shall mean the property as described and set forth in "Exhibit A" which is attached to this Agreement and incorporated herein by reference. The term shall also include but not be limited to any individual lots or parcels that exist or are created as a result of subdivisions of the property.
- 1.2 The term "Owner" and "Owners" shall mean any person, corporation, partnership, entity, being, trust, or agency, that currently has title or possession, or obtains title or ownership in the future, to the property described in "Exhibit A" of this Agreement. The term shall include but not be limited to any person, corporation, partnership, entity, being, trust, or agency who purchases or otherwise obtains legal possession or title to any legal lot of record, parcel or lots created as a result of subdivision of the property.
- 1.3 The terms "Regional Detention Pond" and "City Stormwater Facility" shall mean the City's regional stormwater detention pond located North of State Route 538, west of Freeway Drive, within a portion of Section 18, Township 34 North, Range 04 East identified by the Skagit County Assessor as Parcel P104824 and located approximately 320 linear feet west of the west property line of the property described within Exhibit "A."



- 1.4 A "significant change" shall mean any condition where i) additional impervious area greater than ninety percent (90%) of the Watson property is created; or ii) any condition including but not limited to a change in the City's regulations resulting in additional stormwater attenuation than greater than what has been calculated according to the Washington State Department of Ecology's 1992 Stormwater Management Manual for the Puget Sound Basin as adopted in the City's stormwater regulations adopted and in effect at the time the applicant submitted a technically complete short plat application to the City approved through Resolution 814.
- 1.5 The term "Applicant" shall mean the property owner who submitted application to the City for short plat approval of the property identified under project application number LU09-045 as Brad Watson.

SECTION 2. RECITALS.

- 2.1 On May 26, 2010 the City Council of Mount Vernon approved Resolution 814 adopting findings of fact and conclusions of law regarding the Watson Freeway Drive Short Plat, Site Plan and Traffic Concurrency review identifies under project application number: LU09-045.
- 2.2 Resolution 814 concludes that there exists no current capacity within the City Stormwater Facility located to the west of Freeway Drive to serve the property; provided however, that the City is willing to evaluate additional information and/or studies prepared by the applicant that would support use of the City Stormwater Facility to serve the property.
- 2.3 Following the passage of Resolution 814 the applicant submitted a technical analysis to the City Public Works Director involving modification of the City Stormwater Facility. The applicant proposed constructing changes to the City Stormwater Facility that would modify pond outflow control structure and install associated improvements to its levee resulting in additional capacity within this pond proposed to serve the property. Development of the property approved through Resolution 814 estimates Ninety Percent (90%) of all future lots to be comprised of impervious areas.
- 2.4 Parties stipulate and agree that the City is under no obligation, as a matter of law, to provide service through any public regional detention facility to the Owner including the City Stormwater Facility; that any relationship between the City and the Applicant for such service is purely contractual in its nature, and that such being the case, the reasonableness or unreasonableness of any term by the contract shall not be subject to judicial review.
- 2.5 Chapter 13.33.200 of the Mount Vernon Municipal Code (MVMC) governs the City's establishment of regional facilities and their use for private development and allows for regional facilities to receive runoff from private development at the sole discretion of the City.



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2.6 That MVMC 13.33.200 provides that:

- a. The Public Works Director may recommend that the City assume some responsibility for further design, construction, operation or maintenance of its regional facilities to receive runoff from private development in the event the public benefits would accrue and allows for modification of the stormwater plan; and
- b. That a decision to allow private development to utilize a City regional facility must be made concurrently with review and approval of their stormwater plan; and
- c. That the developer can be required by the City to supply additional information at the request of the Public Works Director to aid in the Director's recommendation and City's determination; and
- d. In the event the City decides to assume some responsibility for stormwater runoff from private development into its Regional Detention Pond, that the developer shall be required to contribute at a minimum, its pro rata share of construction costs of the facility in which it is utilizing.

SECTION 3. AGREEMENT CONDITIONS.

