

WATER

26 Attachment 1

Borough of Mechanicsburg

APPENDIX A

**SAMPLE OPERATION AND MAINTENANCE AGREEMENT
STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (SWM BMPs)**

THIS AGREEMENT is made and entered into this _____ day of _____, 20_____, by and between _____ (hereinafter the "Landowner") and the Borough of Mechanicsburg, Cumberland County, Pennsylvania, (hereinafter "Borough");

WITNESSETH:

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

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

WHEREAS, the SWM BMP Operation and Maintenance Plan approved by the Borough (hereinafter referred to as the "Plan") for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the Borough, provides for management of stormwater within the confines of the Property through the use of BMPs; and

WHEREAS, the Borough and the Landowner, his successors and assigns, agree that the health, safety, and welfare of the residents of the Borough and the protection and maintenance of water quality require that on-site SWM BMPs be constructed and maintained on the Property; and

WHEREAS, the Borough requires, through the implementation of the SWM Site Plan, that SWM BMPs as required by said Plan and the Municipal Stormwater Management 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 construct the BMPs in accordance with the plans and specifications identified in the SWM Site Plan.
2. The Landowner shall operate and maintain the BMPs as shown on the Plan in good working order in accordance with the specific maintenance requirements noted on the approved SWM Site Plan.

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3. The Landowner hereby grants permission to the Borough, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper credentials, to inspect the BMPs whenever necessary. Whenever possible, the Borough shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMPs in accordance with Paragraph 2, the Borough or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). It is expressly understood and agreed that the Borough 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 Borough.
5. In the event the Borough performs work of any nature, or expends any funds in performance of operation and maintenance work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Borough for all expenses (direct and indirect) incurred within 10 days of receipt of an invoice from the Borough.
6. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMPs by the Landowner; provided, however, that this Agreement shall not be deemed to create any additional liability on the Borough for damage alleged to result from or be caused by stormwater runoff.
7. The Landowner, its executors, administrators, assigns, and other successors in interest shall release the Borough, hold it harmless and indemnify it from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Borough, its officials, employees or independent contractors from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or the Borough.

This Agreement shall be recorded at the office of the Recorder of Deeds of Cumberland County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

ATTEST:

Borough of Mechanicsburg:

WITNESS:

Landowner:

WATER

COMMONWEALTH OF PENNSYLVANIA)
: SS.
COUNTY OF CUMBERLAND)

ON THIS, the _____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the President of the Borough Council of Mechanicsburg Borough, and that he/she as such President, being authorized to do so, executed the foregoing instrument as and for the act of the Borough for the purposes therein contained.

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

_____(SEAL)
Notary Public

COMMONWEALTH OF PENNSYLVANIA)
: SS.
COUNTY OF CUMBERLAND)

ON THIS, the _____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a Corporation, and that he/she as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation by himself/herself as _____.

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

_____(SEAL)
Notary Public