MIDVALE CITY, UTAH
ORDINANCE NO. 2017-O-07

AN ORDINANCE AMENDING CHAPTER 13.16 OF THE MIDVALE MUNICIPAL CODE
ADDING SECTION 13.16.150 LONG-TERM STORM WATER
MAINTENANCE AGREEMENT

WHEREAS, Midvale City has a UPDES Permit with the Utah State Department of
Environmental Quality for the control and discharge of storm water within the boundaries of the City; and

WHEREAS, said permit outlines responsibilities of the City pertaining to the regulation and
control of storm water; and

WHEREAS, one of these responsibilities directly pertains to monitoring the operation and
maintenance of storm water facilities built on private commercial properties to ensure their continued
effectiveness; and

WHEREAS, in order to accomplish this requirement, the City will enter into an agreement
with the owners of private commercial properties that will outline the duties and responsibilities for the
long-term maintenance and operation of any storm water facilities built on the property; and

WHEREAS, an additional section of Chapter 13.16 of the Midvale Municipal Code has been
prepared to codify the necessary provisions for implementing, reviewing and enforcing these
requirements.

NOW THEREFORE BE IT ORDAINED, by the City Council of Midvale City, Utah as
follows:

Section 1. The Midvale City Council desires to amend Chapter 13.16 of the Midvale
Municipal Code adding Section 13.16.150 Long-Term Storm Water Maintenance Agreement, attached
hereto as Exhibit A.

Section 2. This ordinance shall become effective upon publication of the summary thereof.

PASSED AND ADOPTED this 20th day of June, 2017.

JoAnn B. Seghini, Mayor

ATTEST:

Rori L. Anderland, MM
City Recorder

Voting by the City Council

"Aye"    "Nay"

Stephen Brown
Paul Glover
Quinn Sperry
Paul Hunt
Wayne Sharp

Date of first publication  June 25, 2017
Chapter 13.16

STORMWATER UTILITY

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13.16.010 Purpose.
The city finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all areas within the city may constitute a potential hazard to the health, safety and general welfare of the city. The city council further finds that natural and manmade stormwater facilities and conveyances constitute a stormwater system and that effective improvement, regulation, and control of stormwater through formation, by the city, of a stormwater utility requires the transfer to the utility of all stormwater facilities and conveyances and related rights belonging to the city. (Ord. 06-15:200402-25 § 1 (part), 2004)

13.16.020 Definitions.
For the purpose of this chapter, the following terms phrases and words shall mean:

1. “City” means Midvale City, a municipal corporation of the state of Utah.
2. “County” means Salt Lake County.
3. “Council” means Midvale City council.
4. “Customer” or “person” means any individual; public or private corporation and its officers; partnership; association, firm, trustee; personal representative of an estate; the state of Utah or its departments, institutions, bureaus, agencies; county; city; political subdivision, or any other governmental or legal entity recognized by law.
5. “Director” means the city’s public works director or designee.
6. Equivalent Residential Unit (ERU). An “ERU” is equal to three thousand square feet of impervious surface area. This is based on an average single family residential parcel, which has an impervious surface area of three thousand square feet.
7. “Impervious surface” means a parcel’s hard surface area that causes water to run off its surface in quantities or speeds greater than under natural conditions. Some examples of impervious surfaces are rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots or storage areas, and gravel that has been subject to surface traffic, including compacted gravel surfaces.
8. “Mitigation” means on-site facilities or practices which are designed to reduce stormwater quantity or improve stormwater quality.
9. “Parcel of real property” means the smallest, separately segregated unit of land having an owner. A parcel has boundaries and surface area, and is documented with a property number by the county.

10. “Developed parcel” means any parcel whose surface has been altered by grading, filling, or construction of any improvement.


12. “Single family residential parcel” means any parcel of land containing a single family or duplex dwelling unit, as defined in Title 17, Midvale City Zoning Code.

13. “Stormwater” means water produced by storms, surface drainage, snow and ice melt, and other water handled by the stormwater system.

14. “Stormwater facilities” means any facility, improvement, development or property made for controlling stormwater quantity and quality.

15. “Stormwater system” means all manmade stormwater facilities and conveyances, and natural stormwater systems including designated open spaces owned or maintained by the city that store, control, treat, and/or convey stormwater.

16. “Stormwater utility” or “utility” means the utility created by this chapter, which operates, maintains, regulates and improves stormwater facilities and programs within Midvale City.

17. “Undeveloped parcel” means any parcel that has not been altered by grading, filling, or construction.

(Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.030 Stormwater utility created.
There is hereby created and established a stormwater utility, herein referred to as “utility,” and service charge rate structure. The utility will have regulatory authority and responsibility for planning, design, construction, maintenance, administration and operation of all city stormwater conveyances and facilities. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.040 Ownership of city stormwater facilities and assets.
The city administrator shall determine which of the city’s stormwater assets will be transferred to the utility. Until such transfer, the utility shall operate, maintain and improve existing city stormwater facilities used for the conveyance of stormwaters through, under or over lands or watercourses, beginning at a point where the stormwaters first enter the stormwater system of the city and ending in each instance at a point where the stormwaters exit from the system. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.050 Utility administration.
The stormwater utility shall be administered by the city’s public works department. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.060 Service charge imposed.
All persons otherwise responsible for impervious surfaces within the city which contribute runoff to the stormwater system or who otherwise use or benefit from the stormwater utility of the city will be responsible for paying the stormwater water utility fees as set forth by Resolution No. 06/15/2004 R-51. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.070 System of rates and charges.
A. Service Fees Imposed. The city will impose stormwater water fee rates and charges on each parcel of real property within the city except governmentally owned streets. The charges shall fund the administration, planning, design, construction, water quality programming, operation, maintenance and repair of existing and future stormwater facilities.

B. Methods of Determining Contribution of Stormwater.
1. Contributions of stormwater from nonresidential parcels and residential parcels larger than duplexes have been ascertained through aerial photography by evaluating land surface and measuring the amount of impervious surface.

2. Contributions of stormwater from residential parcels have been established by estimating residential impervious areas.

C. Method of Determining Service Fee Rates. Stormwater service fees shall be applied to each parcel of real property within the city (including city-owned properties) except government-owned streets. Service fees shall be differentiated according to the following classifications:

1. Residential Parcels. Single family residential and duplex parcels shall constitute one ERU.

2. Undeveloped Parcels. Undeveloped parcels shall have no charges applied.

3. Other Parcels. Charges for all other parcels shall be computed by multiplying the total ERUs for a parcel by the monthly rate. Total ERUs are calculated by dividing total square feet of impervious surface by three thousand square feet (one ERU).

4. Credit for On-Site Mitigation. A service charge credit shall be available for those nonsingle family residential customers that exceed the city’s stormwater development standards and/or reduce the city’s downstream costs in providing stormwater capacity, provided, that if the city’s standards are increased in the future, then only those customers who currently exceed the existing standards will continue to be eligible for a service charge credit. If a request for mitigation credit is granted, the credit shall be applied to all charges from the time of the credit request being accepted by the city, and will be reflected on the next billing thirty days after appeal is granted.

Stormwater control facilities located on a parcel may either hold runoff for a period of time and release it at a controlled rate to the stormwater water system (detention), or hold water until it evaporates or infiltrates into the ground (retention).

Credit for improving quality of stormwater runoff will be based on implementation of source or treatment controls which reduce or eliminate pollutants from its stormwater runoff before it enters the city’s stormwater system.

Customers who believe their site conditions warrant a service charge credit may make application to the city by requesting an application package from the city engineer, provided, that no credit shall exceed a forty-five percent reduction of the original service charge amount. (Ord. 6/15/20044-26 § 1 (part), 2004)

13.16.080 Billing and collection.

A. Utility Enterprise Fund. This chapter creates the stormwater utility fund. All revenues received from stormwater user fees shall be placed in the enterprise fund as a designated fund, to be kept separate and apart from all other city funds. The collection, accounting and expenditure of all stormwater utility funds shall be in accordance with the Utah Uniform Fiscal Procedures Act.

B. Billing. The city shall bill, or cause to be billed, parcel owners for stormwater utility services. Fees and charges shall be considered delinquent if not paid as determined by the procedures established by the city and shall be an obligation to the city, which shall be subject to recovery in a civil action. (Ord. 6/15/20044-26 § 1 (part), 2004)

13.16.090 Appeal of charges.

Any nonresidential customer who disagrees with the stormwater rate structure’s application to his/her parcel may apply to the director for a user fee adjustment. The adjustment request must state the grounds for adjustment and must be filed in writing with the director no later than thirty days after receipt of billing. The director shall review the request and basis for user charges to determine whether an error was made in the calculation or application of the fee. The director may approve an adjustment to the fee.

