

2016 038319

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2016 JUN 21 PM 12:52

MICHAEL B. BROWN
RECORDER

LONG-TERM OPERATION AND MAINTENANCE AGREEMENT

File No.: LTMA-01 Parcel No.: 45-12-11-328-003.000-046

As accepted through Storm Water Quality Management Permit No.: 2016-02-C

Project Name: New Facility for NB Coatings

Primary function or description of activities to be executed at the site:
Office, warehouse, and distribution.

THIS AGREEMENT, made and entered into this 15 day of JUNE, of the year 2016, by and between Indiana Land Becknell Investors LLC (hereinafter called the "OWNER") and the City of Hobart, Indiana.

WITNESS, that

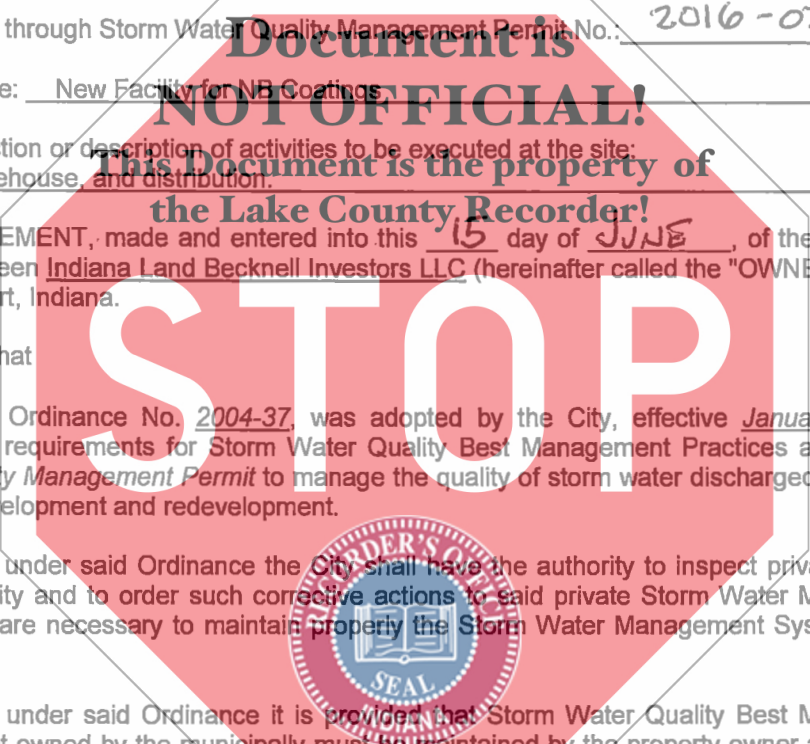
WHEREAS, Ordinance No. 2004-37, was adopted by the City, effective January 5, 2005, establishing requirements for Storm Water Quality Best Management Practices and a Storm Water Quality Management Permit to manage the quality of storm water discharged from areas of urban development and redevelopment.

WHEREAS, under said Ordinance the City shall have the authority to inspect private systems within the City and to order such corrective actions to said private Storm Water Management systems as are necessary to maintain properly the Storm Water Management Systems within the City.

WHEREAS, under said Ordinance it is provided that Storm Water Quality Best Management Practices not owned by the municipally must be maintained by the property owner according to the terms of *Long-term Operation and Maintenance Agreement* that must be implemented before a Storm Water Quality Management Permit is approved.

WHEREAS, the City has adopted and approved technical guidelines relating to Storm Water Quality Best Management Practices in the City.

WHEREAS, the OWNER is the legal title-holder of certain real property, more particularly described as Lot 2A in Replat #7 of North Wind Crossings, per Plat Book, Page , being part of the property described in Warranty Deed Document No.2005-015999, recorded March 4, 2005 in Lake County, Indiana. Original deed property has been subject to subsequent subdivisions. (hereinafter called the "Property").



CASH
\$22-00
M-2124

WHEREAS, the OWNER is proceeding to build on, develop or redevelop the property.

WHEREAS, the Storm Water Pollution Prevention Plan and Long-term Operation and Maintenance Plan, sealed by Gary P. Torrenga a licensed Professional Engineer, dated SWPPP dated 5/10/16, last revised & Post-Construction O&M Manual dated 5/10/16, last revised on file with the City, which is expressly made a part hereof, as approved or to be approved by the City, provides for Storm Water Quality Management within the confines of the property.

WHEREAS, the City and the OWNER agree that the health, safety, and general welfare of the residents of the City require that onsite Storm Water Quality Best Management Practices be constructed, operated and maintained on the property.

WHEREAS, the City requires that onsite storm water facilities in accordance with the Storm Water Pollution Prevention Plan and Long-term Operation and Maintenance Plan be adequately constructed and installed, operated and maintained by the OWNER.

WHEREAS, an approved Storm Water Pollution Prevention Plan and Long-term Operation and Maintenance Plan will adequately illustrate the location type and extent of Storm Water Quality Best Management Practices, minimum inspection procedures and schedule, minimum operation procedures and schedule, and anticipated minimum maintenance activities including when and how to remove accumulated/collected/filtered/amassed/grown excess vegetation, sediment, debris, trash, pollutant and/or forms of pollution from the Storm Water Quality Best Management Practices.

