

**DECLARATION OF COVENANT
LANDSCAPE VEGETATION MAINTENANCE
FOR GREEN STORMWATER INFRASTRUCTURE DRAINAGE SYSTEM
IN THE PUBLIC RIGHT-OF-WAY OF _____**

GRANTOR: _____

GRANTEE: CITY OF SEATTLE

Legal Description of Property:

Additional Legal on: _____
Assessor's Tax Parcel ID#: _____

This DECLARATION OF COVENANT - LANDSCAPE VEGETATION MAINTENANCE FOR GREEN STORMWATER INFRASTRUCTURE DRAINAGE SYSTEM ("Covenant") is made this ____ day of _____, 2021, by _____, a Washington limited liability company ("Owner") and ("Grantor"), for the benefit of the CITY OF SEATTLE, a municipal corporation of the State of Washington ("City" or "Grantee").

RECITALS:

WHEREAS, _____ owns the property located at _____ in Seattle, King County, Washington, legally described in Exhibit A, attached hereto, King County Assessor Parcel _____, ("Grantor's Property" or "Owner's Property"). Grantor has received a Master Use Permit ("MUP") from the City's Department of Construction and Inspections under Application No. _____, relating to the development of Owner's Property and construction of a _____ (the "Project");

WHEREAS, Grantor has agreed to voluntarily construct a Green Stormwater Infrastructure Drainage System composed of bioretention cells and other features ("Bioretention Cells") in the public right-of-way at _____ to treat stormwater runoff from a portion of _____ as part of its Project; and Grantor has received a Street Improvement Permit ("SIP") from the City's Department of Transportation (Project No. _____) approving the final Bioretention Cell design;

WHEREAS, the parties acknowledge that the Bioretention Cells will provide water quality benefits to the public by reducing polluted stormwater runoff discharging into _____;

WHEREAS, upon completion of construction and acceptance of the Bioretention Cells, the City will own and maintain the engineered infrastructure portions of the _____, including, but not limited to, _____; and

WHEREAS, Grantor has agreed to maintain indefinitely into the future vegetation within the _____ area in the public right-of-way of _____ to ensure long-term, proper and continuous functioning of the drainage system.

NOW THEREFORE,

IN CONSIDERATION of the public good, mutual benefits, and other valuable consideration, receipt of which is hereby acknowledged, Grantor covenants with the City and its successors in interest and assigns, that it will observe, consent to, support, perform and abide by the conditions and obligations set forth and described in Paragraphs 1 through 12 below. Grantor hereby grants, covenants, and agrees as follows:

1. Grantor agrees, at its own cost, to:
 - a. Maintain in perpetuity those Bioretention Cell assets listed in Exhibit C as being the responsibility of Grantor, attached to and made part of this Covenant, and as may be modified by the City from time to time, including but not limited to the landscape vegetation within the area of the Bioretention Cells in the public right-of-way along _____, in accordance with Seattle Public Utilities (“SPU”) requirements and standards for operation and maintenance of Green Stormwater Infrastructure (“GSI”), as described in the [Seattle Stormwater Manual, Appendix G, Stormwater Control Operations and Maintenance Requirements](#), and as hereafter updated, revised or amended.
 - b. In addition to carrying out its obligations required by this Covenant, Grantor agrees to comply with all City permit requirements, and all applicable laws, including but not limited to Seattle Municipal Code, Title 15. The Bioretention Cell area is depicted on Exhibit B, attached to and made a part of this Covenant (the “Covenant Area”).
2. Prior to or at the time of execution of this Covenant, Grantor or Owner shall have obtained a relevant street use permit as may be required by the City to carry out its obligations under this Covenant to support the continuous and proper functioning of the Bioretention Cells. This requirement to obtain and maintain all necessary permits shall be an ongoing obligation of Grantor or Owner in perpetuity under this Covenant. In addition to the foregoing permit requirements, prior to performing any alterations or modifications to landscaping, the Bioretention Cells or to the Covenant Area, or for using the Covenant Area for any purpose other than maintenance of landscape vegetation to support Bioretention Cell functioning, Grantor or Owner shall obtain all other permits or consents as required by the City.

3. The City may choose from time to time to replace or modify components or portions of the Bioretention Cells and the Bioretention Facility Assets as listed in Exhibit C, or other drainage infrastructure within the Covenant Area, including, but not limited to, surficial and subsurface soils to maintain proper functioning. Should the City, in its sole discretion, replace the soils within the Bioretention Cells, it will also replace or substitute any vegetation that is removed to replace the soils within the area of the Bioretention Cells. Grantor/Owner agrees that it shall reimburse the City for costs related to such replacement or substitution of soils or vegetation and Grantor/Owner also agrees that it shall at its own expense continue to maintain the new or replaced landscape vegetation following the City's removal and replacement of soils within the Covenant Area.
4. Grantor understands and agrees that this Covenant shall in no way confer any rights on or to Grantor to use the public right-of-way and the Bioretention Cell area other than the right to enter the Bioretention Cell area within the public right-of-way to perform maintenance of landscape vegetation in accordance with the requirements and obligations of this Covenant, and subject to any requirements of permits that may be required by the City for Grantor's use of the right-of-way.
5. This Covenant is binding upon the Grantor, its heirs, successors, and assigns. The obligations and conditions set forth in this Covenant are not personal, but shall run with the land (Owner's Property) and shall be an equitable servitude that touches and concerns the Owner's Property forever for the benefit of the general public, and shall be binding on all parties having or acquiring any right, title, or interest in the Owner's Property or any part thereof now and in the future, including but not limited to lessees and ground lessees for the duration or term of the lease or ground lease.
6. Grantor, for itself and for its heirs, successors, and assigns, agrees that it shall forever defend, indemnify, and hold harmless the City of Seattle, its officials, officers, employees, and agents, from all liabilities, claims, causes of action, judgments, fines, penalties, or expenses, including reasonable attorney fees and necessary litigation expenses, resulting from any actual or alleged bodily injury including death, or actual or alleged damage to property, or 1) Grantor's use of or activities within the Covenant Area, 2) Grantor's maintaining or failure to maintain, modifying, or removal of the above-described landscape vegetation, or 3) Grantor's failure to carry out any of the obligations of this Covenant or breach of any of the terms, conditions or provisions of this Covenant.

