

**STORMWATER BEST MANAGEMENT PRACTICES
OPERATIONS AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____, by and between _____, (hereinafter the “Landowner”), and the TOWNSHIP OF HEMPFIELD, Westmoreland County, Pennsylvania, (hereinafter “Municipality”);

WITNESSETH

WHEREAS, the Landowner is the legal and/or beneficial owner of certain property, being Westmoreland county Tax Map No. _____ in the Township of Hempfield, Westmoreland County, Pennsylvania, as more particularly described in an instrument recorded in Recorder of Deeds Office in and for Westmoreland County, Pennsylvania at Instrument Number _____, or in Deed Book Volume _____, page _____; and

WHEREAS, the Township of Hempfield has approved a certain Subdivision and/or Land Development known as _____, (hereinafter “Subdivision and/or Land Development”); and.¹

WHEREAS, the Landowner is proceeding to develop the (Property, Subdivision or Land Development); bearing No. _____; and²

WHEREAS, the Municipality has adopted Chapter 76 of the Code of the Township of Hempfield, as amended and supplemented, known as Subdivision of Land, which requires, inter alia, that an approved stormwater drainage plan be submitted and approved as part of its plan review procedures; and

WHEREAS, the Township of Hempfield has adopted a stormwater management and land disturbance activity ordinance, being Chapter 72 of the Code of the Township of Hempfield, as amended and supplemented, which provides for the design, construction and maintenance of stormwater management facilities within the municipality; and

WHEREAS, the stormwater management BMP Operations and Maintenance Plan approved by the Municipality (hereinafter referred to as the “Plan”) for the property identified herein, which is attached hereto as Exhibit “A” and made part hereof, as approved by the Municipality, provides for management of stormwater and land disturbance activity within the confines of the Property through the use of Best Management Practices (BMP’s); and

WHEREAS, the Municipality, and the Landowner, its heirs, executors, administrators, successors or assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site stormwater and land disturbance activity Best Management Practices be constructed and maintained on the (Property, Subdivision or Land Development); and

¹ Insert if applicable
² Insert applicable designation

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

- **BMP** – “Best Management Practice;” activities, facilities, designs, measures or procedures used to manage stormwater and land disturbance activity impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Hempfield Township Stormwater Management and Land Disturbance Activity Ordinance, including but not limited to infiltration trenches, seepage pits, filter strips, bioretention, wet ponds, permeable paving, rain gardens, grassed swales, forested buffers, sand filters and detention basins.
- **Infiltration Trench** – A BMP surface structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.
- **Seepage Pit** – An underground BMP structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.
- **Rain Garden** – A BMP overlain with appropriate mulch and suitable vegetation designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or underground aquifer; and

WHEREAS, as part of the plan, the landowner intends to either retain ownership and maintenance of all or a portion of the stormwater management system; and/or after completion of the same to transfer either a portion of the stormwater management system or the entire stormwater management system to the municipality for maintenance, if applicable, under the plan; and

WHEREAS, the entire stormwater management system and controls, including those that eventually may be transferred to the municipality and those remaining with the Landowner, are necessary and integral to the proper operation of such stormwater management controls, facilities and plan; and

WHEREAS, the Municipality requires, through the implementation of the Plan, that stormwater management BMP’s as required by said Plan and the Hempfield Township Stormwater Management and Land Disturbance Activity Ordinance be constructed and adequately operated and maintained by the Landowner, his successors and assigns.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The landowner shall execute a developer’s agreement with the municipality to guarantee the installation and completion of all of the stormwater management facilities as set forth in the Stormwater Management Plan be designed and constructed in accordance with the plans and specifications submitted and the requirements of Chapter 72 of the Code of the Township of Hempfield; and further, that the landowner, its successors and assigns, shall

be responsible for any and all maintenance and operation, including all costs and expenses thereof required by the BMPs and the stormwater facilities to be designed, constructed and retained by the landowner.

