

**APPENDIX A**

**Long Form: This sample O&M Agreement should be used for SWM Site Plans associated with Subdivision and/or Land Development Plans.**

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 \_\_\_\_\_ its/his/her successors, heirs, personal representatives and assigns, including any subsequently created homeowners association and/or the subsequent owners of any subdivided lots (“Property Owner”), and Spring Garden Township, York County, Pennsylvania (“Township”).

**W I T N E S S E T H**

**WHEREAS**, the Property Owner is the owner of real property located in Spring Garden Township, York County, Pennsylvania, as more fully described in the land records of York County, Pennsylvania, at Deed Book \_\_\_\_\_, Page \_\_\_\_\_, UPI No. \_\_\_\_\_, with a street address of \_\_\_\_\_ (the “Property”).

**WHEREAS**, the Subdivision/Land Development Plan (the “Plan”) for the \_\_\_\_\_ [Name of Subdivision/Land Development Plan] which is expressly made a part hereof, as approved or to be approved by the Township and recorded with the Recorder of Deeds of York County, Pennsylvania, provides for the management of stormwater within the confines of the Property pursuant to a Stormwater Management Site Plan (the “SWM Site Plan”) approved by the Township on or about \_\_\_\_\_; and

**WHEREAS**, in accordance with the Plan, the Property shall be developed for \_\_\_\_\_ use; 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 and incorporated herein, and 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 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 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, as amended (the “Stormwater

Ordinance”), that SWM facilities and BMPs, as set forth in the Township-approved SWM Site Plan be constructed and adequately operated and maintained by the 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 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 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 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 Property Owner hereby grants permission to the Township, its authorized agents and employees, to enter upon the Property to inspect the SWM facilities and BMPs whenever the Township deems necessary. The purpose of the inspection is to assure safe and proper functioning of the SWM facilities and BMPs.

**Section 5.** The Township may inspect the SWM facilities and BMPs as it deems appropriate to evaluate proper maintenance, operation, and functioning of the SWM facilities and BMPs.

**Section 6.** The approved SWM facilities and BMPs shown on the approved SWM Site Plan shall be inspected by the Township, or the Township’s designee, on a regular basis in a frequency as determined by the Township. A report of all inspections shall be sent to the Property Owner. In the event that the inspection identifies remedial action, the Township shall provide written notification of the asserted violation(s). Such notifications shall set forth the nature of the violation(s) and establish a time limit for the correction of the violation(s). Failure to comply within the time specified shall subject such person to the penalty provisions of the Stormwater Ordinance. The Township may establish a fee schedule for the inspection of SWM BMPs, the amount of which shall be set by resolution of the Board of Commissioners. The Township shall invoice the Property Owner for all inspections and include a copy of said invoice with the inspection report. If not paid within thirty (30) days of receipt of invoice, the Township

may enter a municipal lien against the Property in the amount of such costs or may proceed to recover its costs through proceedings and equity or at law as authorized under the provisions of the Municipal Claims and Tax Lien Act, 53 P.S. §7101 *et. seq.*

**Section 7.** In the event the Property Owner fails to properly maintain the SWM facilities and/or BMPs, 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 8.** The Property Owner hereby conveys to the Township easements and/or rights-of-way to assure access for periodic inspections by the Township and repair of the SWM facilities and BMPs, if necessary, as set forth more specifically in Appendix [A/B]. The Property Owner shall not plant in, construct on or otherwise alter the right-of-way granted herein in any way that interferes or impedes the Township's access.

**Section 9.** 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 Property Owner's or his successors' and assigns' failure to perform such work, the 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 10.** The Property Owner shall indemnify the Township, its agents and employees, against any and all damages, accidents, casualties, occurrences, claims, fines, and costs, including engineering, consultant, and attorney fees, which might arise, be incurred, or be asserted against the Township related in any way to the construction, presence, construction, existence, operation and/or maintenance of the SWM facilities and BMPs on the Property by the Property Owner.

**Section 11.** In the event a claim is asserted against the Township, its agents or employees, the Township shall promptly notify the Property Owner and they shall defend, at their own expense, any suit based on such claim. If any judgment or claims against the Township, its agents or employees, are allowed, the Property Owner shall pay all costs and expenses (including attorney fees) in connection therewith.

**Section 12.** The Property Owner shall release the Township, its supervisors, employees, officers, agents and representatives, from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said persons from the construction, presence, operation, existence, and/or maintenance of the SWM facilities and BMPs by Property Owner or Township.