Grantor's indemnification obligations under this Covenant do not apply to any liabilities, claims, causes of action, judgments, or expenses resulting from bodily injury, property damage, or federal or state government agency enforcement or regulatory action caused by the sole negligence of the City, its officers, elected officials, employees, agents, or contractors.

Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, specifically and expressly agrees to waive Grantor's and Grantor's heirs', successors' and assigns' immunity under industrial insurance Title 51 of the Revised Code of Washington, to the extent necessary to provide the City with a full and complete indemnity from claims for the City is entitled to indemnity under the indemnity and Covenant. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, specifically and expressly agrees that this provision was mutually negotiated by the Parties.

7. This Covenant shall be recorded with the King County Recorder's Office, Department of Executive Services, King County, Washington. This Covenant may not be amended, modified, or terminated except by written document executed and acknowledged by the City.
8. No waiver of any right or remedy in the event of default, non-performance of obligations under or violation of this Covenant shall constitute a waiver of such right or remedy in the event of subsequent default, non-performance of obligations under or violation of this Covenant. If the City determines that a default, non-performance of Grantor's obligations under or violation of this Covenant has occurred, the City may demand corrective action sufficient to cure the default, non-performance or violation, including but not limited to restoration and remediation of the Bioretention Cells and Covenant Area landscaping and vegetation, and the City may bring an action to specifically enforce this Covenant, to enjoin violation of this Covenant, and to require the restoration or remediation of the Bioretention Cells or Covenant Area to the condition that existed at the time the Bioretention Cells began operation. The City's remedies described herein shall be cumulative.
9. Grantor acknowledges that permission to use the Covenant Area for the purposes described herein is of a temporary nature and vest no permanent rights in the Grantor or Grantor's heirs, successors or assigns to use or occupy the public right-of-way. Upon 30-days' notice sent to Grantor, that is posted on Owner's Property or in the Covenant Area, or that is published in the City's official newspaper, the City may revoke the permission to use the Covenant Area. If the use becomes dangerous, unsafe or interferes with the City's or public use of the right-of-way, or if the use is not in accordance with SMC Title 15, the City may revoke permission to use the Covenant Area without providing the 30-day notice as described herein.
10. The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.
11. Grantor represents and warrants that it has the legal authority to grant this Covenant to the City. All individuals executing Covenant on Grantor's behalf represent and warrant that they have full power and authority to execute this Covenant.

EXHIBIT A

Legal Description of Grantor Property

EXHIBIT B

Depiction of Landscape Vegetation Covenant Area

EXHIBIT C

Maintenance Responsibilities for Bioretention Facility Assets

Maintenance responsibility for each asset within the bioretention facility is outlined in the chart below. Any asset of the facility that is not constructed according to [standard specifications and plans](#) remains the responsibility of the Grantor (Property Owner) or successor Property Owner. The City will not maintain additional furnishings or architectural features. The City reserves the right to modify this chart at any time with reasonable advance notice to the Grantor or Property Owner.

To be filled by Proj Manager/Proj Engr.									
Sheet #	Plan ID	Asset Type	Dimension	Standard Plan #	Pipe Diameter (in)	Length (ft)	STATION	Comments	Responsibility
	1	CB		252			20+96.27		SPU
	2	Pipe			6	16	21+42.86 21+54.18		SPU
	3	Pipe			6	35	21+54.18 21+89.30		SPU
	4	CB		240A			21+91.08		SPU
	5	Slotted Underdrain Pipe		291	4, 6 inch minimum	5	22+02.63 22+07.20		SPU

	6	Gabion Block Wall					22+06.54		Property Owner
	7	Gabion Block Wall					22+24.73		Property Owner
	8	Weather Steel Wall					22+43.71		Property Owner
	9	Slotted Underdrain Pipe		291	4, 6 inch minimum	11	22+46.02 22+56.30		SPU
	10	Weather Steel Wall					22+56.51		Property Owner
	11	Gabion Block Wall					22+70.24		Property Owner
	12	Slotted Underdrain Pipe		291	4, 6 inch minimum	6	22+74.75 22+79.57		SPU
	13	Bioretention Overflow Structure		240B			22+79.98		SPU
	14	Pipe			8		22+79.57 23+05.63		SPU
	15	Bioretention Overflow Structure		240B			23+07.76		SPU

	16	Pipe			8	7	23+05.63 23+07.73		SPU
	17	Catch Basin		240B			23+20.81		SPU
	18	Perforated Pipe			6		22+51.05 22+73.79		SPU