NOW, THEREFORE,

In consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The onsite Storm Water Quality Best Management Practices shall be constructed by the OWNER in accordance with the Storm Water Pollution Prevention Plan and Long-term Operation and Maintenance Plan.
2. The OWNER shall operate and maintain the Storm Water Quality Best Management Practices as directed by the Long-term Operation and Maintenance Plan in good working order acceptable to the City in its reasonable discretion.
3. The OWNER agrees that inspections will be performed by a *Qualified Professional as defined and registered by the City.*
4. The OWNER agrees that inspections will be documented and include the following information:
 - a. A description of the current operational or functional status of the Storm Water Quality BMPs. For structures that accumulate sediment, trash, debris other pollutant or form of pollution, an indication of used and remaining, capacity (fraction, percentage, depth or volume) shall be given to identify when the BMP must be cleaned out.
 - b. Identification of any necessary repairs, sediment/debris removal or replacement of all or portions of the storm water system(s).
 - c. The results of any field or laboratory analyses performed.

- d. Other relevant or unusual observations related to the system(s).
- e. Action plan to prevent premature Storm Water System failure as consistent with the Long-term Operation and Maintenance Agreement(s) provisions.
- f. Action plan to prevent the premature system failure that exceeds the Long-term Operation and Maintenance Agreement(s) provisions, but are necessary to prevent storm water pollution from leaving the site.
5. The OWNER hereby grants permission to the City, its authorized agents and employees to enter the Property at reasonable hours to inspect the Storm Water Quality Best Management Practices whenever it deems reasonably necessary. Whenever possible, the City shall notify the OWNER prior to entering the Property.
6. In the event the OWNER fails to maintain Storm Water Quality Best Management Practices in accordance with the Storm Water Pollution Prevention Plan and Long-term Operation and Maintenance Plan in good working order acceptable to the City, then the City may notify OWNER in writing and OWNER shall have thirty (30) days from its receipt of notice to repair or maintain said stormwater quality best management practices. Should OWNER fail to do so to the reasonable satisfaction of the City, then the City may enter the Property and take whatever steps it deems reasonably necessary to repair or maintain said Storm Water Quality Best Management Practices. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the land of the OWNER without first obtaining written approval of the OWNER. It is expressly understood and agreed that the City is under no obligation to maintain or repair said facilities, and in no event shall this Agreement impose any such obligation on the City.
7. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the OWNER shall reimburse the City upon notice and demand, within ninety (90) days of receipt thereof for all costs incurred by the City hereunder, as evidenced by all appropriate invoices. In the event, the OWNER does not reimburse the City within ninety (90) days of receipt; the City may apply a lien upon the property for the expense to the City. In the event, the OWNER does not reimburse the City within one year from the application of a lien upon the property then the City may take other legal measures to recover costs, including associated legal costs, incurred by the City.
8. It is the intent of this Agreement to guarantee the proper maintenance of onsite Storm Water Quality Best Management Practices by the OWNER; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by Storm Water Management Practices.
9. The OWNER, its executors, administrators, assigns, and any other successors in interest, shall indemnify and hold the City and its agents and employees harmless for any and all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against the City from the construction, presence, existence, operation or maintenance of the Storm Water Quality Best Management Practices by the OWNER.
10. In the event a claim is asserted against the City, its agents, or employees for the construction, presence, existence, operation or maintenance of the Storm Water Quality

Best Management Practices by the OWNER, the City shall notify the OWNER and the OWNER shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its agents, or employees shall be allowed as a result of such claim, the OWNER shall pay all costs and expenses in connection therewith, "including the City reasonable attorney fees."

11. This Agreement as attached by the Storm Water Pollution Prevention Plan and Long-term Operation and Maintenance Plan shall be recorded among the land records of the City, and shall constitute a covenant running with the land, and shall be binding on the OWNER, its administrators, executors, assigns, heirs, and any other successors in interest.
12. This Agreement as attached by the Storm Water Pollution Prevention Plan and Long-term Operation and Maintenance Plan shall be recorded among real property title documents for the said property, and shall constitute a covenant running with the land, and shall be binding on the OWNER, its administrators, executors, assigns, heirs, and any other successors in interest. Any required or permitted under this Agreement must be in writing and must be given either: (i) by personal delivery; (ii) by United States certified mail, return-receipt requested, postage prepaid, and properly addressed; or (iii) by any private overnight, "same day," or "next-day" delivery service, delivery charges prepaid with proof of receipt, and sent to OWNER at 2750 East 46th Street, Suite 200, Carmel, IN 46033, with a copy to Terry Levin at 4242 S. 1st Ave. Suite D Lyons, IL 60534.

WITNESS the following signatures:



City of Hobart, Indiana by its Board of Public Works & Safety

BY: [Signature]
Brian Snedecor, President

Dated: 6/20/16

ATTEST: [Signature]
Deb Longer, Clerk/Treasurer

Dated: 6/20/16

STATE OF INDIANA

COUNTY OF LAKE

Document is
NOT OFFICIAL!

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Brian Snedecor, as President of City of Hobart, Indiana, and Deb Longer, as Clerk/Treasurer of the City of Hobart, Indiana, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Clerk/Treasurer, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act of said city, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20 day of June, 2016.

[Signature]
Notary Public

Prepared by & Return to:

ANTHONY DeBONIS, JR.
Hobart City Attorney
Anthony DeBonis, Jr. & Associates
214 Main Street
Hobart, Indiana 46342
Tel: 219-940-9963



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: _____