

Storm Water Management Practice Maintenance Agreement

Document Number

Per the Access and Detention Pond Easement executed on April 9th, 2002 by and between Kohl's Department Stores., predecessor-in-interest to Kohl's Value Services, Inc., R. Equities VI LLC and Fox Run Association, predecessor-in-interest to Fox Run 3, LLC ("Fox Run 3"), Fox Run 3, LLC is the responsible party for the maintenance of the Detention Pond Tract (Outlot 7 of CSM ____). Fox Run 3 as "Owner" of the property described below, in accordance with Chapter 32 City of Waukesha Storm Water Management and Erosion Control, agrees to maintain storm water management practice(s) on the subject property in accordance with approved plans and Storm Water Management Plan conditions. The owner further agrees to the terms stated in this document to ensure that the storm water management practice(s) continues serving the intended functions in perpetuity. This Agreement includes the following exhibits:

Exhibit A: Legal Description of the real estate for which this Agreement applies ("Property").

Exhibit B: Location Map(s) – shows an accurate location of each storm water management practice affected by this Agreement.

Exhibit C: Maintenance Plan – prescribes those activities that must be carried out to maintain compliance with this Agreement.

Note: The storm water management system was constructed in 2002 based on the City of Waukesha approved Storm Water Management Report, which was prepared by National Survey & Engineering for Kohl's Department Stores, Inc. dated May 31, 2001. This Storm Water Management Practice Maintenance Agreement is now being recorded as part of a requirement of the Fox Run Redevelopment project.

Through this Agreement, the Owner hereby subjects the Property to the following covenants, conditions and restrictions:

1. The Owner shall be responsible for the routine and extraordinary maintenance and repair of the storm water management practice(s) and drainage easements identified in Exhibit B until Storm Water and Erosion Control Permit termination by the City of Waukesha in accordance with Chapter 32 of the City Code of Ordinances.
2. After Storm Water and Erosion Control Permit termination under 1., the current Owner(s) shall be solely responsible for maintenance and repair of the storm water management practices and drainage easements in accordance with the maintenance plan contained in Exhibit C.
3. The Owner(s) shall, at their own cost, complete inspections of the storm water management practices at the time intervals listed in Exhibit C, and conduct the inspections by a qualified professional, file the reports with the City of Waukesha after each inspection and complete any maintenance or repair work recommended in the report. The Owner(s) shall be liable for the failure to undertake any maintenance or repairs. After the work is completed by the Contractor, the qualified professional shall verify that the work was properly completed and submit the follow-up report to the City within 30 days.
4. In addition, and independent of the requirements under paragraph 3 above, the City of Waukesha, or its designee, is authorized to access the property as necessary to conduct inspections of the storm water management practices or drainage easements to ascertain compliance with the intent of this Agreement and the activities prescribed in Exhibit C. The City of Waukesha may require work to be done which differs from the report described in paragraph 3 above, if the City of Waukesha reasonably concludes that such work is necessary and consistent with the intent of this agreement. Upon notification by the City of Waukesha of required maintenance or repairs, the Owner(s) shall complete the specified maintenance or repairs within a reasonable time frame determined by the City of Waukesha.
5. If the Owner(s) do not complete an inspection under 3. above or required maintenance or repairs under 4. above within the specified time period, the City of Waukesha is authorized, but not required, to perform the specified inspections, maintenance or repairs. In the case of an emergency situation, as determined by the City of Waukesha, no notice shall be required prior to the City of Waukesha performing emergency maintenance or repairs. The City of Waukesha may levy the costs and expenses of such inspections, maintenance or repair

Name and Return Address

City of Waukesha
130 Delafield Street
Waukesha, WI 53188

Parcel Identification Number(s) – (PIN)

related actions as a special charge against the Property and collected as such in accordance with the procedures under s. 66.0627 Wis. Stats. or subch. VII of ch. 66 Wis. Stats.

6. This Agreement shall run with the Property and be binding upon all heirs, successors and assigns. After the Owner records the addendum noted above, the City of Waukesha shall have the sole authority to modify this agreement upon a 30-day notice to the current Owner(s).

Dated this ____ day of _____, 2020.

**Owner:
Fox Run 3, LLC**

(Owners Signature)

(Owners Typed Name)

Acknowledgements

State of Wisconsin:
County of Waukesha

Personally came before me this ____ day of _____, 2020, the above named [Owners name] to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Name]

Notary Public, Waukesha County, WI

My commission expires: _____.

This document was drafted by:

Paul Jenswold, P.E.
Jahnke & Jahnke Associates LLC
711 W. Moreland Blvd
Waukesha, WI 53188

For Certification Stamp

City of Waukesha Common Council Approval

Dated this ____ day of _____, 201_.

Shawn N. Reilly, Mayor

Gina Kozlik, City Clerk

Acknowledgements

State of Wisconsin:
County of Waukesha

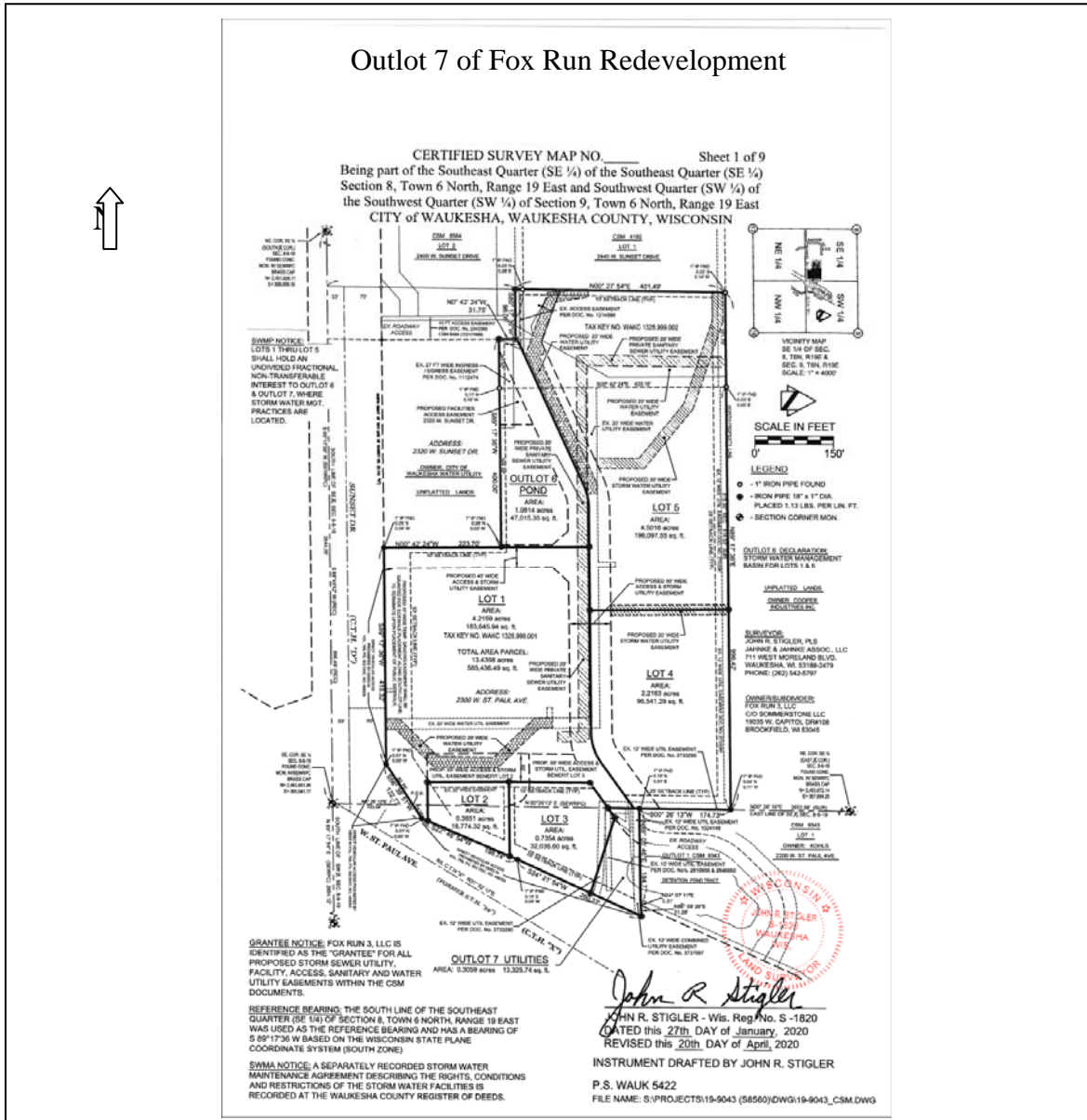
Personally came before me this ____ day of _____, 2020, the above named _____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Name]
Notary Public, Waukesha County, WI
My commission expires:_____.

