Short Form: This sample O&M Agreement should be used for SWM Site Plans associated with single lot Regulated Activities

UPI No. _____

_____
[Street Address, Municipality]

STORMWATER OPERATION AND MAINTENANCE AND RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20___, by and among _____**[Developer/Property Owner]**, its/his/her successors, heirs, personal representatives and assigns, including specifically any future lot owner ("Property Owner"), and Spring Garden Township, York County; Pennsylvania, ("Township").

W I T N E S S E T H

WHEREAS, the [Developer/Property Owner] is the owner of real property located in _____ Township, York County, commonly known as _____, with a UPI No. _____(the "Property"). **[street address]**

WHEREAS, the [Developer/Property Owner] plans to develop on and/or further develop impervious surface on the Property for _____ use; and

WHEREAS, the SWM Site Plan (the "SWM Site Plan") which is expressly made a part hereof, as approved or to be approved by the Township, provides for the management of stormwater within the confines of the Property; and

WHEREAS, the SWM Site Plan includes a SWM Operation and Maintenance Plan approved by the Township (the "O&M Plan") for the Property, which is attached hereto as Appendix A which provides for the construction, and future operation and maintenance of SWM facilities and stormwater Best Management Practices (BMPs) specified in the O&M Plan in order to adequately manage and control stormwater on the Property post-construction; and

WHEREAS, the Township and the [Developer/Property Owner] agree that the health, safety and welfare of the residents of the Township and the protection and maintenance of water quality require that SWM facilities and BMPs be constructed and maintained on the Property; and

WHEREAS, the Township requires, through the implementation of the Township's Stormwater Management Ordinance, Ordinance No. 2012-18 (the "Stormwater Ordinance"), that SWM facilities and BMPs as set forth in the approved SWM Site Plan be constructed and adequately operated and maintained by the [Developer/Property Owner] in accordance with the approved O&M Plan and the Stormwater Ordinance.

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:

Section 1. Unless otherwise defined in this Agreement, the terms used herein shall have the meaning given to them in the Stormwater Ordinance, as amended.

Section 2. The [Developer/Property Owner] shall establish and/or construct the SWM facilities and BMPs in accordance with the terms, conditions and specifications identified in the approved SWM Site Plan. Except where expressly allowed by the Stormwater Ordinance, the [Developer/Property Owner] shall not alter, modify, replace, relocate or in any way interfere with any SWM facilities or BMPs without the prior written permission of the Township.

Section 3. The [Developer/Property Owner] shall adequately maintain the SWM facilities and BMPs shown on the approved SWM Site Plan in good working order in accordance with the specific O&M requirements set forth in the O&M Plan. This includes all structures and features, including, but not limited to, swales, pipes, channels, basins, and ditches built to convey and control stormwater, as well as all SWM BMP structures, improvements, and vegetation used to control the quantity, rate, and quality of stormwater on the Property and potentially leaving the Property. Adequate O&M is defined as good working condition, acceptable to the Township, so the stormwater facilities are performing their design functions and not having any adverse effects on water quality or adjoining or nearby roads, structures or properties. Adequate O&M will not be demonstrated merely by strict compliance with the SWM Site Plan or O&M Plan where the SWM Site Plan and O&M Plan are inadequate for stormwater management in the field.

Section 4. The [Developer/Property Owner] hereby grants to the Township an easement appurtenant for the periodic inspections by the Township and repair of the SWM facilities and BMPs, if necessary. The [Developer/Property Owner] may choose and periodically modify the easement location so long as the [Developer/Property Owner] at all times maintains or provides an unobstructed means for access to and emergency maintenance of the SWM facilities and BMPs. The Township shall not be liable for restoration of the Property in the event of emergency maintenance or for any damages due to failure of the [Developer/Property Owner] to provide unobstructed access to the SWM facilities and BMPs. Whenever possible, the Township shall notify the [Developer/Property Owner] prior to entering the Property.

Section 5. Every other calendar year, beginning in 2015, and occurring every odd numbered year thereafter (i.e., 2017, 2019, 2021, 2023, and so forth), SWM facility and BMP inspections shall be completed and verified by a third party qualified professional hired by the [Developer/Property Owner]. The Township's SWM BMP inspection form shall be the minimum acceptable inspection form used and submitted. Inspection forms may be obtained from the Spring Garden Township office. All inspection reports shall be due to the Township's office no later than February 1 of the following calendar year. All costs for inspections of SWM facilities and BMPs shall be borne by the [Developer/Property Owner].

