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# DRAFT STORMWATER MAINTENANCE AGREEMENT

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Stormwater Equipment  
Manufacturers Association

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[www.stormwaterassociation.com](http://www.stormwaterassociation.com)

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## **NOTICE:**

This is a draft Stormwater Agreement for use by state and local government agencies in setting an ordinance requiring the maintenance of all stormwater Best Management Practices BMPs. Stormwater BMP's are practices whether land-based, proprietary or natural that provide a level of treatment and/or storage to improve the water quality of our watershed. These practices in one form or another are installed on every project. Like a car, these practices require routine maintenance and inspection. The Stormwater Equipment Manufacturers Association (SWEMA) recommends that any organization or person using this draft ordinance consult with their legal council to ensure the provisions contained in this document are in compliance with local laws and state requirements.

## **Maintenance:**

The Stormwater Equipment Manufacturers Association is a strong advocate for the proper maintenance of all Best Management Practices (BMPs) used for stormwater systems. All systems require maintenance regardless of the type of BMP installed. The maintenance requirements vary with each BMP and should be tailored according to system and site specific needs. The property owner of the BMP should be aware of the annual maintenance costs associated with each BMP and should consider these in establishing the long term operations and maintenance plan.

## Operation and Maintenance Agreement

The Operation and Maintenance (O&M) Agreement for a site is comprised of the following elements:

1. An Inspection and Maintenance Agreement signed by the developer or BMP owner.
2. A Long-term Maintenance Plan written by the design engineer or plan designer. The Maintenance Plan must include a description of the stormwater system and its components, inspection priorities, inspection schedule for each component, and a schematic for each BMP.
3. Drawing of easements on a plat or a system location map to enable owner or municipality to locate BMPs as needed.

A sample Operation and Maintenance Agreement is contained in this document that includes templates for inspection checklists for each type of structural BMP, including water quality buffers. The inspection checklists can also serve as an inspection report for each facility. As noted above, inspection priorities and schedules for each BMP type must be submitted to the designated authority when required by the owner or municipality, as a component of the long-term maintenance plan for the site. These templates are general guidelines and may be modified by the design engineer or plan designer as needed for site specific conditions.



# INSPECTION and MAINTENANCE AGREEMENT for STORMWATER FACILITIES

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Permit number: \_\_\_\_\_

Map & parcel number: \_\_\_\_\_

Project Name & Address:

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between (*insert full BMP owner's name*) \_\_\_\_\_, hereinafter referred to as the "OWNER(S)" of the following property and (NAME OF GOVERNMENT AGENCY) hereinafter referred to as the "AGENCY."

WITNESSETH, that

WHEREAS, the Landowner is the owner of certain real property, with full authority to execute deeds, mortgages, other covenants, do hereby covenant with the AGENCY and agree as follows:

1. The OWNER(S) covenant with the AGENCY that the OWNER(S) shall provide for adequate long term maintenance and continuation of the stormwater control measures described in the SWPPP (Stormwater Pollution Prevention Plan) and shown in the location map, deed of easement drawing or plat attached hereto to ensure that the facilities are and remain in proper working condition in accordance with approved design standards, rules and regulations and applicable laws. The OWNER(S) shall perform preventative maintenance activities at intervals described in the inspection schedule included in the Operations and Maintenance Plan along with necessary landscaping (grass cutting, etc.) and trash removal as part of regular maintenance.
2. The OWNER shall submit to the GOVERNMENT an annual report by \_\_\_\_ (define the due date) each year. The report shall include the Operations and Maintenance Plan that documents the inspection schedule, times of inspection, remedial actions taken to repair, modify or reconstruct the system, the state of control measures and notification of any planned change in responsibility for the system.
3. The OWNER(S) shall grant to the GOVERNMENT or its agent or contractor the right of entry at reasonable times and in a reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing the facility.