An appeal of the director’s decision may be brought before the city administrator within thirty days after the date of the director’s decision. Decision of the city administrator shall be final and conclusive.
If an appeal of charges is successful, credit will be applied to all charges from the time of the appealed billing and will be reflected on a future billing after the appeal is granted. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.100 No polluted waters discharged to storm sewers.
The only substance allowed to be discharged under this chapter into the city's stormwater system is stormwater, surface drainage, subsurface drainage, groundwater, roof runoff, cooling water or nonpolluted water. Such water may be discharged only into stormwater facilities which have adequate capacity for the accommodation of such water. Such discharged water shall comply with the city's stormwater quality standards. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.110 Obstruction.
A. It is unlawful for anyone to obstruct or contribute to the obstruction of the flow of stormwater runoff or nonstormwater runoff into any sump, detention basin, storm drain, curb and gutter, drain inlet, or other associated structural controls that convey stormwater and/or nonstormwater runoff, unless the obstruction is authorized by the city engineer or his appointee and granted with the issuance of a permit signed by the city engineer or his appointee.

B. It is unlawful for any person to cause any obstruction that inhibits the normal flow of stormwater and/or nonstormwater runoff in any curb and gutter, unless the obstruction is authorized by the city engineer or his appointee and granted with the issuance of a permit signed by the city engineer or his appointee.

C. It is unlawful for a person to cover over any drain inlets for any reason or purpose, unless the obstruction is authorized by the city engineer or his appointee and granted with the issuance of a permit signed by the city engineer or his appointee.

D. Subsections (A) and (B) of this section shall not apply during clean-up periods established by the city, provided the materials are placed according to any directions from the city and do not obstruct drain inlets. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.120 Dumping.
A. It is unlawful for anyone to dump or allow to be dumped into any sump, detention basin, storm drain, curb and gutter, drain inlet, or other storm drainage structure that conveys stormwater and/or nonstormwater, any type of debris, petroleum product, chemical, paint, pesticide, herbicide, heavy metal, acid or base product, solid or liquid waste product, hazardous waste product, and/or human or animal waste.

B. The restrictions set forth in subsection (A) of this section shall not apply to the normal runoff of nonstormwater related to domestic home uses; for example, lawn watering, washing cars, etc. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.130 Enforcement.
This chapter may be enforced through the administrative code enforcement program of the Midvale Municipal Code, or by filing civil or criminal actions in the Midvale City justice court or third district court. The city has sole discretion to decide whether to file a civil or criminal case for a violation. The city may file both, or one or the other. The possibility of an administrative remedy pursuant to administrative code enforcement shall in no way interfere with the city's right to prosecute violations of this chapter as criminal offenses. The city may use any of the remedies available under the law in both civil and criminal prosecution. If the city chooses to file both civil and criminal charges for the same violation, no civil penalties may be assessed, but all other remedies are available. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.140 Annual report to stormwater utility customers.
The city's public works department shall cause to be completed an annual report on the stormwater utility which, if accepted, is approved by the city council. This report shall summarize the financial activities of the utility and the major areas of expenditure, field activities, accomplishments, income, and the upcoming year's priorities. (Ord. 6/15/2004O-23 § 1 (part), 2004)

13.16.150 Long Term Stormwater Management Agreement required.
A. Every parcel of real property, except single family residential parcels and undeveloped parcels, that has been developed or redeveloped on or after March 10, 2003, is required to have its owner enter into an agreement with the
city that outlines the responsibilities of the owner for long term stormwater management. This agreement will be recorded with the Salt Lake County Recorder’s Office and will be binding on future parcel owners.

B. Every owner of a parcel of real property that is required to enter into an agreement under this section is required to provide an annual report to the city that outlines the maintenance procedures used to keep the parcel’s stormwater facilities functioning properly.

C. The owner of a parcel of real property is solely responsible for the operation and maintenance of stormwater facilities located on the parcel. The stormwater facilities must be adequately maintained, perform in a working manner, comply with the terms of any agreement entered into under this section and the Utah Water Quality Act (Utah Code Ann. § 19-5-101, et seq., as amended).

D. After providing no less than 3 business days’ notice, city personnel are authorized to enter upon any parcel of real property that is required to have its owner enter into an agreement under this section in order to inspect the stormwater facilities on the parcel for the purpose of determining whether the parcel owner is in compliance with this section.
When recorded, mail to:

Midvale City Recorder
7505 South Holden Street
Midvale, UT 84047

Affects Parcel No(s): ________________________________

LONG TERM STORMWATER MANAGEMENT AGREEMENT

This Long Term Stormwater Management Agreement ("Agreement") is made and entered into this ______ day of ______________________, 20______, by and between Midvale City, a Utah municipal corporation ("City"), and

________________________________________________________________________,

a ______________________________________________________________________ (“Owner”).

