

## AGREEMENT

This agreement made and entered into this \_\_\_\_ day of April 2016, by and between the City of Stillwater, an Oklahoma municipal corporation and Stillwater Utilities Authority, a public trust (collectively "Stillwater") and Stillwater Milling Company, LLC, an Oklahoma limited liability company ("Stillwater Milling Company"),

WITNESSETH:

WHEREAS, Stillwater Milling Company owns and operates the "Stillwater Milling Company Agri-Center" located at 502 East Sixth Avenue, Stillwater, Oklahoma; and

WHEREAS, Stillwater Milling Company intends to expand said business by constructing a new retail sales facility at this location; and

WHEREAS, a sanitary sewer line owned and maintained by Stillwater crosses a portion of the planned building site; and

WHEREAS, it is the intention of Stillwater and Stillwater Milling Company to enter into an agreement permitting Stillwater Milling Company to construct the new retail sales facility over the existing sanitary sewer line and the future relocation of the line by Stillwater ("Agreement").

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH HEREIN AND OTHER VALUABLE CONSIDERATION, STILLWATER AND STILLWATER MILLING COMPANY AGREE AS FOLLOWS:

**Construction of Building:** Stillwater hereby consents to construction of the new Stillwater Milling Company retail facility ("New Agri-Center") over its existing sewer line crossing the Stillwater Milling Company property located at 502 East Sixth Avenue, subject to the terms and conditions set forth in this Agreement.

**Dedication-Existing Line:** Stillwater Milling Company shall dedicate to Stillwater a twenty foot (20') sanitary sewer line easement over its property south of Sixth Avenue. Said easement shall be granted by separate instrument and shall be generally located over the existing sewer line from a point immediately south of Sixth Avenue to the south boundary line of the Stillwater Milling Company property as generally shown on Exhibit A. Stillwater shall mark the approximate boundaries of the easement prior to establishment of the legal description and execution of the conveying instrument. Stillwater shall provide the legal description and exhibit and Stillwater shall prepare and provide the easement document. Stillwater Milling Company shall reimburse Stillwater for one-half of the cost of preparing the legal description and exhibit. Stillwater covenants that future construction of any new sewer line in this easement shall be done in a manner so as to create a minimum amount of disruption to continued operation of Stillwater Milling Company's business. Stillwater Milling Company agrees to provide Stillwater with temporary access to the areas immediately adjacent to said easement for the purposes of constructing and/or maintaining the sewer line.

**Dedication-Replacement Sewer Line:** Stillwater Milling Company shall additionally dedicate to Stillwater a twenty foot (20') easement over its property north of Sixth Avenue for future location of the existing sewer line. Said easement shall be granted by separate instrument and shall be generally located east of the existing Agri-Center/Warehouse building and west of the existing concrete grain elevator as generally shown on Exhibit A. Stillwater shall mark the

approximate boundaries of the easement prior to establishment of the legal description and execution of the conveying instrument. Stillwater shall provide the legal description and exhibit and shall prepare and provide the easement document. Stillwater Milling Company shall reimburse Stillwater for one-half of the cost of preparing the legal description and exhibit. Stillwater covenants that future construction of any new sewer line in this easement shall be done in a manner so as to create a minimum amount of disruption to continued operation of Stillwater Milling Company's business. Stillwater Milling Company agrees to provide Stillwater with temporary access to the areas immediately adjacent to said easement for the purposes of constructing and/or maintaining the sewer line.

***Building Design and Construction:*** Stillwater Milling Company agrees that the design of the New Agri-Center building over the existing sewer line shall include accommodation for transfer of any additional loading to the soil around the existing line so that it does not take on any new load during or after construction.

***Damage to Existing Line:*** Stillwater Milling Company shall be responsible for any damage to the existing sewer line caused by and during construction of the New Agri-Center. Any such damage shall be repaired by Stillwater Milling Company immediately upon discovery of the damage. Stillwater Milling Company's liability for the existing sewer line shall cease upon confirmation that no damage occurred to the existing sewer line during or by the construction of the New Agri-Center or when all damage has been repaired. The condition of the existing sewer line shall be determined by CCTV inspection. Stillwater shall CCTV the existing sewer line prior to commencement of construction of the New Agri-Center building and again within 60 days following the completion of the foundation and floor of the New Agri-Center building. Stillwater shall make all CCTV inspection records available to Stillwater Milling Company. Stillwater shall notify Stillwater Milling Company of any damage to the existing sewer line found in the final inspection within 30 days following the final inspection. After Stillwater Milling Company's liability for the sewer line ceases, Stillwater shall relocate the existing sewer line to the new easement granted by Stillwater Milling Company whenever said line becomes damaged or otherwise fails in a manner that will require excavation underneath the New Agri-Center building or the existing Warehouse. All such relocation costs shall be borne by Stillwater.

***Waiver of Liability:*** Stillwater Milling Company acknowledges that the construction of a building over an existing sanitary sewer line includes certain known and unknown risks. Stillwater Milling Company therefore holds Stillwater harmless and waives any and all liability of Stillwater for damage to the New Agri-Center building resulting from the failure of the existing sewer line during and after the construction of said building as provided in this Agreement. This waiver shall be binding on any successor in interest or assign of Stillwater Milling Company.

***Unique Circumstances:*** Stillwater and Stillwater Milling Company each acknowledges that this is a non-standard solution to a unique situation. The parties agree this solution will greatly benefit both Stillwater Milling Company and the City of Stillwater.

***Governing Law:*** This Agreement is governed by the statutes and laws of the State of Oklahoma and the charter and ordinances of the City of Stillwater.

***Final Agreement:*** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both Stillwater and Stillwater Milling Company.

IN WITNESS WHEREOF, the parties have executed this lease agreement as of the day and year first above written.

CITY OF STILLWATER  
STILLWATER UTILITIES AUTHORITY

\_\_\_\_\_  
Gina J. Noble, Mayor/Chair

(SEAL)

ATTEST:

\_\_\_\_\_  
Elizabeth Chrz, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS \_\_\_\_ DAY OF APRIL 2016.

\_\_\_\_\_  
John E. Dorman, City Attorney

STILLWATER MILLING COMPANY

\_\_\_\_\_  
By: \_\_\_\_\_, President

(SEAL)  
ATTEST:

\_\_\_\_\_  
Secretary