Exhibit A – Legal Description

The following description and reduced copy map identifies the land parcel(s) affected by this Agreement. For a larger scale view of the referenced document, contact the Waukesha County Register of Deeds office.

Project Identifier: **Outlot 7 of Fox Run Redevelopment** Acres: **13.44**
 Date of Recording: _____, 2020
 Map Produced By: **Jahnke and Jahnke Associates, LLC, 711 W. Moreland Blvd, Waukesha, WI**
 Legal Description: **Outlot 7 of Fox Run Redevelopment, located in all that part of the Southwest Quarter (SW ¼) of Section 9, Township 6N, Range 19E (City of Waukesha) Waukesha County, Wisconsin.**



Drainage Easement Restrictions: The entire Outlot is a drainage easement for storm water collection, conveyance and treatment. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt storm water flows in any way. See Exhibit C for specific maintenance requirements for storm water management practices within this area. See CSM ___ for details on location.

CERTIFIED SURVEY MAP NO. _____ Sheet 3 of 9
 Being part of the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4)
 Section 8, Town 6 North, Range 19 East and Southwest Quarter (SW 1/4) of
 the Southwest Quarter (SW 1/4) of Section 9, Town 6 North, Range 19 East
 CITY of WAUKESHA, WAUKESHA COUNTY, WISCONSIN

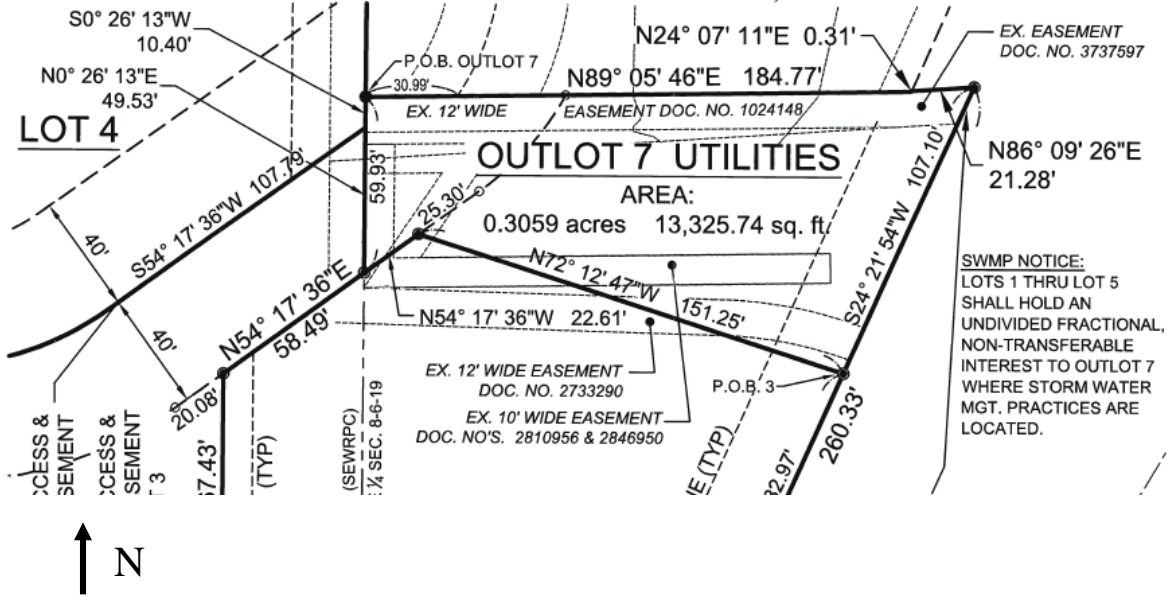


Exhibit B - Location Map

Storm Water Management Practices Covered by this Agreement

The storm water management practices covered by this Agreement are depicted in the reduced copy of a portion of the construction plans, as shown below. The practices include one wet detention basin and all associated pipes, earthen berms, rock chutes and other components of these practices. All of the noted storm water management practices are located within a drainage easement in Outlot 7 of the subdivision plat, as noted in Exhibit A.

Subdivision Name: **Outlot 7 of Fox Run Redevelopment**
Storm water Practices: **Wet Detention Basin**
Location of Practices: **All of Outlot 7**
Owners of Outlot 7: **Each owner of Lots 1 through 5 shall have equal (1/5) undividable interest in Outlot 7**