- 3.1 The property shall not be served nor access shall be provided by the City Stormwater Facility until all improvements set forth in Exhibit "B" attached hereto and incorporated herein to the Regional Detention Pond are constructed, inspected and approved, and meet City standards and specifications as directed by the Public Works Director. Improvements to the City Stormwater Facility shall be at the owner's sole expense and liability. Owner shall be responsible for and shall comply with all state statutes regarding construction of the improvements including payment of all prevailing wages and compliance with bidding statutes if applicable. Owner shall not cause any liens or encumbrance on City Stormwater Facility as a result of any work. This Agreement shall not constitute a debt of the City nor result in the expenditure of any public funds.
- 3.2 The owner shall apply for and receive a Fill & Grade Permit and all other permits as required from the City or other regulatory authority prior to starting any work under this Agreement.
- 3.3 The owner shall provide the City with a performance bond approved by the City or cash deposit in lieu in the amount of Five Thousand Dollars (\$5,000.00) before any work on the City Stormwater Facility begins. This bond or deposit will be released by the City once the work on the City Stormwater Facility has been completed and accepted by the City's Public Works Director. The bond or cash deposit may be subject to hold or lien by Washington State's Department of Labor and Industries if applicable.



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- 3.4 This Agreement shall limit providing the owner capacity within the City's Stormwater Facility to serve up to Ninety Percent (90%) impervious areas on the property required through the City's stormwater regulations in effect at the time the applicant submitted a technically complete short plat application to the City including but not limited to adopted sections of the Department of Ecology's 1992 Stormwater Management Manual for the Puget Sound Basin. In the event additional impervious area is added to the property, if stormwater regulations change, or increases in capacity are required by the owner beyond what is set forth in this subsection, the City may terminate this Agreement at its sole discretion. In lieu of termination Owner and City may re-negotiate another service agreement, or amend this service agreement at the City's sole discretion. In the event additional capacity to the City's Regional Detention Pond is realized beyond that set forth in this subsection for any reason including but not limited to i) a decrease in needed capacity from the owner due to change in development, ii) unforeseen additional capacity due to a change in conditions, iii) unforeseen additional capacity due to other changes to the City's stormwater system, or iv) unforeseen additional capacity as a result of the construction of improvements set forth in Exhibit "B", all surplus capacity shall remain the property of the City. Owner shall not enter into further agreements with third parties to utilize any capacity of the City's Regional Detention Pond nor assign this Agreement absent written consent by the City.
- 3.5 Any change to development of the property from that approved by the City through Resolution 814 constituting a significant change in the amount of stormwater to be routed to the City's Regional Detention Pond as determined by the City in its sole discretion, may result in terminate of this Agreement at the election of the City. A "significant change" in the amount of stormwater shall mean that amount of stormwater as defined in Section 1.4 of this Agreement.
- 3.6 Owner's construction of improvements, at owners sole expense, set forth in Exhibit "B" shall constitute owner's payment of its pro rata share of the construction costs of the existing City Stormwater Facility. At a minimum, improvements shall expand capacity of the City Stormwater Facility to wholly mitigate for impacts of the development of the property as approved through Resolution 814 approving the applicant's application for short plat.
- 3.7 This Agreement shall in no manner be construed to exempt the owner, it's successors in interest or assigns from paying applicable stormwater fees to the City's stormwater utility as now or hereafter adopted by the City.
- 3.8 Owner shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent action or omission of the owner, its officers, agents and employees in performing the obligation pursuant to this Agreement, including all claims, actions, suits, liability loss, costs, expenses and damages of any nature whatsoever arising prior to the effective of this Agreement.



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- 3.9 Failure of Owner to complete construction of improvements set forth in Exhibit "B" and receive approval by the City's Public Works Director by **May 26, 2015** shall result in automatic termination of this Agreement unless further extended in writing by the parties. Owner may request a one year extension of time 30 days prior to the expiration of this agreement. Such extension shall be granted in the event Owner receives an extension of short plat approval adopted through Resolution 814. Otherwise, any extension may be granted at the sole discretion of the City.