2. The BMPs shall be constructed by the Landowner in accordance with the plans and specifications identified in the Plan.
3. The Landowner shall operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality and in accordance with the specific maintenance requirements noted on the Plan.
4. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. Whenever possible, the Municipality shall notify the Landowner prior to entering the property. In the event such inspection evidences any failures, deficiencies, or inadequacies with the BMPs, controls or facilities, any breaches of this Agreement or any violation of the applicable municipal ordinances in the design, construction, maintenance, operation and/or use thereof, then the municipality shall give written notice to the Landowner setting forth the findings of the municipality and establishing a reasonable timetable for the correction of those findings.
5. In the event the Landowner fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality, the Municipality or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). This provision shall not be construed to allow the Municipality to erect any permanent structure on the land of the Landowner. 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.
6. In the event the Municipality, 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 Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Municipality. In the event, Landowner does (do) not reimburse the Municipality within said ten (10) period, the Municipality shall have the right to deduct said sums from the funds deposited pursuant to §72-32(C)(5) of Chapter 72 of the Code of the Township of Hempfield. The Landowner shall within ten (10) days after receiving written notice from the Municipality of the Municipality's use of said funds; deposit with the Municipality sufficient funds to increase the fund established to its original amount. In the event Landowner shall fail to provide said funds, the Municipality shall have the right to file a Municipal Lien on said property, pursuant to the Pennsylvania Municipal Claims Law, 53 P.S. § 57101 *et seq.*; or in the alternative, bring an action in Assumpsit for the amount due and owing.

7. Landowner shall keep on file with the municipality the name, address and telephone number of the person or company responsible for maintenance and operation activities pursuant to the BMPs; and, in the event of a change, new information shall be submitted to the municipality within ten (10) days of said change. The person(s) responsible for maintenance and operation activities shall be submitted to the municipality whenever the stormwater management system is completed for the plan.
8. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
9. The Landowner, its heirs, executors, administrators, assigns, and other successors in interests, shall release the Municipality's employees and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or Municipality. In the event that a claim is asserted against the Municipality, its designated representatives or employees, the Municipality shall promptly notify the Landowner and the Landowner shall defend, at his own expense, any suit based on the claim. If any judgment or claims against the Municipality's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.
10. The Municipality shall inspect the BMP(s) at a minimum of once every three years to ensure their continued functioning.
11. The landowner hereby grants unto the municipality, in conjunction with the municipality's approval of the plan, perpetual non-exclusive easement(s) and the privilege and right to discharge into and through, use and occupy the BMPs, stormwater management facilities and system owned by the Landowner and those used and occupied by the Landowner for the discharge and conveyance of storm and runoff waters from the plan, together with easements reasonable and necessary to access the BMPs, stormwater management facilities and system, whether or not specifically identified on the plan as such.
12. This Agreement is to be construed pursuant to the laws of the Commonwealth of Pennsylvania and the jurisdiction for the enforcement of the terms hereof is vested in the Court of Common Pleas of Westmoreland County, Pennsylvania.
13. This Agreement shall become effective upon execution of the same by all parties hereto and approval of the plan.
14. This Agreement constitutes the entire Agreement of these parties and may not be modified except by further written documents signed by all parties hereto. The rights and obligations of the Landowner may not be transferred, assigned or alienated by the Landowner without the prior written consent of the municipality. The municipality

reserves the sole and exclusive right and discretion to grant or deny any request of transfer, assignment or alienation.

- 15. A Memorandum of this Agreement shall be recorded in the Office of the Recorder of Deeds in and for Westmoreland County, Pennsylvania, and shall constitute a covenant running with the property and/or equitable servitude, and shall be binding on the Landowner, its successors and assigns and any other successors in interest in perpetuity.
- 16. The Landowner covenants and agrees to include and provide a specific reference to this Agreement in any instrument conveying any legal or equitable interest in the property or any part thereof.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

FOR THE LANDOWNER

Secretary

(SEAL)

FOR THE TOWNSHIP OF HEMPFIELD

Secretary

Chairman

COMMONWEALTH OF PENNSYLVANIA)
)**SS:**
COUNTY OF WESTMORELAND)

On this the ____ day of _____, 200__ before me, _____
_____, the undersigned officer, personally appeared _____ who
acknowledged himself to be the _____ of the
_____, a municipal corporation, and that he as such
_____, being authorized to do so, executed the foregoing instrument as
_____.

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

Title of Officer