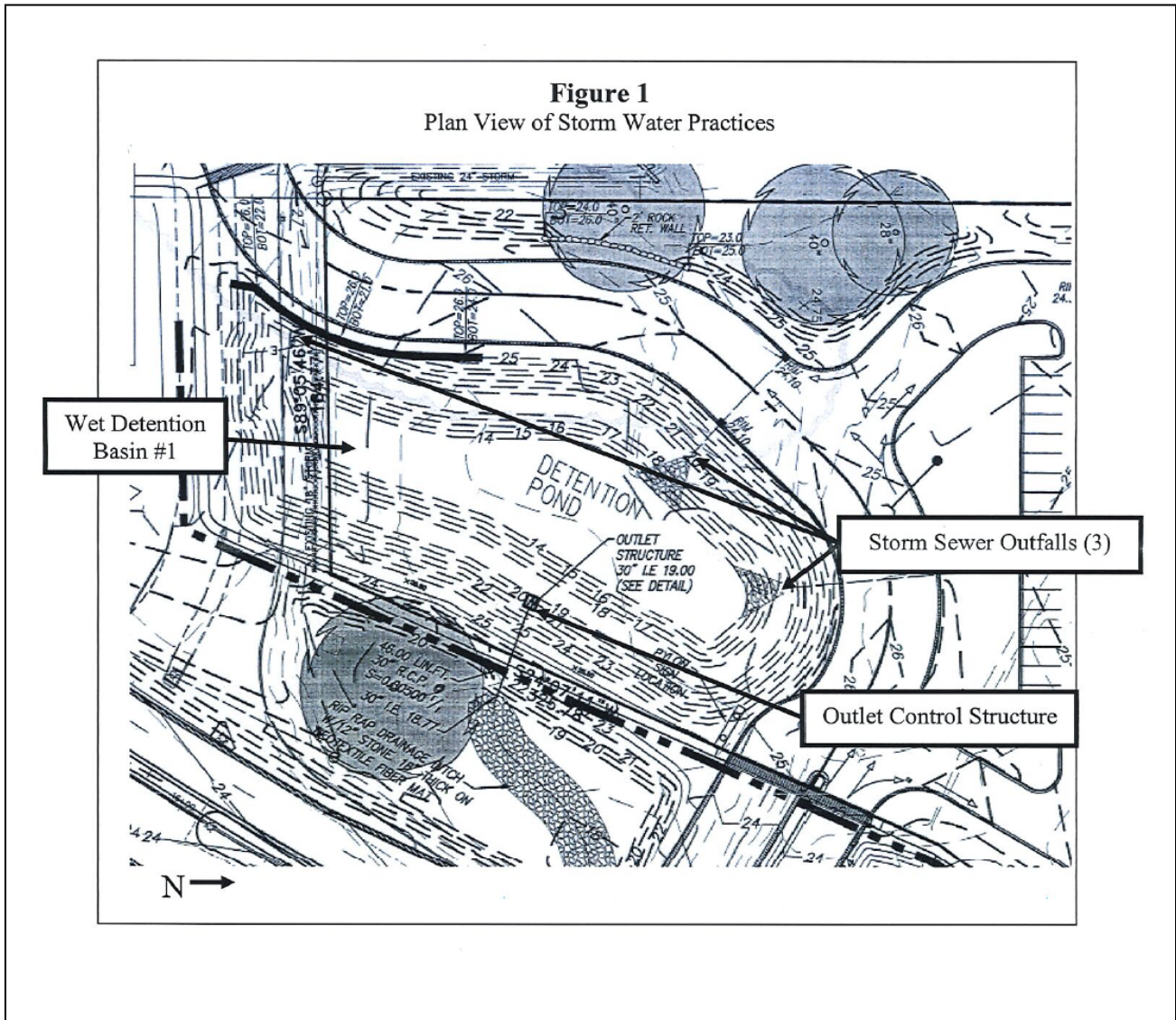


Exhibit B - Figure 1 (A)

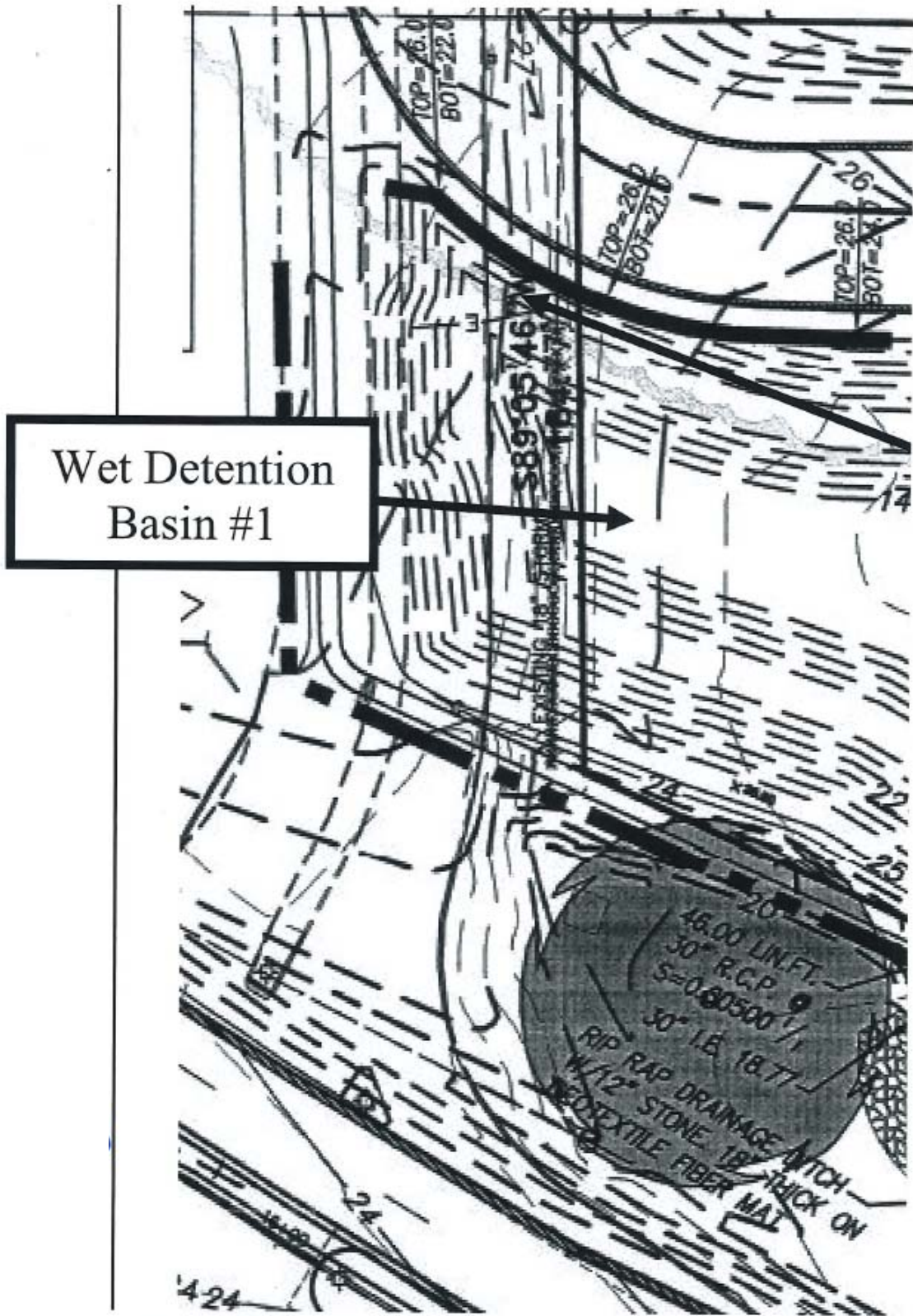


Exhibit B - Figure 1 (B)



Exhibit B - Figure 1 (C)