SECTION 4. MISCELLANEOUS PROVISIONS.

- 4.1 **Modification.** No modification of this Agreement shall be made unless mutually agreed upon by the parties in writing.
- 4.2 **Severability.** In the event that any term or clause of this Agreement conflicts with applicable law, the conflicting term shall be severed from the Agreement and such conflict shall not affect the other terms and conditions of the Agreement.
- 4.3 **Costs and Attorney's Fees.** In the event that litigation over this Agreement results between the parties hereto, the prevailing party shall be awarded, in addition to other damages allowed by law, its reasonable attorney's fees and costs incurred in pursuing such litigation. It is further agreed by the Owner that should it be necessary for the City to enforce any of the provisions of this Agreement, the Owner shall pay to the City all reasonable attorney fees and costs incurred by the City in enforcing this Agreement.
- 4.4 **Agreement Runs with the Land.** The terms and conditions of this Agreement shall constitute covenants running with the land and shall be binding upon the heirs, successors in interest, and assigns of Owner, and shall be a covenant running with the land, equitable servitude, contractual obligation, and a condition implied in any conveyance or other instrument affecting title of the property. Further, this Agreement is expressly understood to be entered into for the benefit of Owner and the City and shall be enforceable by any or all of the parties for whose benefit it runs.
- 4.5 **Recording.** This Agreement shall be recorded immediately upon execution with the Skagit County Auditor. The recording of this Agreement shall be completed by the Owner at the Owner's expense.
- 4.6 **Breach.** The failure to meet any of the terms or conditions of this Agreement shall constitute a material breach of the Agreement. In the event of a breach, the City may, in addition to any other remedy provided by law, refuse to allow stormwater from the property to the attenuated and/or cleaned within the City Stormwater Facility.
- 4.7 **Release of Claims.** By signing this Agreement, the owner releases the City from any and all lawsuits, claims, causes of action, damages, or fees, whether known or unknown, that it may have or may bring against the City as a result of the process of obtaining the use of the City Stormwater Facility as contemplated in this Agreement. This includes, but is not limited to, the City's failure to maintain, operate or repair the City Stormwater Facility or relating stormwater system.



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4.8 **Stormwater Rates and Fee Credits.** This Agreement has no bearing on stormwater rates or changes to those rates that the City may impose over time. This Agreement will not result in fee credits to the Owner.

4.9 **Compliance with Federal, State and Local Laws.** Owner, its agents, contractors or subcontractors shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

4.10 **Compliance with Grant Terms and Conditions.** Owner shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds the City Stormwater Facility work hereunder now or in the future.

4.11 **Waiver.** Any waiver by the City shall be in writing and shall not be implied through failure to enforce any term of this Agreement. Any breach of any provision of this Agreement by the Owner shall not operate, or be construed, as a waiver of any subsequent breach by Owner or prevent the City from thereafter enforcing any such provisions.

4.12 **Complete Agreement.** This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

4.13 **Notices.**

A. Notices to the City of Mount Vernon shall be sent to the following address:

City of Mount Vernon
Attn: Public Works Director
P.O. Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273-0809

And

City of Mount Vernon
Attn: City Attorney
P.O. Box 809
910 Cleveland Avenue
Mount Vernon, WA 98263-0809

B. Notices to the Owner shall be sent to the following address:

Watson Properties
Attention: Brad Watson
820 South Second Street
Mount Vernon, WA 98273



In the event of conveyance of a property interest, the new Owner(s) shall provide the City written notice of all new contact information.

4.14 Interpretation and Venue. The laws of Washington State shall govern the interpretation of this Agreement. It is agreed that venue for any lawsuit arising out of this Agreement shall be Skagit County.

