

**DRAIN  
STORM WATER MANAGEMENT AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the Shiawassee County Drain Commissioner (“Drain Commissioner”); and \_\_\_\_\_ a Michigan \_\_\_\_\_ whose address is \_\_\_\_\_ (“LANDOWNER”). In this Agreement either the Drain Commissioner or LANDOWNER may be referred to as “Party” or collectively, as “Parties”.

**WITNESSETH:**

**WHEREAS**, the \_\_\_\_\_ Drain (“Drain”) is a county drain legally established pursuant to the Michigan Drain Code, Public Act 40 of 1956, as amended (“Drain Code”), and located in Shiawassee County; and

**WHEREAS**, LANDOWNER is the owner of approximately \_\_\_\_\_ acres of land located in the \_\_\_\_\_, Shiawassee County (the “Property”) as legally described in **Exhibit A**; and

**WHEREAS**, LANDOWNER is in the process of constructing [DESCRIBE CONSTRUCTION, IMPROVEMENTS, OR DEVELOPMENT], with the increase in impervious surface area necessitating [DESCRIBE DETENTION OR OTHER MEANS NEEDED TO CONTROL STORMWATER] (the “Improvements”) as depicted in the plans and specifications attached hereto as **Exhibit B**; and

**WHEREAS**, the Drain Commissioner has established requirements and general compliance guidelines for storm water management practices for developments within Shiawassee County (“2015 Storm Water Management Guidelines”) for the purposes of minimizing increases in storm water runoff rates and volumes and improving water quality from identified new land development, reducing erosion from development or construction projects, and preventing an increase in non-point source pollution; and

**WHEREAS**, LANDOWNER have requested approval of the Improvements pursuant to the 2015 Storm Water Management Guidelines; and

**WHEREAS**, the Drain Commissioner has reviewed the plans and specifications for the Improvements and has authorized approval under the 2015 Storm Water Management Guidelines contingent upon the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and covenants of each, the Parties agree as follows:

**A. Conditions of the Improvements.**

1. The Drain Commissioner hereby authorizes LANDOWNER to perform the Improvements on the Property as depicted in **Exhibit B**.
2. LANDOWNER understands and agrees to pay the total costs and expenses related to the Improvements including any administrative, engineering, inspection, surveying, easement acquisition, and legal costs and expenses.
3. Prior to the commencement of construction, LANDOWNER shall obtain all local, state and federal permits to the extent required by law, including but not limited to those required by the Shiawassee County Soil Erosion and Sedimentation Control Agent and the Michigan Department of Environment, Great Lakes & Energy. A copy of all required permits, including any extensions or modifications thereof, shall be provided to the Drain Commissioner.
4. LANDOWNER, its assigns and successors in interest, shall be responsible for the operation and maintenance of the Improvements on the Property in working order and keep the Improvements free from debris or obstructions, and for the payment of all costs associated therewith.
5. LANDOWNER further agrees to perform inspections of the Improvements every five (5) years, commencing with the completion of the Improvements. LANDOWNER shall provide inspection reports to the Drain Commissioner. In the event that any inspection report indicates the need for maintenance or work to any part of the Improvements, LANDOWNER shall cause such maintenance or work to be done in a timely manner.
6. LANDOWNER grants and conveys to the Drain Commissioner, his agents, or employees, the right of entry on to the Property for purposes of inspection of the Improvements to determine the need for maintenance or improvement. In the event the Drain Commissioner determines the need for maintenance or improvement of the Improvements, he shall notify LANDOWNER of the necessity of the maintenance or improvement, setting forth the specific details thereof, in writing. Within ninety (90) days receipt of said notice or within a time period as otherwise indicated by the Drain Commissioner, LANDOWNER shall cause the maintenance or improvement to be completed.
7. All costs for the maintenance or improvement shall be at LANDOWNER' sole cost and expense including, but not limited to, all related administrative, engineering, inspection, surveying, easement acquisition, and legal costs and expenses incurred by the Drain Commissioner in connection with such maintenance or improvement.