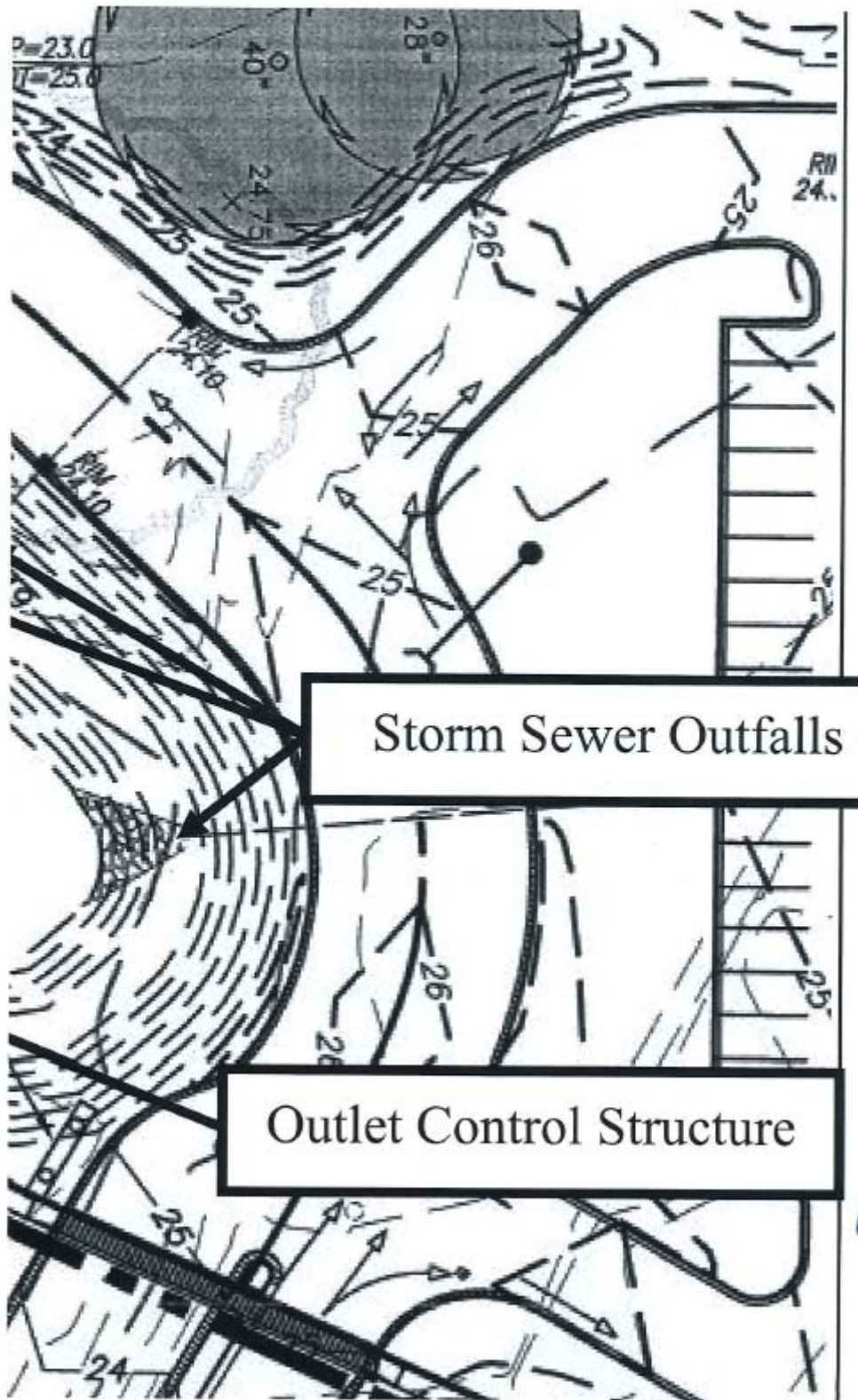


Exhibit B – Figure 1 (Close up)

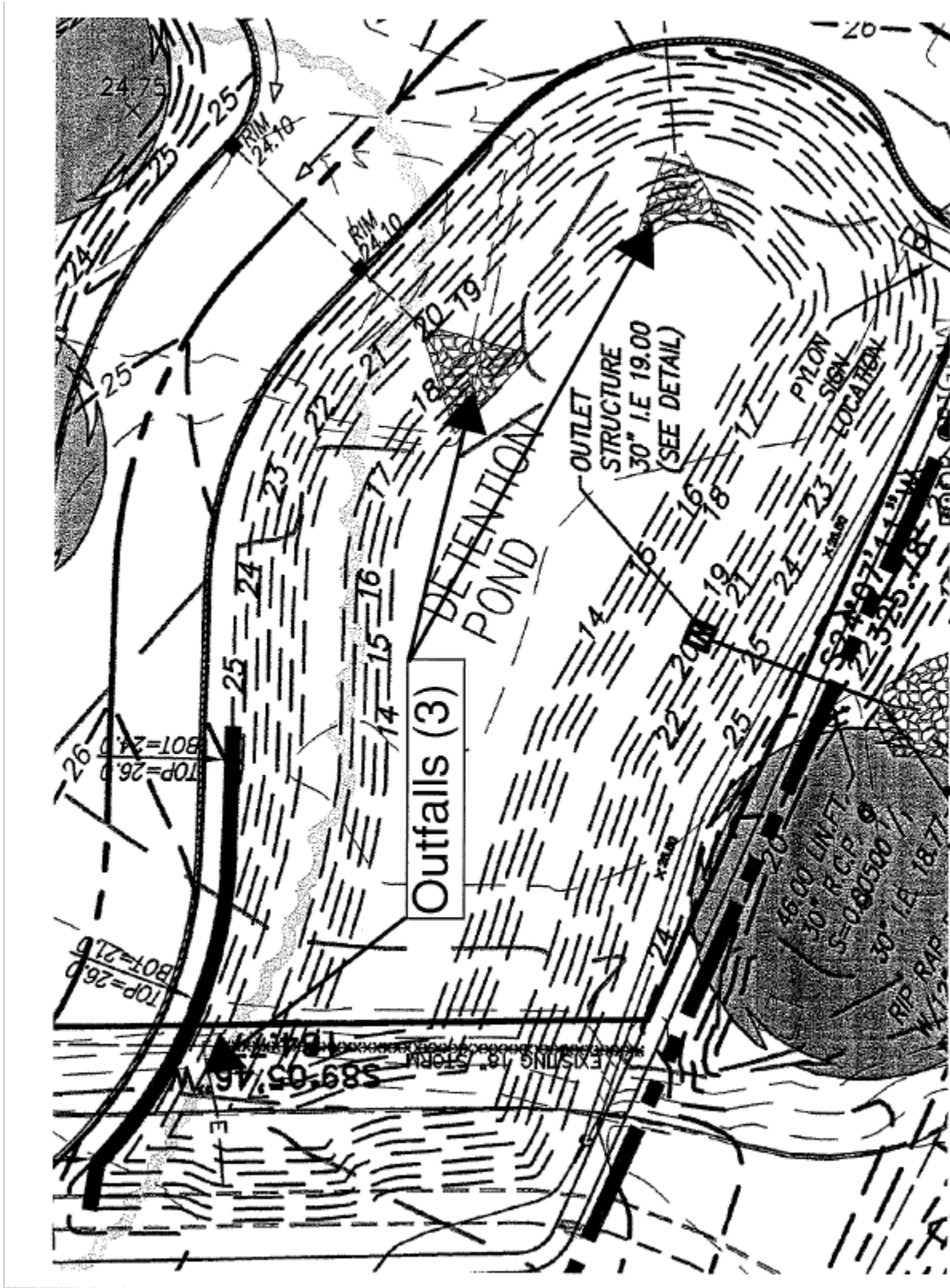


Exhibit C

Storm Water Practice Maintenance Plan

This exhibit explains the basic function of each of the storm water practices listed in Exhibit B and prescribes the minimum maintenance requirements to remain compliant with this Agreement. The maintenance activities listed below are aimed to ensure these practices continue serving their intended functions in perpetuity. The list of activities is not all inclusive, but rather indicates the minimum type of maintenance that can be expected for this particular site. Access to the stormwater practices for maintenance vehicles is shown in Exhibit B. Any failure of a storm water practice that is caused by a lack of maintenance will subject the Owner(s) to enforcement of the provisions listed on page 1 of this Agreement by the City of Waukesha.

System Description:

The wet detention basin is designed to trap 80% of sediment in runoff and maintain pre-development downstream peak flows. The basin has three outfall pipes with flared end sections that outlet into the pond. The outlet structure for the pond outlets to a rock chute. The basin will trap the suspended solids. It should be noted that all three outfall pipes and the outlet structure are not in Outlot 7 discussed herein, but are in Outlot 1 of CSM 9343 along with the majority of the detention basin. Outlot 7 of the Fox Run Redevelopment only has a small portion of the detention basin slopes and water surface. The pond size and water level as it exists in Outlot 7 must be maintained as specified in this Agreement (see Figures 1, 2 and 3).

Minimum Maintenance Requirements:

To ensure the proper long-term function of the storm water management practices described above, the following activities must be completed:

1. Grass slopes must be checked after heavy rains (minimum of annually) for signs of erosion. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the detention basin. Erosion matting is recommended for repairing grassed areas.
2. NO trees are to be planted or allowed to grow on the earthen berms. Tree root systems can reduce soil compaction and cause berm failure. The berms must be inspected annually and any woody vegetation removed.
3. Invasive plant and animal species shall be managed in compliance with Wisconsin Administrative Code Chapter NR 40. This may require eradication of invasive species in some cases.
4. If the permanent pool falls below the safety shelf, a review shall be performed to determine whether the cause is liner leakage or an insufficient water budget. If the cause is leakage, the liner shall be repaired. Leakage due to muskrat burrows may require removal of the animals. If the permanent pool cannot be sustained at the design elevation, benching of the safety shelf may be necessary.
5. If floating algae or weed growth becomes a nuisance (decay odors, etc.), it must be removed from the basin or the forebay and deposited where it cannot drain back into the basin. Removal of the vegetation from the water reduces regrowth the following season (by harvesting the nutrients). Wetland vegetation must be maintained along the waters edge for safety and pollutant removal purposes.
6. When sediment in the basin has accumulated to an elevation of three feet below the outlet elevation, it must be removed (see Exhibit D). All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the basin. The forebays will likely need sediment removal first. Failure to remove sediment from the forebays will cause resuspension of previously trapped sediments and increase downstream deposition.
7. No grading or filling of the basin or berm other than for sediment removal is allowed, unless otherwise approved by the City of Waukesha.
8. Periodic mowing of the grass swales will encourage vigorous grass cover and allow better inspections for erosion. Waiting until after August 1 will avoid disturbing nesting wildlife. Mowing around the basin or the forebays may attract nuisance populations of geese to the property and is not necessary or recommended.
9. Any other repair or maintenance needed to ensure the continued function of the storm water practices or as ordered by the City of Waukesha under the provisions listed on page 1 of this Agreement.
10. The titleholder(s) or their designee must document all inspections as specified above. Documentation shall include as a minimum: (a) Inspectors Name, Address and Telephone Number, (b) Date of Inspections, (c) Condition Report of the Storm Water Management Practice, (d) Corrective Actions to be Taken and Time Frame for Completion, (e) Follow-up Documentation after Completion of the Maintenance Activities. All documentation is to be delivered to the attention of the City Engineer at the City of Waukesha Engineering Department on January 10th and July 10th each year.

Addendum 1
Storm Water Management Practice
Maintenance Agreement

Document number

The purpose of this addendum is to record verified “as-built” construction details, supporting design data and permit termination documentation for the storm water management practice(s) located on Outlot 7 of the Fox Run Redevelopment, described as being all that part of the Southwest Quarter (SW ¼) of Section 9, Township 6N, Range 19E (City of Waukesha) Waukesha County, Wisconsin. This document shall serve as an addendum to document # _____, herein referred to as the “Maintenance Agreement”. This addendum includes all of the following exhibits:

Exhibit D: Design Summary – contains a summary of key engineering calculations and other data used to design the wet detention basin.

Exhibit E: As-built Survey – shows detailed “as-built” cross-section and plan view of the wet detention basin.

Exhibit F: Engineering/Construction Verification – provides verification from the project engineer that the design and construction of the wet detention basin complies with all applicable technical standards and Waukesha County ordinance requirements.

Exhibit G: Storm Water Management & Erosion Control Permit Termination – provides certification by the City of Waukesha that the Storm Water and Erosion Control Permit for the above noted site has been terminated.

Dated this ___ day of _____, 2020.

Owner:

[Owners Signature – per the Maintenance Agreement]

[Owners Typed Name]

Name and Return Address

Parcel Identification Number(s) – (PIN)

Acknowledgements

State of Wisconsin County of Waukesha

Personally came before me this ___ day of _____, 2020, the above named _____ [Owners name] to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Name]

Notary Public, Waukesha County, WI

My commission expires: _____.

This document was drafted by:

Paul Jenswold, P.E.
Jahnke & Jahnke Associates LLC
711 W. Moreland Blvd
Waukesha, WI 53188

For Certification Stamp

Exhibit D Design Summaries for Wet Detention Basin

Project Identifier: Fox Run Redevelopment **Project Size:** Acres **No. of Lots:** 7
Number of Runoff Discharge Points: 2 **Watershed (ultimate discharge):** Fox River
Watershed Area (including off-site runoff traveling through project area): 24.64 acres

Watershed Data Summary. The following table summarizes the watershed data used to determine peak flows and runoff volumes required to design wet detention basin.

Summary Data Elements	Subwatershed A		Subwatershed B (off-site)	
	Pre-develop	Post-develop	Pre-develop	Post-develop
Watershed Areas (in acres) <i>(see attached map)</i>	37.73 acres	24.64 acres		
Average Watershed Slopes (%)	1.5-5%	1-5%		
Land Uses (% of each) <i>(see attached map)</i>	40% Commercial 50% Wooded 10% Residential	70% Commercial 20% Grass 10% Residential		
Runoff Curve Numbers	RCN = 72	RCN = 83		
Conveyance Systems Types	Sheet flow and shallow concentrated flow	100% storm sewer		
Summary of Average Conveyance System Data	Shallow concentrated flow 1.9% unpaved	30" storm sewer 0.3%		
Time of Concentration (Tc) <i>(see attached map & worksheets)</i>	.3080 hrs.	.1667 hrs.		
25% of 2-yr 24-hr post-dev runoff volume	0.50 ac-ft	0.62 ac-ft		
1-year/24 hour Runoff Volume	N/A	N/A		
2-yr./24 hour Peak Flow <i>(see attached hydrographs)</i>	24.72 cfs	7.10 cfs		
10-yr./24 hour Peak Flow	62.80 cfs	22.66 cfs		
100-yr./24 hour Peak Flow	117.88 cfs	61.30 cfs		

Exhibit D (continued)

Practice Design Summary. The following table summarizes the data used to design wet detention basin.

Design Element	Design Data
Site assessment data: (see attached maps)	
Contributing drainage area to basin (subwatershed A & B)	24.64 acres
Distance to nearest private well (including off-site wells)	> 100 feet
Distance to municipal well (including off-site wells)	> 900 feet
Wellhead protection area involved?	No
Ground slope at site of proposed basin	average 3%
Any buried or overhead utilities in the area?	Yes
Proposed outfall conveyance system/discharge (w/ distances)	100 ft. to CTH "X" Road ditch 350 ft. to Fox River
Any downstream roads or other structures? (describe)	Yes – 36" cmp road culvert
Floodplain, shoreland or wetlands?	No
Soil investigation data (see attached map & soil logs):	
Number of soil investigations completed	--
Do elevations of test holes extend 3 ft. below proposed bottom?	--
Average soil texture at pond bottom elevation (USDA)	--
Distance from pond bottom to bedrock	--
Distance from pond bottom to seasonal water table	--
General basin design data (see attached detailed drawings):	
Permanent pool surface area	2.05 acres
Design permanent pool water surface elevation	elev. 19
Top of berm elevation (after settling) and width	elev. 25.0 / width varies
Length/width (dimensions/ratio)	300 ft. (L) x 140 ft. (W) = 2.14:1
Safety shelf design (length, grade, max. depth)	10 ft. @ 10% slope/1.0' deepest
Ave. water depth (minus safety shelf/sediment)	5 ft. (in center)
Sediment forebay size & depth	--
Sediment storage depth & design maintenance	5 ft. depth for pool

Design Basin Inflow, Outflow & Storage Data (see attached hydrographs and detail drawings)				
Inflow Peak/Volume	Maximum Outflow Rate	Max. Water Elevation	Storage Volume at Max. Elev. (above perm. pool)	Outflow Control Structures*
1-yr./24 hr. (volume)	0.48 cfs	20.00 ft.	2.05 acre feet	#1
40.74 cfs (Post 2-yr./24 hr. peak)	7.51 cfs	21.27 ft.	2.41 acre feet	#1 and #2
76.71 cfs (Post 10-yr./24 hr. peak)	22.15 cfs	22.89 ft.	3.32 acre feet	#3
122.83 cfs (Post 100-yr./24 hr. peak)	53.03 cfs	24.59 ft.	4.40 acre feet	#3 and #4

- * #1 = 2.5 inch orifice – flow line elevation 19.08
- #2 = 20" wide rectangular weir – flow line elevation 20.00
- #3 = 30 inch storm sewer pipe – flow line elevation 19.08
- #4 = outlet control structure overflow grate – flow line elevation 24.01
- #5 = earthen berm, grass spillway – flow line elevation 25.03

Source: Storm Water Management Report for Kohl's Department Store, dated May 31, 2001 prepared by National Survey and Engineering.

Exhibit D (continued)

Watershed Map. The watershed map shown below was used to determine the post-development data contained in this exhibit. The post-developed watershed areas are the same as the pre-development watershed areas for this project.