RECITALS

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters within the City, as set forth in the Midvale City Code, Chapter 13.16, pursuant to the Utah Water Quality Act, as set forth in Utah Code Ann. §§ 19-5-101, et seq., as amended ("Act"); and

WHEREAS, the Owner hereby represents and acknowledges that it is the owner in fee simple of certain real property more particularly described in Exhibit “A,” attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, the Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and/or adjacent lands; and

WHEREAS, in order to accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Owner is required to build and maintain at Owner’s expense a storm and surface water management facility or improvements ("Stormwater Facilities"); and
WHEREAS, the Stormwater Facilities are more particularly described and shown in the final site plan or subdivision approved for the Property and related engineering drawings, and any amendments thereto, which plans and drawings are on file with the City and are hereby incorporated herein by this reference ("Development Plan"); and

WHEREAS, a condition of Development Plan approval, and as required as part of the City’s Small MS4 UPDES General Permit from the State of Utah, Owner is required to enter into this Agreement establishing a means of documenting the execution of the Long Term Stormwater Management Plan and,

NOW, THEREFORE, in consideration of the benefits received and to be received by the Owner, its successors and assigns, as a result of the City’s approval of the Long Term Stormwater Management Plan, and the mutual covenants contained herein, the parties agree as follows:

Section 1
Long Term Stormwater Management Plan. Upon completion of the Stormwater Facilities, the owner must provide a summary description of all Stormwater Facilities, details, and appurtenance draining to and affecting the Stormwater Facilities, and establish the standard operations and routine maintenance procedures for the Stormwater Facilities and control measures installed on the property. This Long Term Stormwater Management Plan, more particularly shown in Exhibit ‘B’, must be filed with the Midvale City Recorder.

Section 2
Construction of Stormwater Facilities. The Owner must, at its sole cost and expense, construct the Stormwater Facilities in accordance with the Development Plans and specifications, and any amendments thereto which have been approved by the City.

Section 3
Maintenance of Stormwater Facilities. The Owner must, at its sole cost and expense, adequately maintain the Stormwater Facilities. Owner’s maintenance obligations include all system and appurtenance built to convey stormwater, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance, for purposes of this Agreement, is defined as good working condition so that the Stormwater Facilities are performing their design functions. The Owner must, at its sole cost and expense, perform all work necessary to keep the Stormwater Facilities in good working condition.

Section 4
Annual Maintenance Report of Stormwater Facilities. The Owner must, at its sole cost and expense, inspect the Stormwater Facilities and submit an inspection report and certification to the City annually. The purpose of the inspection and certification is to assure safe and proper functioning of the Stormwater Facilities. The annual inspection must cover all aspects of the Stormwater Facilities, including, but not limited to, the
parking lots, structural improvements, berms, channels, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies must be noted in the inspection report. The report must also contain a certification as to whether adequate maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification are due every year by the date of the executed Agreement and must be on forms acceptable to the City.

Section 5
City Oversight Inspection Authority. The Owner hereby grants permission to the City, its authorized agents, and employees to enter upon the Property and to inspect the Stormwater Facilities upon reasonable notice of not less than three business days to the Owner. Such inspections will be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City. The purpose of the inspection is to determine and ensure that the Stormwater Facilities are being adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Long Term Stormwater Management Plan.

Section 6
Notice of Deficiencies. If the City finds that the Stormwater Facilities contain any defects or are not being maintained adequately, the City will send Owner written notice of the defects or deficiencies and provide Owner with a reasonable time, but not less than 60 days, to cure such defects or deficiencies. Such notice must confirm delivery to the Owner or be sent certified mail to the Owner at the address listed on the Salt Lake County Tax Assessor.

Section 7
Owner to Make Repairs. The Owner must, at its sole cost and expense, make such repairs, changes or modifications to the Stormwater Facilities as may be determined as reasonably necessary by the City within the required cure period to ensure that the Stormwater Facilities are adequately maintained and continue to operate as designed and approved.

Section 8
City’s Corrective Action Authority. In the event the Owner fails to adequately maintain the Stormwater Facilities in good working condition acceptable to the City, after due notice of deficiencies as provided in Section 6 and failure to cure, then, upon Owner’s failure to cure or correct within 30 days following a second notice delivered to Owner, the City may seek any combination of the following actions:

1. The City may require Owner to reimburse the City for any fines the City incurs as a result of the Owner’s failure to abide by this Agreement.
2. In accordance with Midvale Municipal Code 5.04.020, the City may suspend or revoke Owner’s business license.
3. In accordance with Midvale Municipal Code 13.16.130, the City may issue a citation punishable as a class B misdemeanor.
4. The City may pursue any remedy available under the City’s Administrative Code Enforcement Program including, but not limited to, abating the violation.