Section 6. In the event the [Developer/Property Owner] fails to maintain the SWM facilities and/or BMPs in accordance with Section 3, the Township or its representatives may enter upon the Property and take whatever action is deemed necessary to repair, operate, and/or maintain the SWM facilities and/or BMPs. It is expressly understood and agreed that the Township is under no obligation to maintain or repair said SWM facilities and BMPs, and in no event shall this Agreement be construed to impose any such obligation on the Township.

Section 7. In the event the Township, 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 on account of the [Developer/Property Owner]'s failure to perform such work, the [Developer/Property Owner] shall reimburse the Township upon demand, within 30 days of receipt of invoice thereof, for all costs, including engineer and attorney fees, incurred by the Township hereunder. If not paid within said 30-day period, the Township may enter a municipal lien against the property in the amount of such costs, or may proceed to recover his costs through proceedings in equity or at law as authorized under the provisions of the Municipal Claims and Tax Lien Act, 53 P.S.§ 7101 *et seq.*

Section 8. The [Developer/Property Owner] shall release the Township, its supervisors, employees, officers, agents and representatives, from all damages, accidents, casualties, occurrences, claims or fines which might arise, be incurred, or be asserted against said persons from the construction, presence, existence, operation and/or maintenance of the SWM facilities and BMPs on the Property by [Developer/Property Owner] or Township. The Township disclaims all liability for design, construction, installation or operation defects. The grant of a permit or approval of a subdivision and/or land development plan shall not constitute a representation, guarantee, or warranty of any kind or liability upon the Township, its officials, or employees. None of the conditions or covenants contained in this Agreement shall be deemed a waiver of Township's rights or immunities granted by statute.

Section 9. Should any provision of this Agreement be interpreted to conflict with the Stormwater Ordinance, as amended or superseded, the provisions and requirements of the Stormwater Ordinance shall control interpretation. Should any provision of this Agreement be determined by a court to be unenforceable, such provision of this Agreement shall be deemed to be void; provided, however, the balance of the Agreement shall remain in full force and effect.

Section 10. This Agreement shall be recorded in the land records of York County, Pennsylvania and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the [Developer/Property Owner], its/his/her successors, receivers, heirs, personal representatives and assigns, in perpetuity. [Developer/Property Owner] shall specifically reference this Agreement and recording information in any deeds transferring or conveying the Property or any subdivided outparcels thereof.

Section 11. The laws of the Commonwealth of Pennsylvania shall govern the interpretation of this Agreement. Jurisdiction and venue shall be exclusively in the county in which the Property is located. The obligations and duties of the [Developer/Property Owner] under this Agreement shall be specifically enforceable by the Township, and the [Developer/Property Owner] agrees that a court shall have the specific authority to order compliance with this Agreement in the form of a preliminary injunction or other equitable relief.

Section 12. A violation or breach of this Agreement shall be deemed a violation of the Stormwater Ordinance, as amended, which shall be subject to all remedies and enforcement set forth therein. [Developer/Property Owner] shall be responsible for all costs of enforcement (including engineering, consultant and/or attorney fees) of this Agreement, which costs shall be reimbursed to the Township upon demand within 30 days of the receipt of an invoice therefore. All invoiced amounts due under this Agreement for administration, maintenance, repair, enforcement or otherwise that remain unpaid after 30 days from the date of invoice shall be assessed interest at the rate of 12% per annum until paid in full.

Section 13. This Agreement may only be amended by a written amendment executed by the party against whom enforcement is sought.

ATTEST/WITNESS:

SPRING GARDEN TOWNSHIP

_____
, Secretary

_____
, President

[DEVELOPER/PROPERTY OWNER]

_____

_____

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF YORK :

On this the _____ day of _____, 20___, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the President of _____ Township Board of Commissioners, a First Class Township organized and existing under the laws of Pennsylvania, and that he/she as such President, being authorized to do so, executed the foregoing document for the purposes therein contained by signing the name of the township by himself/herself as President.

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

_____
Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF YORK :

On this the _____ day of _____, 20___, before me, the undersigned officer, personally appeared _____, _____, who executes this document and acknowledges he/she is authorized to do so and acknowledged that he/she executed the same for the purposes therein contained.

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

_____
Notary Public