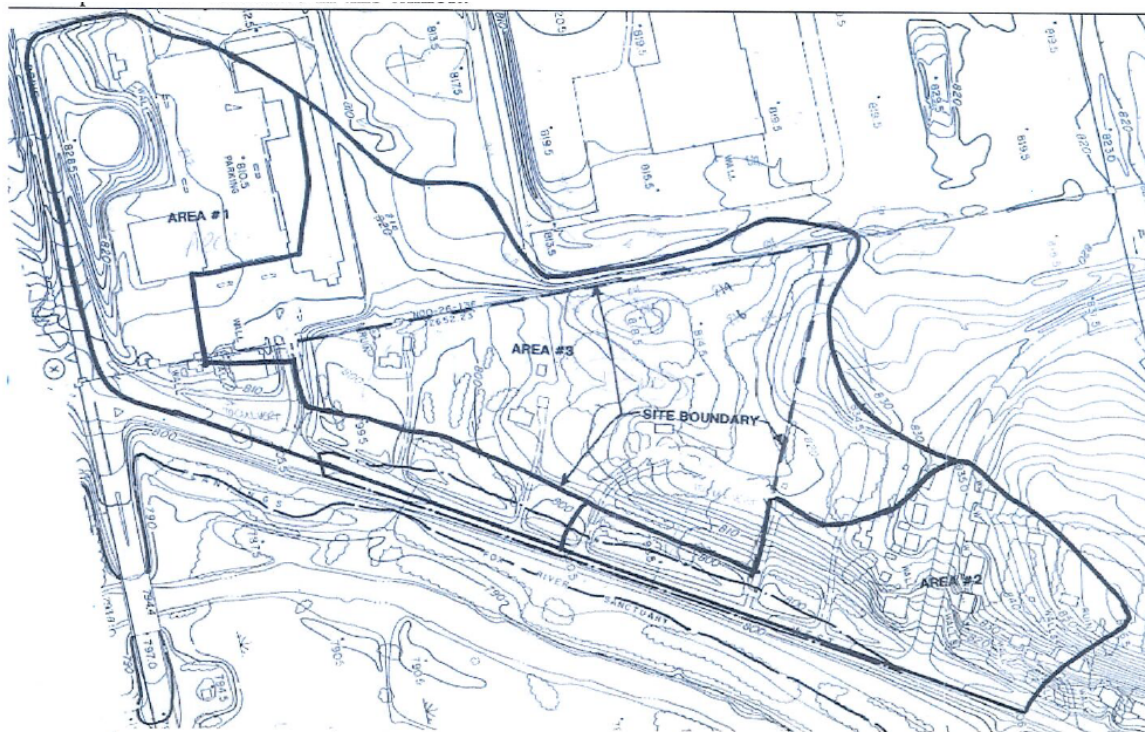


Exhibit D - Watershed Map (A)



Exhibit D - Watershed Map (B)



Exhibit E

As-built Survey for Wet Detention Basin

The wet detention basin depicted in Figure 1 is a reduced copy of the as-built plan.

Project Identifier: Fox Run Redevelopment
Storm water Practice: Wet Detention Basin
Location of Practice: All of Outlot 7 of CSM ____; Fox Run Redevelopment:
Owners of Outlot 7: Each owner of Lots 1-5 shall have equal (1/5) undividable interest in Outlot 7.

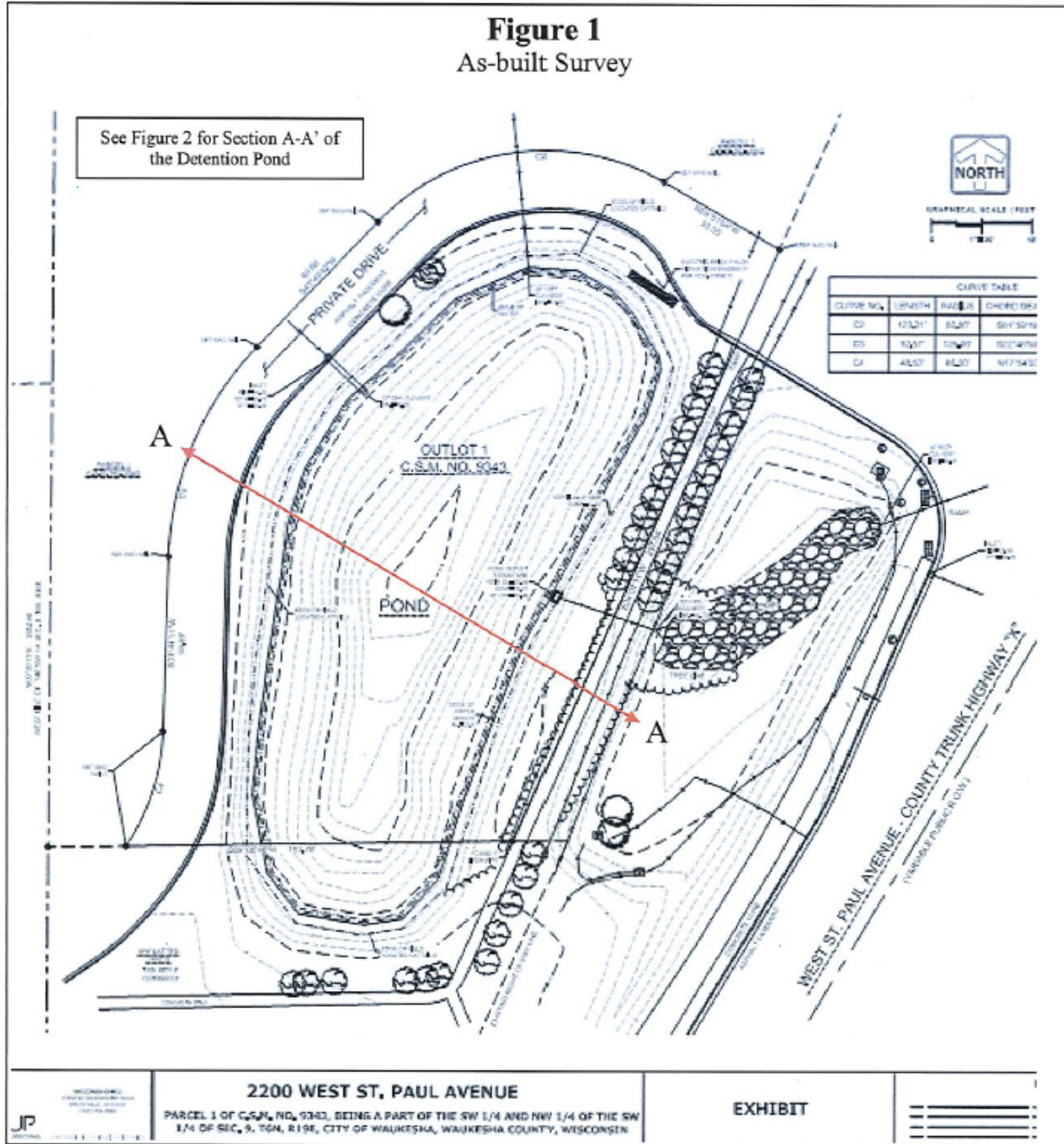


Exhibit E – Figure 1 (A)

