

ORDINANCE APPENDIX E

STORMWATER BEST MANAGEMENT PRACTICES AND CONVEYANCES OPERATION AND MAINTENANCE AGREEMENT

SAMPLE AGREEMENT

NOTES TO EDITOR:

- 1) This was written to serve as a sample agreement between the Municipality and the landowner who will be responsible for the inspection, operation and maintenance of stormwater BMPs and man-made Conveyances.*
- 2) For all other situations, the language in this sample agreement will have to be adjusted.*
- 3) User must complete the information needed on Page 1, and Sections 2, 5, and 8.*

REVISED
Chester County Water Resources Authority
October 15, 2021

<p>Prepared By: <i>Insert Preparer's Name</i> <i>Insert Preparer's Address Line 1</i> <i>Insert Preparer's Address Line 2</i> <i>Insert Preparer's Phone Number</i></p> <p>Return To: <i>Insert Municipality's Name</i> <i>Insert Municipality's Address Line 1</i> <i>Insert Municipality's Address Line 2</i> <i>Insert Municipality's Phone Number</i></p> <p>UPI#: <i>Insert UPI(s) of properties with BMPs and/or Conveyances for the O&M Agreement</i> Property Street Address: <i>Insert the street address of the</i></p>	<p>LEAVE BLANK For Recorder's Use Only</p>
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**STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND
CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, (hereinafter the "Landowner"), and _____, Chester County, Pennsylvania, (hereinafter "Municipality");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Chester County, Pennsylvania, at Deed Book _____ and Page _____, (hereinafter "Property"); and

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the Stormwater Best Management Practices (hereinafter BMP(s)) and Conveyances Operations and Maintenance Plan OR Simplified Approach Stormwater Management Site Plan [*MUNICIPALITY to edit depending on project type and remove the Simplified Approach Stormwater Management Site Plan reference if the Simplified Approach is not applicable in the Municipality*] _____ (title of approved plans) approved by the Municipality _____ (date) (hereinafter referred to as the "Plan") for the Property, which is attached hereto as Appendix A and made part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and conveyances; and

WHEREAS, the Municipality and the Landowner, for itself and its administrators, executors, successors, heirs, and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

WHEREAS, for the purposes of this agreement, the following definitions shall apply:

BMP – “Best Management Practice” – Activities, facilities, designs, measures, or procedures as specifically identified in the Plan, used to manage stormwater impacts from Regulated Activities to provide water quality treatment, infiltration, volume reduction, and/or peak rate control, to promote groundwater recharge, and to otherwise meet the purposes of the Municipality’s Stormwater Management Ordinance. Stormwater BMPs are commonly grouped into one (1) of two (2) broad categories or measures: “structural” or “nonstructural.” Nonstructural BMPs or measures refer to low impact development and conservation design practices used to minimize the contact of pollutants with stormwater runoff. These practices aim to limit the total volume of stormwater runoff and manage stormwater at its source by techniques such as protecting natural systems and incorporating existing landscape features. Nonstructural BMPs include, but are not limited to, the protection of sensitive and special value features such as wetlands and riparian areas, the preservation of open space while clustering and concentrating development, the reduction of impervious cover, and the disconnection of downspouts from storm sewers. Structural BMPs are those that consist of a constructed system that is designed and engineered to capture and treat stormwater runoff. Structural BMPs are those that consist of a physical system that is designed and engineered to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, bioretention, wet ponds, permeable paving, grassed swales, riparian buffers, sand filters, detention basins, and other manufactured devices designed to mitigate stormwater impacts. The BMPs identified in the Plan are permanent appurtenances to the Property; and

Conveyance – As specifically identified in the Plan, a manmade, existing or proposed facility, feature or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, stream channels, and like facilities or features. The conveyances identified in the Plan are permanent appurtenances to the Property; and