4. The OWNER shall grant to the GOVERNMENT the necessary easements and rights-of-way and maintain perpetual access from public rights-of-way to the facility for the GOVERNMENT or its agent and contractor.
5. If, upon inspection, the GOVERNMENT finds that OWNER(S) has failed to properly maintain the facilities, the GOVERNMENT may order the work performed within \_\_\_\_ days. In the event the work is not performed within the specified time, the OWNER(S) agrees to allow the GOVERNMENT to enter the property and take whatever steps it deems necessary to maintain the stormwater control facilities. This provision shall not be construed to allow the GOVERNMENT to erect any structure of a permanent nature on the land of the OWNER(S) without first obtaining written approval of the OWNER(S).
6. The GOVERNMENT 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 GOVERNMENT. The OWNER(S) shall reimburse the GOVERNMENT upon demand the costs incurred in the maintenance of the facilities.
7. If the OWNER fails to pay the GOVERNMENT for the above expenses after \_\_\_\_\_ days written notice, the OWNER authorizes the GOVERNMENT to collect said expenses from the OWNER through appropriate legal action and the OWNER shall be liable for the reasonable expenses of collection, court costs, and attorney fees.
8. The OWNER(S) and the OWNER(S) heirs, administrators, executors, assigns and any other successor interest shall indemnify and hold harmless the GOVERNMENT and its officers, agents and employees for any and all damages, accidents, casualties, occurrences, claims or attorney's fees which might arise or be asserted, in whole or in part, against the GOVERNMENT from the construction, presence, existence, or maintenance of the stormwater control facilities subject to the Agreement. In the event a claim is asserted against the GOVERNMENT, its officers, agents or employees, the GOVERNMENT shall notify OWNER(S) and the OWNER(S) shall defend at OWNER(S) expense any suit based on such claim. If any judgment or claims against the GOVERNMENT, its officers, agents or employees, shall be allowed, the OWNER(S) shall pay all costs and expenses in connection therewith. The GOVERNMENT will not indemnify, defend or hold harmless in any fashion the OWNER(S) from any claims arising from any failure, regardless of any language in any attachment or other document that the OWNER(S) may provide.
9. The OWNER(S) shall not be able to transfer, assign or modify its responsibilities with respect to this agreement without the GOVERNMENT's written prior consent. Nothing herein shall be construed to prohibit a transfer by OWNER(S).
10. No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such a provision or to exercise any right or remedy available.

11. The OWNER(S) shall record a plat showing and accurately defining the easements for stormwater control facilities. The plat must reference the Instrument Number where this Agreement and its or attachments are recorded and contain a note that the OWNER(S) is responsible for maintaining the stormwater management facilities.
  
12. The OWNER(S) shall record that Agreement in the Office of the Register of Deeds for the county of \_\_\_\_\_, state\_\_\_\_, and the Agreement shall constitute a covenant running with the land and shall be binding upon the OWNER(S) and the OWNER(S) heirs, administrators, executors, assigns and any other successors in interest.

**Attest by OWNER(S)**

\_\_\_\_\_  
OWNER(S) Signature

\_\_\_\_\_  
OWNER(S) Signature

\_\_\_\_\_  
OWNER(S) Print Name

\_\_\_\_\_  
OWNER(S) Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## STORMWATER BMP MAINTENANCE GUIDELINES

The required maintenance interval for stormwater BMPs are often dependent upon the degree of pollutant loading from a particular drainage basin. BMP maintenance can best be broken into three categories: **inspection**, **routine maintenance**, and **major maintenance**. Though each BMP type has its own unique characteristics, **inspections** will generally consist of an assessment to assure its functionality and the general condition. **Routine maintenance** will generally consist of trash and vegetation removal, unclogging of drains, minor sediment removal and exchange of filter media where applicable. **Major maintenance** will be completed as required from inspections and generally consists of significant reconstruction due to failures in the BMP. Examples of Major Maintenance include dredging, excavation, removal of existing media, replacing fabric, replacing the under-drain, and reestablishment of vegetation. The following schedule is offered as a guideline for performing **Inspection** and **routine maintenance** for a range of BMP categories.

BMP	Inspection Frequency	Routine Maintenance Frequency
<i>Inspection Frequency key: A = annual; M=monthly; S=after major storms; Q=Quarterly; SA=Semi Annually</i>		
Bioretention Systems	A, S	2 x /year
Cartridge or Module Media Filtration Structures	SA	1 – 2 x /year
Catch Basin Inserts (long term)	Q	3 – 4 x /year
Dry Pond	M	3 – 4 x /year
Dry Wells	A	1 x /year
Filter Strips or Swales	M	2 – 3 x /year
Green Roofs	SA; S	2 – 3 x /year
Hydrodynamic or Gravity Separators	SA	1 – 2 x /year
Infiltration Trenches	A; S	2 – 3 x /year
Permeable Pavement	A	2 – 3 x /year
Rainwater Gardens	SA; S	2 – 3 x /year
Rainwater Harvesting	SA; S	2 – 3 x /year
Sand Filter	Q first year; SA after	1 – 2 x / year
Trash & Debris Screens	SA; S	2 – 3 x /year
Underground Storage Facilities	SA	1 x /year
Wetlands	SA	2 x /year
Wet Pond	Q	2 – 3 x /year

*Above table developed by SWEMA as a general reference or guideline.*