**Section 13.** In the event Property Owner's obligations under this Agreement will be

assigned or transferred to a successor owner (whether to a developer or individual lot owners, or to a homeowners' association, condominium association or similar form of cooperative ownership), the Property Owner's obligations under this Agreement shall become joint and several obligations of the successors and assigns. Any and all successors, receivers, assignees of Property Owner interests (partial or full) shall execute a written acknowledgement of this Agreement accepting all terms, conditions and obligations set forth herein. A fully executed copy of this Agreement acknowledgment shall be provided to the Township within thirty (30) days of the effective date of assignment and/or any transfer of interest in the Property, or a portion thereof.

**Section 14.** 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.

**Section 15.** None of the conditions or covenants contained in this Agreement shall be deemed a waiver of Township's rights, duties, obligations, or immunities granted by statute. Nor shall the Township's exercise of one of its rights constitute a waiver of any other right, duty or obligation it may have under applicable law. Township immunities shall not relieve the Property Owner of the duty to defend or hold Township harmless from claims arising out of conduct of the Property Owner initiated pursuant to the terms of this Agreement.

**Section 16.** 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 17.** 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 Property Owner, its/his/her successors, receivers, heirs, personal representatives and assigns, in perpetuity. Property Owner shall specifically reference this Agreement and recording information in any deeds transferring or conveying the Property or any subdivided outparcels thereof

**Section 18.** 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. Property Owner shall be responsible for all costs of enforcement (including engineering, consultant, 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, repair, maintenance, 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 19.** This Agreement may only be amended by a written amendment executed by the party against whom enforcement is sought.

[INTENTIONALLY LEFT BLANK]

ATTEST:

SPRING GARDEN TOWNSHIP

\_\_\_\_\_  
Print: \_\_\_\_\_, Secretary

\_\_\_\_\_  
Print: \_\_\_\_\_, President

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF YORK :

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the President of the Spring Garden 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

ATTEST/WITNESS:

PROPERTY OWNER

\_\_\_\_\_  
Print:

By: \_\_\_\_\_  
Print:  
Title:

ATTEST/WITNESS:

PROPERTY OWNER (if applicable)

\_\_\_\_\_  
Print:

By: \_\_\_\_\_  
Print:  
Title:

COMMONWEALTH OF PENNSYLVANIA :

: SS

COUNTY OF YORK :

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

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

\_\_\_\_\_  
Notary Public

**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 \_\_\_\_\_, 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 Property Owner is the owner of real property located in Spring Garden Township, York County, Pennsylvania commonly known as \_\_\_\_\_, with a UPI No. \_\_\_\_\_(the “Property”).

**WHEREAS**, the 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 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 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 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 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 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 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 Property Owner may choose and periodically modify the easement location so long as the 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 Property Owner to provide unobstructed access to the SWM facilities and BMPs. Whenever possible, the Township shall notify the Property Owner prior to entering the Property.

**Section 5.** The approved SWM facilities and BMPs shown on the approved SWM Site Plan shall be inspected by the Township, or the Township's designee, on a regular basis in a frequency as determined by the Township. A report of all inspections shall be sent to the Property Owner. In the event that the inspection identifies remedial action, the Township shall provide written notification of the asserted violation(s). Such notifications shall set forth the nature of the violation(s) and establish a time limit for the correction of the violation(s). Failure to comply within the time specified shall subject such person to the penalty provisions of the Stormwater Ordinance. The Township may establish a fee schedule for the inspection of SWM BMPs, the amount of which shall be set by resolution of the Board of Commissioners. The Township shall invoice the Property Owner for all inspections and include a copy of said invoice with the inspection report. If not paid within thirty (30) days of receipt of invoice, the Township may enter a municipal lien against the Property in the amount of such costs or may proceed to recover its costs through proceedings and equity or at law as authorized under the provisions of the Municipal Claims and Tax Lien Act, 53 P.S. §7101 *et. seq.*

**Section 6.** In the event the 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 Property Owner's failure to perform such work, the 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 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 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 Property Owner, its/his/her successors, receivers, heirs, personal representatives and assigns, in perpetuity. 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 Property Owner under this Agreement shall be specifically enforceable by the Township, and the 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. 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.

[INTENTIONALLY LEFT BLANK]

ATTEST:

SPRING GARDEN TOWNSHIP

\_\_\_\_\_  
Print: \_\_\_\_\_, Secretary

\_\_\_\_\_  
Print: \_\_\_\_\_, President

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF YORK :

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the President of the Spring Garden 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

ATTEST/WITNESS:

PROPERTY OWNER

\_\_\_\_\_  
Print:

\_\_\_\_\_  
Print:

ATTEST/WITNESS:

PROPERTY OWNER (if applicable)

\_\_\_\_\_  
Print:

\_\_\_\_\_  
Print:

COMMONWEALTH OF PENNSYLVANIA

:

: SS

COUNTY OF YORK

:

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

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

\_\_\_\_\_  
Notary Public