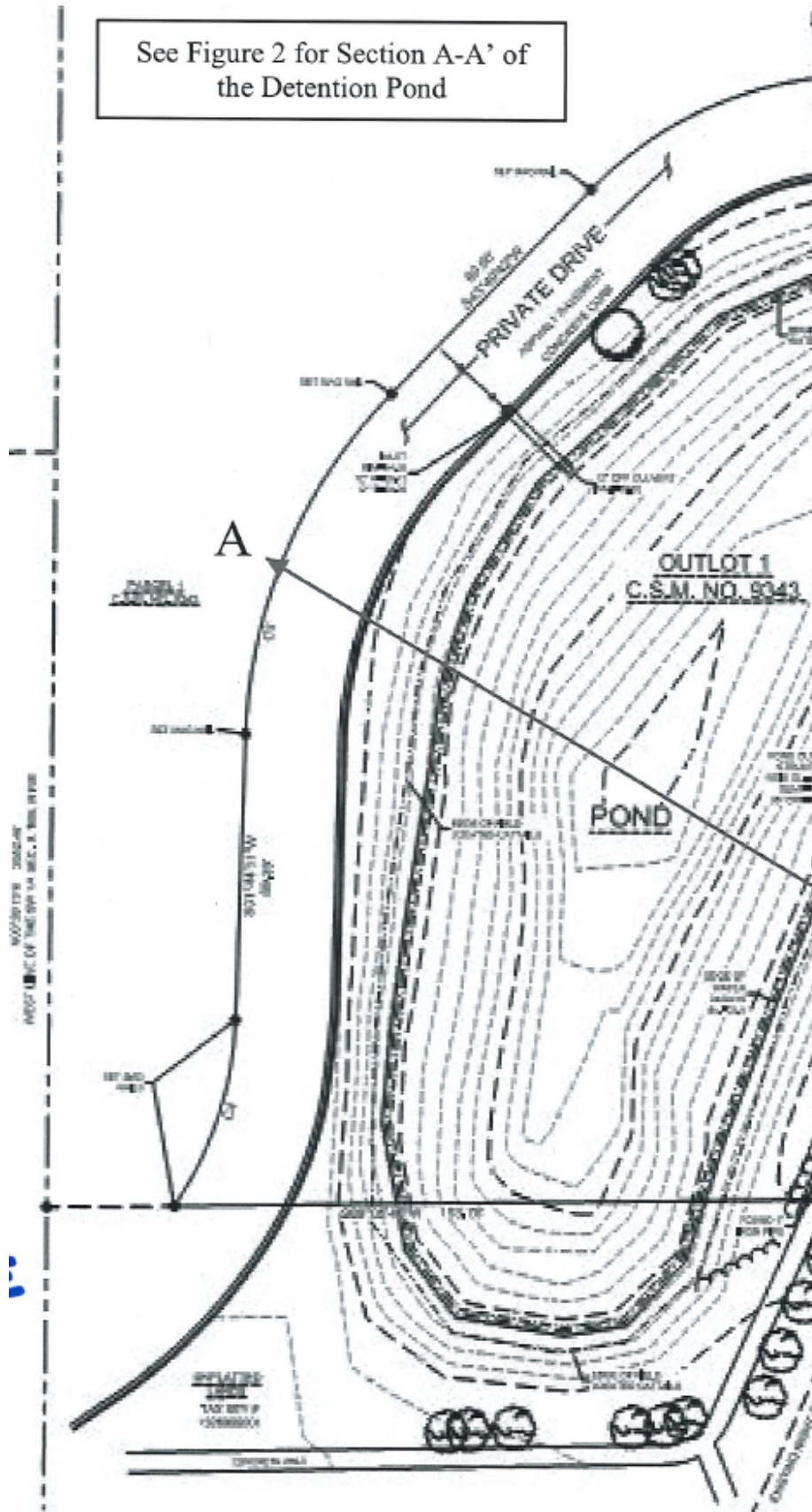


Exhibit E – Figure 1 (B)

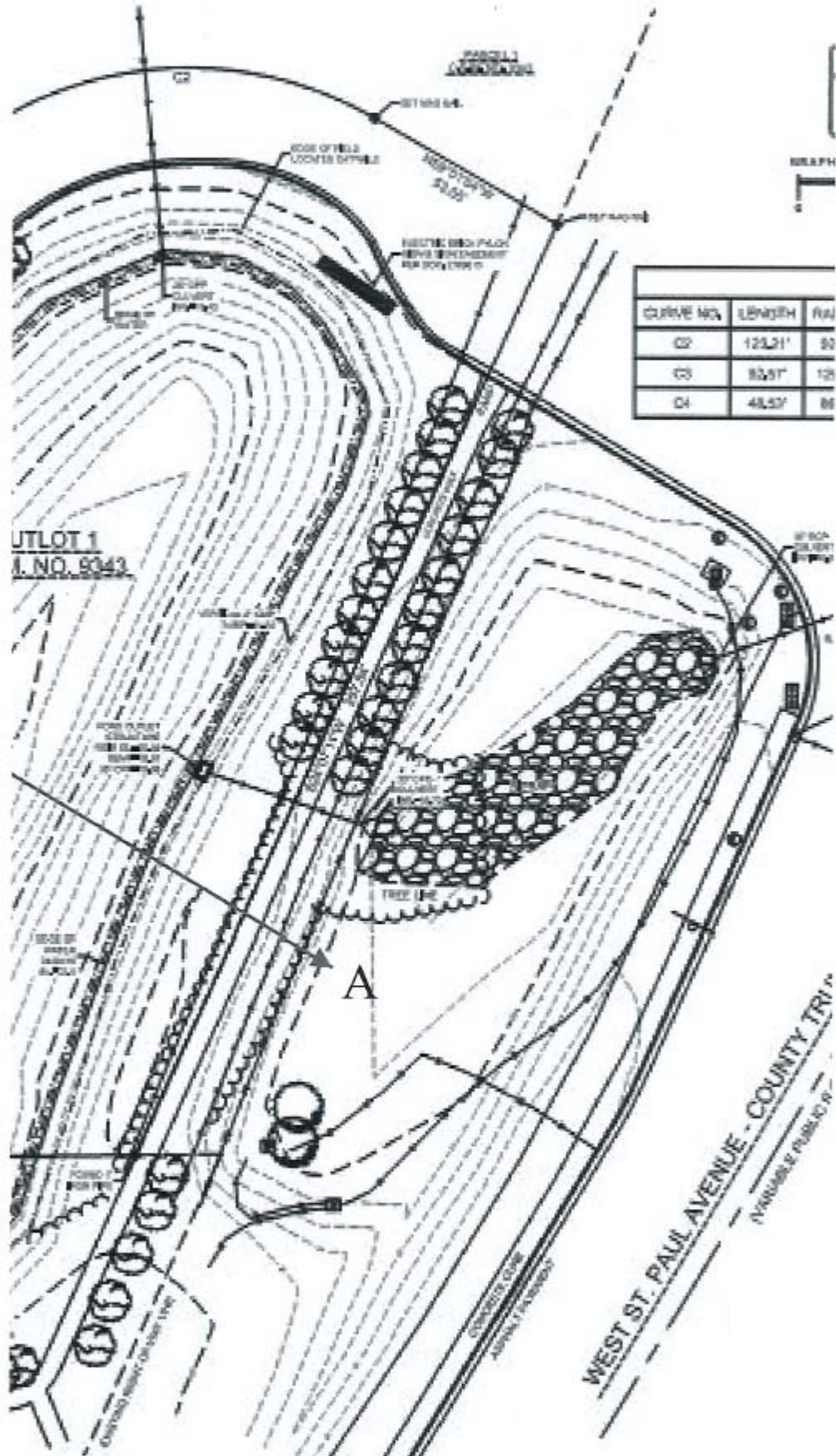
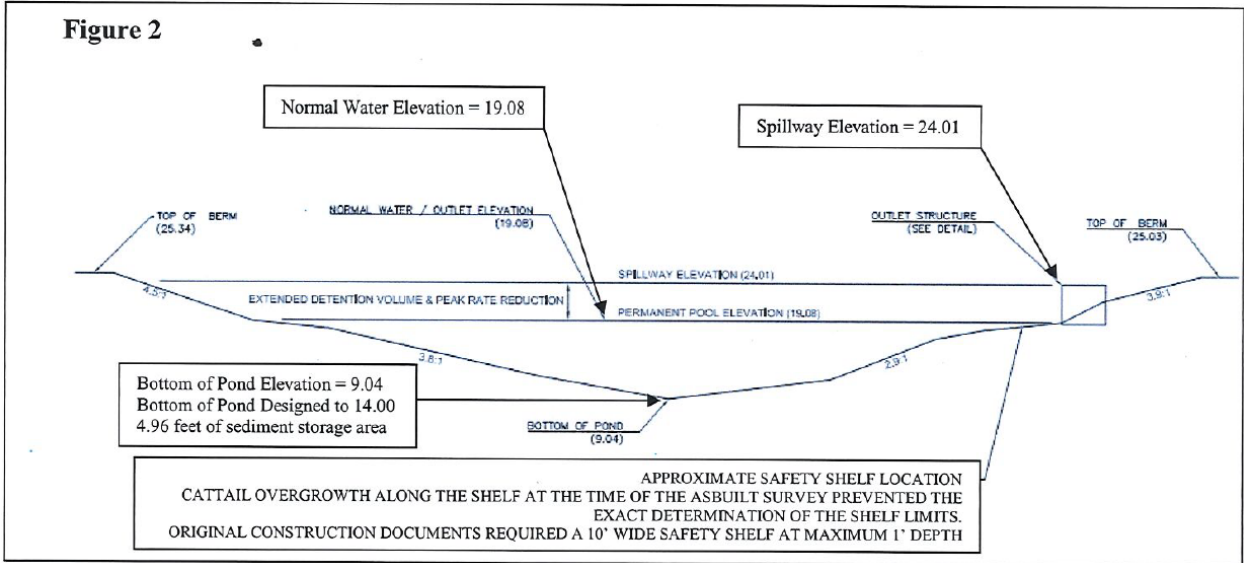


