

Short Form - This Agreement should be used for plans proposing regulated activities on a single lot.

UPI No.
(Parcel Number)

Address
(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 _____ **[Builder]**, its/his/her successors, heirs, personal representatives and assigns, including specifically any future lot owner (“Landowner”), and **Jefferson Borough**, York County; Pennsylvania.

W I T N E S S E T H

WHEREAS, the Landowner is the owner of real property located in **Jefferson Borough**, York County, commonly known as **(street address)** _____, with a **UPI No. (Parcel Number)** _____.

WHEREAS, the Landowner is proceeding to build on and/or further develop impervious surface on the Property; 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 Borough, 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 Borough (the “O&M Plan”) for the Property, **[which is attached hereto as Appendix A and made a part hereof/which is on file at the Borough offices and made a part hereof]** which provides for the establishment, operation and maintenance of SWM facilities and BMPs; and

WHEREAS, the Borough and the Landowner agree that the health, safety and welfare of the residents of the Borough and the protection and maintenance of water quality require that SWM facilities and BMPs be established, constructed and maintained on the Property; and

WHEREAS, the Borough requires, through the implementation of the Borough’s Stormwater Management Ordinance, Ordinance No. 2012-01 (the “Stormwater Ordinance”), that SWM facilities and BMPs as required by the SWM Site Plan and the Stormwater Ordinance be established, constructed and adequately operated and maintained by the Landowner in accordance with the O&M Plan.

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 Landowner shall establish and/or construct the SWM facilities and BMPs in accordance with the terms, conditions and specifications identified in the SWM Site Plan. Except when expressly allowed by the Stormwater Ordinance, the Landowner shall not alter, modify, replace, relocate or in any way interfere with any SWM facilities or BMPs without the prior written permission of the Borough.

Section 3. The Landowner shall adequately maintain the SWM facilities and BMPs shown on the 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 swales, pipes, channels built to convey and control stormwater, as well as all SWM BMP structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate O&M is defined as good working condition, acceptable to the Borough, so those 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 Landowner hereby grants to the Borough an easement appurtenant for the periodic inspections by the Borough and repair of the SWM facilities and BMPs, if necessary. The Landowner may choose and periodically modify the easement location so long as the Landowner at all times maintains or provides an unobstructed means for access to and emergency maintenance of the SWM facilities and BMPs. The Borough shall not be liable for restoration of the Property in the event of emergency maintenance or for any damages due to failure of the Landowner to provide unobstructed access to the SWM facilities and BMPs. Whenever possible, the Borough shall notify the Landowner prior to entering the Property.

Section 5. In the event the Landowner fails to maintain the SWM facilities and/or BMPs in accordance with Section 3, the Borough or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain the SWM facilities and BMPs. It is expressly understood and agreed that the Borough 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 Borough.

Section 6. In the event the Borough, 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 Landowner's failure to perform such work, the Landowner shall reimburse the Borough upon demand, within 30 days of receipt of invoice thereof, for all costs, including engineer and attorney fees, incurred by the Borough hereunder. If not paid within said 30-day period, the Borough 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 7. The Landowner shall release the Borough, 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, existence or maintenance of the SWM facilities and BMPs by Landowner or Borough. The Borough 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 Borough, its officials, or employees. None of the conditions or covenants contained in this Agreement shall be deemed a waiver of Borough's rights or immunities granted by statute.

Section 8. 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 9. 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 Landowner, its/his/her successors, receivers, heirs, personal representatives and assigns, in perpetuity. Landowner will reference this Agreement and recording information in any deeds transferring or conveying the Property or any subdivided outparcels thereof.

Section 10. 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 Landowner under this Agreement shall be specifically enforceable by the Borough, and the Landowner 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 11. 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. Landowner shall be responsible for all costs of enforcement (including attorney fees) of this Agreement, which costs shall be reimbursed to the Borough upon demand within 30 days of the receipt of an invoice thereof. All invoiced amounts due under this Agreement for administration, 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 12. This Agreement may only be amended by a written amendment executed by the party against whom enforcement is sought.

ATTEST/WITNESS:

_____ BOROUGH

, Secretary

, President

[LANDOWNER]

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 _____ Borough Council, organized and existing under the laws of Pennsylvania, and that he as such President, being authorized to do so, executed the foregoing document for the purposes therein contained by signing the name of the Borough by himself 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 is authorized to do so and acknowledged that he executed the same for the purposes therein contained.

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

Notary Public