

**OPERATIONS AND MAINTENANCE (O&M) AGREEMENT**  
**STORMWATER MANAGEMENT BEST MANAGEMENT**  
**PRACTICES (SWM BMPs)**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ of \_\_\_\_\_, (hereinafter the “Landowner”), and Cumberland Township, Adams County, Pennsylvania, a municipal corporation organized and existing pursuant to the laws of the Commonwealth of Pennsylvania, with a principal address of 1370 Fairfield Road, Gettysburg, Pennsylvania (hereinafter “Municipality”);

**WITNESSETH**

**WHEREAS**, the Landowner is the legal or equitable owner of certain real property, located at \_\_\_\_\_ in Cumberland Township (Municipality) as recorded by deed in the land records of Adams County, Pennsylvania, Deed Book \_\_\_\_\_ at Page \_\_\_\_\_, being known as \_\_\_\_\_ as depicted on a subdivision/land development plan recorded in Record Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter “Property”); and

**WHEREAS**, the Landowner is proceeding to build and develop the Property or has become the owner of the Property at or after the time that the Property has been developed; and

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

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

**WHEREAS**, the Municipality requires, through the implementation of the SWM Site Plan, that SWM BMPs as required by said SWM Site Plan and the Municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, 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 recitals set forth above are incorporated herein by reference.
2. The Landowner shall construct, or cause the construction of, the BMPs in accordance with the plans and specifications identified in the SWM Site Plan.
3. The Landowner shall operate and maintain the BMPs as shown on the SWM Plan in good working order in accordance with the specific operation and maintenance requirements noted on the approved O&M Plan.
4. The Landowner shall inspect the system at intervals outlined on the approved plans or as described in the applicable provisions of the Stormwater Management Ordinance.
5. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper credentials, to inspect the BMPs whenever the Municipality deems it appropriate. Whenever possible, the Municipality shall notify the Landowner prior to entering the property. The costs of the inspection may be assessed by the Municipality to the Landowner.
6. The Municipality may inspect the BMPs at reasonable intervals or following major storm events to ensure their continued functioning. The costs of the inspection may be assessed by the Municipality to the Landowner.
7. In the event the Landowner fails to operate and maintain the BMPs as provided in the O&M Plan, such failure shall be deemed a nuisance, and the Municipality shall notify Landowner in writing of any deficiencies. If Landowner fails to take action to correct those deficiencies within thirty (30) days of receipt of such notice, the Municipality or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). Landowner expressly agrees that the Municipality reserves the right to take immediate action to abate any nuisance that the Municipality, in its sole and absolute discretion, determines to be a serious violation. It is expressly understood and agreed that the Municipality 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 Municipality.
8. In the event the Municipality, 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, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred, plus a penalty of ten percent (10%) within ten (10) days of receipt of invoice from the Municipality. If such payment is not made with the 10-day period, the Municipality may place a municipal lien against the Property pursuant to the procedures set forth in the Pennsylvania Municipal Lien Law, 53 P.S. §7101 *et. seq.* as amended.
9. The Landowner, hereby indemnifies the Municipality and its employees and agents against all damages, casualties, occurrences or claims which might arise or be asserted against said it or them arising from the construction, presence, existence, or maintenance of the Stormwater Management Practices, Facilities, Systems, and BMPs by the Landowner or by the Municipality. In the event that a claim is asserted against the Municipality, its employees or agents, the Municipality shall promptly notify the Landowner and the

Landowner shall defend, at his or its own expense, any suit based on the claim. If any judgment or claims against the Municipality's employees or agents shall be entered, the Landowner shall pay all costs and expenses regarding said judgment or claim.

10. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMPs by the Landowner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
11. The Landowner, its executors, administrators, assigns, and other successors in interests, shall release the Municipality from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or Municipality.
12. This Agreement shall be recorded at the Office of the Recorder of Deeds of Adams County, Pennsylvania.
13. This Agreement shall be a covenant running with the Property, and shall be binding on the Landowner, and the Landowner's heirs, successors and assigns, and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

TOWNSHIP OF CUMBERLAND

ATTEST:

\_\_\_\_\_  
Township Secretary

By: \_\_\_\_\_  
Chairperson of the Board of Supervisors

ATTEST:

For the Landowner:

\_\_\_\_\_

\_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF ADAMS :

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be Chairperson of the Board of Supervisors of Cumberland Township and that as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

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

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF :

On this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ , before me, \_\_\_\_\_ personally appeared who acknowledged himself/herself to be the landowner of \_\_\_\_\_, and in that capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

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