Exhibit E

Cross-Section A - A'



Outlet Structure Detail

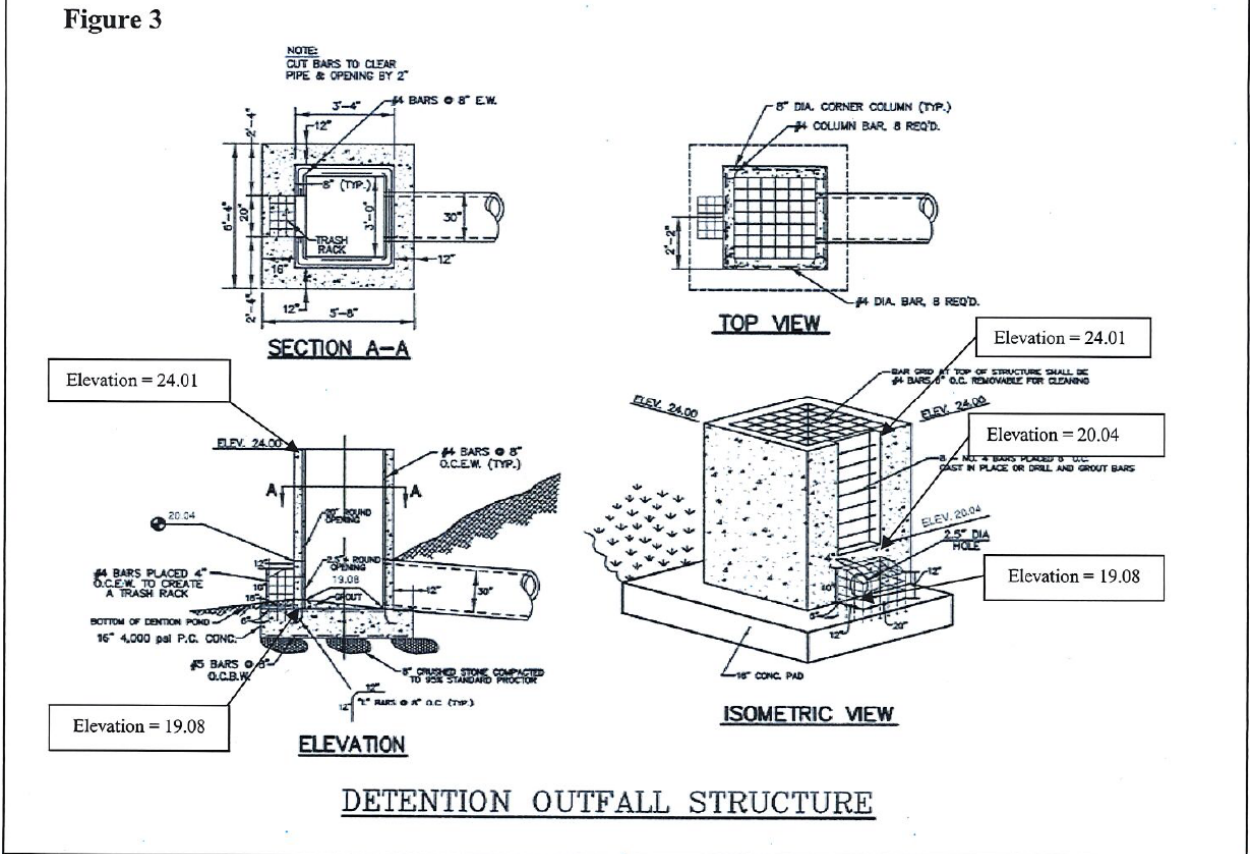


Exhibit “F”
Engineering/Construction Verification

DATE: _____

TO: City of Waukesha

FROM: Paul Jenswold, P.E., Jahnke & Jahnke Associates, LLC

RE: Engineering/Construction Verification for the following project:

Project Name: Fox Run Redevelopment

Section 9 T6N R19E, City of Waukesha

Storm Water Management & Erosion Control Permit # N/A

Storm Water Management Practices: Wet Pond

For the above-referenced project and storm water management practices, this correspondence shall serve as verification that: 1) all site inspections outlined in approved inspection plans have been successfully completed; and 2) the storm water management practice design data presented in Exhibit D, and the “as-built” construction documentation presented in Exhibit E comply with all applicable state and local technical standards, in accordance with the City of Waukesha Storm Water Management and Erosion Control Ordinance.

Any design or construction changes from the originally approved construction plans are documented in Exhibits D and E and have been approved by the City of Waukesha.

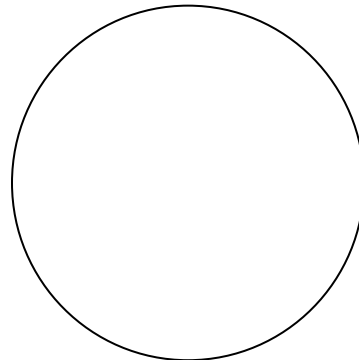


Exhibit G
Storm Water Management and Erosion Control Permit Termination

Project Identifier: Fox Run Redevelopment

Location: Part of the Southwest Quarter (SW ¼) of Section 9, Township 6N, Range 19E (City of Waukesha)

Storm Water Management and Erosion Control Permit Holder's Name:

Storm Water Management & Erosion Control Permit #: _____

Chapter 32 – City of Waukesha Storm Water Management and Erosion Control requires that all newly constructed storm water management practices be maintained by the Storm Water and Erosion Control Permit Holder until permit termination, after which maintenance responsibilities shall be transferred to the responsible party identified on the CSM and referenced in this Maintenance Agreement.

Upon execution below, this exhibit shall serve to certify that the Storm Water Permit Holder has satisfied all requirements of the Storm Water Management and Erosion Control Ordinance and that the City of Waukesha has terminated the Storm Water Management and Erosion Control Permit for the property covered by this Maintenance Agreement.

Dated this ___ day of _____, 2020.

City of Waukesha representative:

(Signature)

(Typed Name and Title)

Acknowledgements

State of Wisconsin
County of Waukesha

Personally came before me this ___ day of _____, 2020, the above named _____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Name]
Notary Public, Waukesha County, WI
My commission expires: _____