WHEREAS, the Municipality requires, through the implementation of the Plan, that stormwater management BMPs and conveyances, as required by the Plan and the Municipality’s Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner or their designee.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.
2. The Landowner shall construct the BMP(s) and conveyance(s) in accordance with the final stormwater management site plans and specifications OR Simplified Approach Stormwater Management Site Plan [*MUNICIPALITY to edit depending on project type and remove the Simplified Approach Stormwater Management Site Plan reference if the Simplified Approach is not applicable in the Municipality*] as approved by the Municipality in the Plan.
3. Upon completion of construction, the Landowner shall be responsible for complete final As-Built Plans of all BMPs, Conveyances, or other stormwater management facilities included in the approved stormwater management site plan as per the requirements of **Section 502** of the Stormwater Management Ordinance.
4. The Landowner shall inspect, operate and maintain the BMP(s) and conveyance(s) as shown on the Plan in good working order acceptable to the Municipality and in accordance with the specific inspection and maintenance requirements in the approved Plan and the current version of the Pennsylvania Stormwater BMP Manual, as amended
5. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and conveyance(s) whenever it deems necessary for compliance with this Agreement, the Plan and the Municipality's Stormwater Management Ordinance. Whenever possible, the Municipality shall notify the Landowner prior to entering the Property.

NOTE TO EDITOR: The Municipality should select one of the following options:

Option 1 is for Municipalities who elected to have the Municipality or their representative conduct inspections by selecting Option 1 in Section 706 of the Model Ordinance.

Option 2 is for Municipalities who elected to place the responsibility of inspections of BMPs on the Landowner or their designee by selecting Option 2 in the Model Ordinance.

OPTION 1: 6. The Municipality shall inspect the BMP(s) and conveyance(s) to determine if they continue to function as intended.

OPTION 2: 6. The Landowner shall inspect the BMP(s) and conveyance(s) to determine if they continue to function as intended

6. The BMP(s) and conveyance(s) shall be inspected according to the following frequencies, at a minimum:

- a. Annually for the first 5 years.
- b. Once every 3 years thereafter.
- c. During or immediately after the cessation of a 10-year or greater storm.

Written inspection reports shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individual(s) who completed the inspection, the location of the BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to the Municipality within 30 days following completion of the inspection.

Landowners must notify the Municipality of BMP(s) and conveyance(s) that are no longer functioning as designed and must coordinate with the Municipality to determine a schedule to repair or retrofit these systems to restore designed functionality.

NOTE TO EDITOR:

The Municipality should update 5. above for consistency with the option selected in Section 706 of the Ordinance.

7. The Landowner acknowledges that, per the Municipality's Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:

- a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is constructed as part of the approved Plan;
- b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;
- c. Allow the BMP or conveyance to exist in a condition which does not conform to the approved Plan or this Agreement; and
- d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or conveyance.

8. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the Plan in good working order acceptable to the Municipality, the Landowner shall be in violation of this Agreement, and the Landowner agrees that the Municipality or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and conveyance(s). It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.

9. In the event that the Municipality, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for inspection, labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within [] days of delivery of an invoice from the Municipality. Failure of the Landowner to make prompt payment to the Municipality may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

NOTE TO EDITOR:

If the Municipality elects to use the Simplified Approach, the Municipality may, at its option, delete the language requiring Landowner to reimburse the Municipality for projects that qualify for the Simplified Approach.

10. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and conveyance(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

11. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Municipality's employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and conveyance(s) either by the Landowner or Municipality. In the event that a claim is asserted or threatened against the Municipality, its employees, agents or designated representatives, the Municipality shall notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Municipality, or, at the request of the Municipality, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of the Municipality. If any judgment or claims against the Municipality's employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Municipality, including attorneys' fees, regarding said damages, judgments or claims.

12. The Municipality may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Municipality shall include its reasonable attorneys' fees and costs incurred in seeking relief under this Agreement.

13. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Municipality of its rights of enforcement hereunder.

14. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.

15. This Agreement shall inure to the benefit of and be binding upon, the Municipality and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.

NOTE TO EDITOR:
Municipality may add the following:
16. *Additional items or conditions, as required by the Municipality (per Subsection 703.B of this Ordinance), as attached herein:*

This Agreement shall be recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, and shall constitute a covenant running with the Property, in perpetuity.

WITNESS the following signatures and seals:

ATTEST:

(SEAL)

For the Municipality:

(SEAL)

For the Landowner:

ATTEST:

_____ (City, Borough, Township)

By Individual:

State of _____

County of _____

On this _____ day of _____, 20__ . Before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be person whose name(s) is/are subscribed to the within instrument and acknowledged that _____ executed the same for the purpose therein contains.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

By the Company:

State of _____

County of _____

On this _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be _____ of _____, a _____, and that he/she being authorized to do so, executed the forgoing instrument for the purpose therein contained by signing the name of the Company by herself/himself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: