



# Example Maintenance Agreement 1

## AGREEMENT

**THIS AGREEMENT** ("Agreement"), made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_, husband and wife, whose address is \_\_\_\_\_, Burnsville, Minnesota 55337 ("**Owners**") and the **CITY OF BURNSVILLE**, a municipal corporation organized under the laws of the State of Minnesota, whose address is 100 Civic Center Parkway, Burnsville, Minnesota 55337-3817 ("**City**").

## WITNESSETH

WHEREAS, the City has instituted a program for the control of rainwater in order to reduce the impact of rainwater on the City's lakes and rivers; and

WHEREAS, the Program instituted by the City involves the construction of gardens referred to as "Rain Garden" on private property for the residents of the City who are interested in the control of rainwater in order to protect the City's lakes and rivers; and

WHEREAS, the Owners are residents of the City and have expressed the desire to have the City construct a Rain Garden on their property legally described on Exhibit "A" attached hereto ("**Property**").

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants herein contained and other good and valuable consideration, the parties hereto agree as follows:

1. **Construction of Rain Garden.** The City agrees that it will construct a Rain Garden on the Property according to the Rain Garden layout attached hereto as Exhibit "B". The Rain Garden improvements will include grading, engineered soils, mulch, plants, pretreatment and related features.
2. **Rain Garden Plants and Vegetation.** The City will construct and pay for and plant all plants and vegetation to be installed in the Rain Garden area according to the drawing as shown on Exhibit "B".
3. **Maintenance of Rain Garden.** The Owners shall be solely responsible for the maintenance of the Rain Garden according to the standards set forth in Exhibit "C" attached hereto and specifically agree that if the Rain Garden is in the City's right of way that all plants shall be maintained such that they are short enough that they do not interfere with or block the visibility of drivers of motor vehicles.
4. **Right of Entry/City Liability.** The Owners grant to the City a right of entry on their Property to construct the Rain Garden in accordance with the plans set forth in Exhibit "B". The Owners agree that the City's only liability under this Agreement is to construct and install the Rain Garden and the plants and vegetation in accordance with this Agreement and the Owners agree to hold the City harmless and indemnify the City against any claims that result from the use and/or maintenance of the Rain Garden by the Owners.

5. **Notice of Non-Compliance, Repair by City, Cost Recovery.** If the City determines that the Owners have not complied with the Standard of Maintenance, the City shall provide Notice to the Owners of such failure to comply and, if the Owners fail to respond or remedy the deficiency within a reasonable time, as specified in the notice, the City may enter the property, perform the work, and bill the Owners for its costs. The City may certify the costs against the property pursuant to Minnesota Statutes Sections 444.075 or 429.101.

IF THE CITY DETERMINES THAT THE OWNERS HAVE NOT COMPLIED WITH THE STANDARD OF MAINTENANCE, THE CITY, IN ITS SOLE DISCRETION, MAY ALSO REMOVE THE RAIN GARDEN IMPROVEMENTS FROM THE SUBJECT LAND.

6. **Replacement, Future City Policy.** In the event the City shall in the future establish a policy for repair and maintenance or replacement by the City of rain gardens owned by private parties located elsewhere in the City under which policy the costs of such repair and maintenance or replacement are to be paid either out of general City revenues or by collection of utility or service fees or charges, then the Owners shall be entitled to petition the City for the inclusion of the Rain Garden covered by this Agreement in that program.

7. **Governing Law.** This Agreement is governed by the laws of the State of Minnesota and shall be binding upon the parties, their heirs, successors or assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in their name and on their behalf on or as of the date first above written..

Party A

OWNERS \_\_\_\_\_

\_\_\_\_\_  
CITY OF BURNSVILLE  
By: \_\_\_\_\_

Elizabeth B. Kautz, Mayor

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

Craig Ebeling, City Manager

STATE OF MINNESOTA )

( ss.

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, husband and wife.

\_\_\_\_\_ Notary Public

STATE OF MINNESOTA )

( ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Elizabeth B. Kautz and Craig Ebeling, the Mayor and City Manager, respectively, of the CITY OF BURNSVILLE, a Minnesota municipal corporation, on its behalf and pursuant to the authority granted by its City Council.

\_\_\_\_\_ Notary Public

- EXHIBIT A - LEGAL DESCRIPTION OF PROPERTY
- EXHIBIT B - Rain Garden Layout
- EXHIBIT C - Rain Garden Maintenance Standards

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This page was last edited on 11 July 2022, at 17:15.

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