4.15 Insurance. Owner agrees that all contractors, subcontractors, agents or any entity used to perform the work required under this Agreement shall carry as a minimum, the following insurance, in such forms and with such carriers who have a rating which is satisfactory to the City:

- a. Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;
- b. Commercial general liability insurance with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate, for bodily injury, including personal injury or death, products liability and property damage.
- c. Automobile liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in the annual aggregate, for bodily injury, including personal injury or death and property damage.

The City shall be named as additional insured on all such insurance policies, with the exception of workers' compensation coverage. The Owner shall provide certificates of insurance evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Agreement, except after thirty (30) days prior written notice to the City. If the Owner insurance policies are "claims made" or "claims paid," the Owner shall be required to maintain coverage for a minimum period of three (3) years from the date this Agreement is actually terminated. The Owners' failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Agreement.

The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.



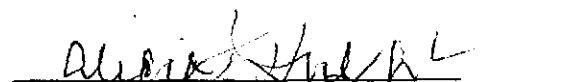
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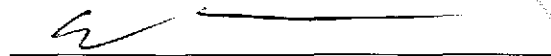
BY SIGNING BELOW, THE PARTIES AGREE THAT THEY HAVE READ THIS AGREEMENT HAVE OR HAVE HAD THE AGREEMENT READ TO THEM, UNDERSTANDING ITS TERMS AND CONDITIONS, AND ENTER INTO THIS AGREEMENT IN A KNOWING, INTELLIGENT, AND VOLUNTARY MANNER.

In Witness Whereof the parties hereto have executed this Agreement, dated this 19th day of July, 2011.


BUD NORRIS, Mayor


ALICIA D. HUSCHKA, Finance Director

Approved as to form:

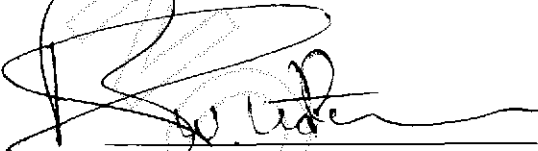

Kevin Rogerson, City Attorney



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OWNER(s):

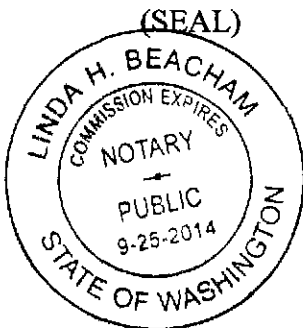

Print Name: Bradley W. Watson

Print Name: _____

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Bradley W. Watson 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 _____ to be the free and voluntary act and deed of said _____, for the uses and purposes therein mentioned.

Given under my hand and official seal this 12th day of July, 2011.



Linda H. Beacham

Notary Public

Residing at Mount Vernon

My appointment expires 9-25-2014



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STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that _____ 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 _____ to be the free and voluntary act and deed of said _____, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 2011.

(SEAL)

