

## EXAMPLE INSPECTION AND MAINTENANCE AGREEMENT FOR STORMWATER CONTROL MEASURES

### PLEASE NOTE:

- This is an **example Inspection and Maintenance Agreement** containing typical language used by communities.
- Agreements are tailored to each development project to list the specific stormwater control measures covered by the agreement, and the funding and operation and maintenance conditions accepted by the community.

This Inspection and Maintenance Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the *[party responsible for the project on which the stormwater control measure (SCM) will be located]* (hereafter referred to as the Owner) and the *[Community]* hereafter referred to as the Community, provides as follows:

**WHEREAS**, the Owner is responsible for certain real estate shown as Tax Map No. *(parcel number)* that is to be developed as *(development's official name)* and referred to as the Property; and,

**WHEREAS**, the Owner is providing a stormwater management system consisting of the following stormwater control measures (SCMs) *(all components of the stormwater management system listed here)* as shown and described on the attached Comprehensive Stormwater Management Plan *(attach copy of development's approved plan)*; and,

**WHEREAS**, to comply with Section XXXX.XX of the Codified Ordinances of the *[Community]* Comprehensive Stormwater Management, pertaining to this project, the Owner has agreed to maintain the SCMs in accordance with the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and undertaking of the parties, the parties hereby agree as follows:

### A. FINAL INSPECTION REPORTS AND AS BUILT CERTIFICATION

The Owner shall certify in writing to the *[Community]* within 30 days of completion of the SCMs that the SCMs are constructed in accordance with the approved plans and specifications. The Owner shall further provide As Built Certifications of the locations of all access and maintenance easements and each SCM, including those SCMs permitted to be located in, or within 50 feet of, water resources, and the drainage areas served by each SCM.

### B. MAINTENANCE PLANS FOR THE STORMWATER CONTROL MEASURES

1. The Owner agrees to maintain in perpetuity the SCMs in accordance with approved Maintenance Plans listed in #2 below and in a manner that will permit the SCMs to perform the purposes for which they were designed and constructed, and in accordance with the standards by which they were designed and constructed, all as shown and described in the approved Comprehensive Stormwater Management Plan. This includes all pipes and channels built to convey stormwater to the SCMs, as well as structures, improvements, and vegetation provided to control the quantity and quality of the stormwater.

2. The Owner shall provide a Maintenance Plan for each SCM. The Maintenance Plans shall include a schedule for monthly and annual maintenance. The Owner shall maintain, update, and store the maintenance records for the SCMs. The specific Maintenance Plans for each SCM are as follows:

***Note: This section must be tailored to the SCMs approved for a specific development and the maintenance necessary and associated schedule for each SCM. Please refer to manual for details on each SCM.***

3. The Owner shall perform all maintenance in accordance with the above Maintenance Plan and shall complete all repairs identified through regular inspections, and any additional repairs as requested in writing by the **[Community]**.

### **C. INSPECTION AND REPAIRS OF SCMs**

1. The Owner shall inspect all SCMs listed in Section B above, every three (3) months and after major storm events for the first year of operation.
2. The Owner shall inspect all SCMs listed in Section B above at least once every year thereafter.
3. The Owner shall submit Inspection Reports in writing to the **[Community]** engineer within 30 days after each inspection. The reports shall include the following:

The date of inspection; \_\_\_\_\_

Name of inspector; \_\_\_\_\_

The condition and/or presence of:

- (i) \_\_\_\_\_
- (ii) \_\_\_\_\_
- (iii) \_\_\_\_\_
- (iv) \_\_\_\_\_
- (v) \_\_\_\_\_
- (vi) \_\_\_\_\_
- (vii) \_\_\_\_\_
- (viii) Any other item that could affect the proper function of the Facility.

4. The Owner grants permission to the **[Community]** to enter the Property and to inspect all aspects of the SCMs and related drainage whenever the **[Community]** deems necessary. The **[Community]** shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary.
5. The Owner shall make all repairs within ten (10) days of their discovery through Owner inspections or through a request from the **[Community]**. If repairs will not occur within this ten (10) day period, the Owner must receive written approval from the **[Community]** engineer for a repair schedule.
6. In the event of any default or failure by the Owner in the performance of any of the covenants and warranties pertaining to the maintenance of the SCMs, or the Owner fails to maintain the SCMs in accordance with the approved design standards and Maintenance Plan, or, in the event of an emergency as determined by the **[Community]**, it is the sole discretion of the **[Community]**, after providing reasonable notice to the Owner, to enter the property and take whatever steps necessary to correct deficiencies and to charge the cost of such repairs to the Owner. The Owner shall reimburse the **[Community]** upon demand, within thirty (30) days of receipt thereof for all actual cost incurred by the **[Community]**. All costs expended by the **[Community]** in performing such

necessary maintenance or repairs shall constitute a lien against the properties of the Owner. Nothing herein shall obligate the **[Community]** to maintain the SCMs.

#### **D. FUNDING**

The Owner shall specify the method of funding for the perpetual inspection, operation, and maintenance of the SCMs listed in this Inspection and Maintenance Agreement. This funding mechanism shall be approved by the **[Community]**.

#### **E. INDEMNIFICATION**

1. The Owner hereby agrees that it shall save, hold harmless, and indemnify the **[Community]** and its employees and officers from and against all liability, losses, claims, demands, costs and expenses arising from, or out of, default or failure by the Owner to maintain the SCMs, in accordance with the terms and conditions set forth herein, or from acts of the Owner arising from, or out of, the construction, operation, repair or maintenance of the SCMs.
2. The parties hereto expressly do not intend by execution of this Inspection and Maintenance Agreement to create in the public, or any member thereof, any rights as a third party beneficiary or to authorize anyone not a party hereof to maintain a suit for any damages pursuant to the terms of this Inspection and Maintenance Agreement.
3. This Inspection and Maintenance Agreement shall be a covenant that runs with the land and shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns, and all subsequent owners of the property.
4. The current Owner shall promptly notify the **[Community]** when the Owner legally transfers any of the Owners responsibilities for the SCMs. The Owner shall supply the **[Community]** with a copy of any document of transfer, executed by both parties.
5. Upon execution of this Inspection and Maintenance Agreement, it shall be recorded in the Recorder's Office of **[County]**, Ohio, at the Owner's expense.

IN WITNESS WHEREOF, the Owner has caused this Inspection and Maintenance Agreement to be signed in its names by a duly authorized person.

\_\_\_\_\_  
(Sign) Individual Owner

\_\_\_\_\_  
(Please type)

By: \_\_\_\_\_  
***Appropriate Community official***

#### **PLEASE NOTE:**

*The information contained herein is for illustration purposes only and should not be considered as legal advice. This document is a template and should not be considered applicable for all situations or facts and circumstances. The reader is advised to consult with retained counsel to obtain appropriate legal advice on the use or modification of any of this document or concepts contained herein.*