5. The City may disconnect the facility storm drain connection after written notice to the Owner.

It is expressly understood and agreed that the City is under no obligation to maintain or repair the Stormwater Facilities, and this Agreement may not be construed to impose any such obligation on the City. The actions described in this Section are in addition to and not in lieu of any and all equitable remedies available to the City as provided by law for Owner’s failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.

Section 9
Reimbursement of Costs. In the event the City, pursuant to this Agreement, incurs any costs, or expends any funds resulting from enforcement or cost for labor, use of equipment, supplies, materials, and the like related to Owner’s Stormwater Facilities, the Owner must reimburse the City upon demand, within 30 days of receipt thereof for all actual costs incurred by the City. After said 30 days, such amount is deemed delinquent and is subject to interest at the rate of 10% per annum. Owner is also liable for any collection costs, including attorneys’ fees and court costs, incurred by the City in collection of delinquent payments.

Section 10
Successor and Assigns. This Agreement will be recorded in the Salt Lake County Recorder’s Office and the covenants and agreements contained herein will run with the land. Whenever the Property is held, sold, conveyed or otherwise transferred, the transfer will be subject to the covenants, stipulations, agreements and provisions of this Agreement and will apply to, bind and be obligatory upon the Owner hereto, its successors and assigns, and will bind all present and subsequent owners of the Property described herein.

Section 11
Severability Clause. The provisions of this Agreement are severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Owner, its successors and assigns, is held invalid, the remainder of this Covenant will not be affected thereby.

Section 12
Utah Law and Venue. This Agreement is interpreted under the laws of the State of Utah. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement must be maintained in the appropriate court of competent jurisdiction in Salt Lake County, Utah.

Section 13
Indemnification. This Agreement imposes no liability of any kind whatsoever on the City, and the Owner agrees to indemnify and hold the City, its officials, officers,
employees, and agents harmless from any damage, accident, casualty, occurrence, or claim in the event the Stormwater Facilities fail to operate properly. The Owner indemnifies and holds the City, its officials, officers, employees, and agents harmless for any damage, accident, casualty, occurrence, or claim which might arise or be asserted against the City from failure of Owner to comply with its obligations under this Agreement relating to the Stormwater Facilities. The Owner also indemnifies and holds the City, its officials, officers, employees, and agents harmless for any damage, accident, casualty, occurrence, or claim which may arise or be asserted against the City in the event the City utilizes any remedy under Section 8 of this Agreement.

Section 14
Amendments. This Agreement may not be modified except by written instrument executed by the City and the Owner of the Property at the time of modification. No modification is effective until recorded in the Salt Lake County Recorder's Office.

Section 15
Subordination Requirement. If there is a lien, trust deed or other property interest recorded against the Property, the trustee, lien holder, etc., is required to execute a subordination agreement or other acceptable recorded document agreeing to subordinate their interest to the Agreement.

Section 16
Exhibit B. The Long Term Stormwater Management Plan (LTSWMP) must adapt to change in good judgment when site conditions and operations change and when existing programs are ineffective. Exhibit B will not be filed with the agreement at County Recorder but is included by reference and kept on file with the City Recorder. Revision applications must be filed with the City Engineering Division and amended into the LTSWMP on file with the Midvale City recorder.
LONG TERM STORMWATER MANAGEMENT PLAN AGREEMENT

SO AGREED this ________ day of __________________ 20_____.

PROPERTY OWNER

By: ___________________________ Title: ___________________________

By: ___________________________ Title: ___________________________

STATE OF UTAH

COUNTY OF SALT LAKE

The above instrument was acknowledged before me by __________________, this ______ day of __________________, 20_____.

______________________________
Notary Public
Residing in: ______________________
My commission expires: _____________

MIDVALE CITY

By: ___________________________ Date: ___________________________

Mayor JoAnn Seighini

Attest: ___________________________
City Recorder

STATE OF UTAH

COUNTY OF SALT LAKE

The above instrument was acknowledged before me by __________________, this ______ day of __________________, 20_____.

______________________________
Notary Public
Residing in: ______________________
My commission expires: _____________ smp___
Attachments:

Exhibit A: Plat and Legal Description
Exhibit B: Stormwater Management Plan; Filed with Midvale City Recorder