## **B. Insurance.**

1. LANDOWNER shall furnish the Drain Commissioner with evidence of liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence covering the Improvements performed by LANDOWNER, which may be accomplished by way of excess or umbrella policies. The insurance shall be written by a company rated by A. M. Best Company requiring an "A-" or better rating. The Certificate of Insurance shall be provided to the Drain Commissioner before commencement of construction of the Improvements. The insurance policy shall provide for a thirty (30) day "Prior Notice Termination" provision in favor of the Drain Commissioner. The Drain Commissioner, the Drain Drainage District, and Shiawassee County shall be named as additional insureds on the policy. Such insurance may be terminated upon the completion of the Improvements.
2. LANDOWNER shall require all contractors performing the Improvements to be insured and shall require liability insurance in the amount of at least \$1,000,000.00 and Worker's Compensation insurance. In addition, the contractor shall provide a copy of its insurance certificate to LANDOWNER and the Drain Commissioner.

## **C. Indemnification.**

1. LANDOWNER agrees to the extent permitted by applicable law to indemnify, hold harmless and defend the Drain Commissioner, the Drain Drainage District, and Shiawassee County (collectively, the "Indemnified Parties") against any and all claims or liability whatsoever brought against the Indemnified Parties for injuries or damages sustained by any person, property, or business as a result of, or in any way related to, the Improvements, including payment of actual and reasonable attorney and engineering fees incurred by the Indemnified Parties in defense of a claim provided, however, in no event shall such indemnity apply to any claims or liability to the extent they are caused by the negligence or intentional misconduct of the any Indemnified Party or their respective agents, employees, licensees and/or invitees. The indemnity set forth in this Section shall survive termination of this Agreement.

## **D. Miscellaneous Provisions.**

1. LANDOWNER shall pay all costs incurred by the Drain Commissioner related to the Improvements and this Agreement, including all administrative, engineering, inspection, surveying, easement acquisition, and legal costs and expenses. Invoices shall be paid within 30 days of receipt. If payment is not made, the Drain Commissioner is authorized to seek collection by all means authorized by law, including placement of a lien against the Property pursuant to the Drain Code.

2. All notices shall be in writing. Any notice shall be deemed to be sufficiently given (i) on the date, if delivered in person; (ii) five (5) days after being sent by United States certified mail, postage prepaid, return receipt requested; or (iii) on the next business day if sent by overnight delivery service (e.g. Federal Express) to the notified party at its address set forth below. These addresses shall remain in effect unless another address is substituted by written notice. Notices shall be sent via facsimile and email transmission to a facsimile number and email address provided, however, notice sent via facsimile and email transmission shall be followed by notice delivered by personal service, certified mail, return receipt requested, or by overnight delivery.

**LANDOWNER**

Attn: \_\_\_\_\_

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

**Shiawassee County Drain Commissioner**

1024 N. Shiawassee Street  
Corunna, Michigan 48817  
Drains@Shiawassee.net

3. LANDOWNER represents and warrants that this Agreement has been duly authorized, executed, and delivered on behalf of LANDOWNER, and that LANDOWNER has the power and authority to enter into this Agreement.
4. Once executed, this Agreement will be recorded at the expense of LANDOWNER with the Shiawassee County Register of Deeds and is deemed to run with the land and shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees and legal representatives. This Agreement may not be assigned without the written consent of the other Party and such consent shall not be unreasonably withheld, conditioned or delayed.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

*[Signatures appear on the following page.]*

\_\_\_\_\_  
Brent Singer  
Shiawassee County Drain Commissioner

STATE OF MICHIGAN     )  
                                          ) ss:  
COUNTY OF SHIAWASSEE )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, a Notary Public in and for said County, appeared Brent Singer, Shiawassee County Drain Commissioner, to me personally known, and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
Acting in: \_\_\_\_\_ County  
My Commission Expires: \_\_\_\_\_

**[LANDOWNER – NAME OR ENTITY]**

\_\_\_\_\_  
By:  
Its:

STATE OF MICHIGAN     )  
                                          ) ss:  
COUNTY OF SHIAWASSEE )

On this \_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said County, appeared \_\_\_\_\_, its \_\_\_\_\_, on behalf of \_\_\_\_\_, to me personally known, and who executed the foregoing instrument and acknowledged the same to be his/her free act and deed.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, \_\_\_\_\_  
Acting in: \_\_\_\_\_ County  
My Commission Expires: \_\_\_\_\_

**Drafted By:**  
Douglas R. Kelly (P49856)  
CLARK HILL PLC  
151 S. Old Woodward Ave, Suite 200  
Birmingham, MI 48009  
(248) 988-5854

**When Recorded, Return to:**  
Brent Singer  
Shiawassee County Drain Commissioner  
1024 N. Shiawassee St.  
Corunna, MI 48817  
(989) 743-2398