Notary Public

Residing at _____

My appointment expires _____



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EXHIBIT A

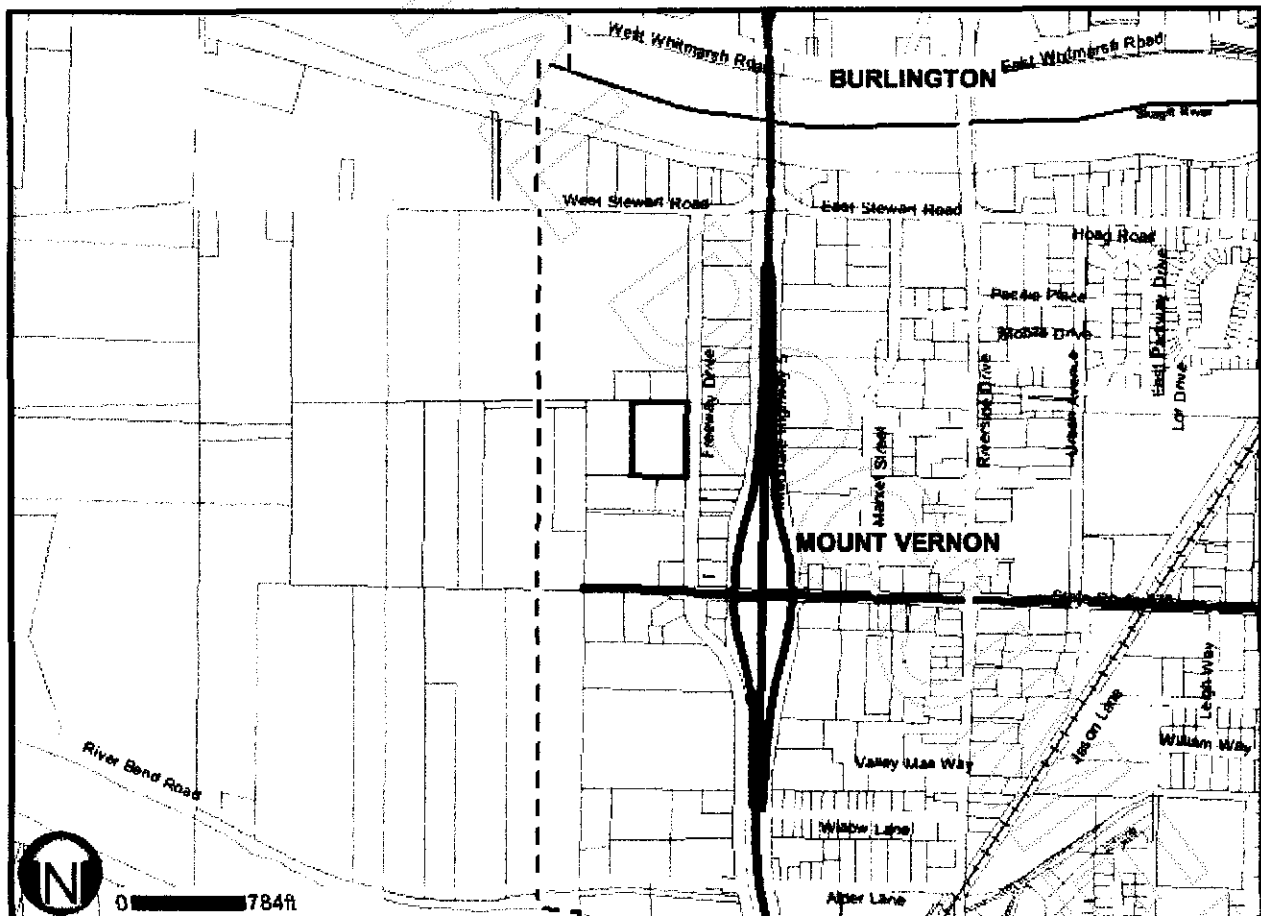
THE 'PROPERTY' SUBJECT TO THIS AGREEMENT

Legal Description:

That portion of the North 512.6 feet of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 18, Township 34 North, Range 4 East, W.M., lying West of a line 650 feet West of and parallel to the East line of said SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ EXCEPT the West 320 feet thereof.

Situate in the County of Skagit, State of Washington.

Below is a map with the boundary of the property shown in red; this map is provided for informational purposes only; the legal description above provides the precise boundaries of the property.



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EXHIBIT B

IMPROVEMENTS TO THE CITY'S REGIONAL STORMWATER FACILITY TO BE COMPLETED BY THE APPLICANT:

- The emergency overflow of the City's regional pond will be raised 1.52-inches higher than the originally designed overflow elevation of 22.50.
- The top of the berm for the City's regional pond will be raised to a minimum elevation of 23.63 so that there is a minimum of one-foot of freeboard above the emergency overflow elevation. This will increase the designed pond's detention volume by at least 15,559 cubic feet.
- Water quality will be achieved by either routing stormwater through a biofiltration swale on the Watson property or by the use of mechanical water-treatment device prior to being discharged from the Watson site and entering the roadside ditch system located along the east side of the Watson property.



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