

**STORMWATER BEST MANAGEMENT PRACTICES
POST-CONSTRUCTION OPERATION AND MAINTENANCE AGREEMENT**

PROJECT NAME: **[Click here and type Project Name]**

PROJECT ADDRESS: **[Click here and type Project Address]**

OWNER NAME: **[Click here and type Owner Name]**

This Post-Construction Operation and Maintenance Agreement (this “Agreement”) is made and entered into this **[Click here and type Date]** day of **[Click here and type Month, Year]** (the “Effective Date”) by and between **[Click here and type Owner name]** (the “Owner”) and the City of Middletown (the “City”), provides as follows:

- A. The Owner is responsible for certain real estate, designated as Parcel Number(s) **[Click here and type Parcel Number(s)]** which is to be the site for a development commonly known as **[Click here and type Project Name]** (the “Property”).
- B. The Owner is providing a stormwater management system for the Property consisting of the following Best Management Practices: **[Click here and type Practices]** as shown and described within the City-approved Stormwater Pollution Prevention Plan pertaining to the Property.
- C. The Owner, on behalf of itself and its successors and assigns, has agreed to maintain the stormwater Best Management Practices in accordance with the terms and conditions set forth in this Agreement.

**OPERATION AND MAINTENANCE PLAN
FOR THE BEST MANAGEMENT PRACTICES**

- 1. The Owner agrees to maintain the Property in perpetuity by the Best Management Practices in accordance with the approved Operation and Maintenance Plan (the “OMP”) referred to in Paragraph 2 herein in a manner that will permit the Best Management Practices 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 OMP. The Owner’s obligations under this provision extend to all pipes and channels built to convey stormwater to the stormwater Best Management Practices, as well as structures, improvements and vegetation provided to control the quantity and quality of the stormwater.
- 2. The Owner shall provide an OMP for all of the post-construction Best Management Practices located on the Property as identified within the Recitals of this Agreement and shown and described within the City-approved Stormwater Pollution Prevention Plan for the Property. The OMP shall contain the following:
 - The name, address and contact person for the entity responsible for Best Management Practice inspection and maintenance;
 - The maintenance tasks to be undertaken;
 - The schedule for inspection and maintenance tasks;
 - Any necessary legally binding maintenance easements and agreements;
 - A site plan showing the location of the Best Management Practices and all access and maintenance easements;
 - The method of funding for perpetual inspection, operation and maintenance of the Best Management Practices.
- 3. The Owner shall perform all maintenance in accordance with the OMP and shall promptly complete all repairs identified through regular inspections and any additional repairs, as requested in writing by the City.

4. The shall provide the OMP to the City along with the Owner-executed copy of this Agreement. The City-approved OMP shall be attached to the fully-executed Agreement as “Exhibit A” and expressly incorporated as part of the Agreement pursuant to this reference.

BEST MANAGEMENT PRACTICES

5. The Owner shall inspect all Best Management Practices identified within the OMP every three (3) months, and after all major storm events, the first year of operation of the development on the Property.
6. Following the first year of operation, the Owner shall inspect all Best Management Practices identified within the OMP at least once annually, or more frequently as specified in the City-approved OMP.
7. Inspection reports shall be prepared for all Best Management Practices on the Property and include, at a minimum, the following information:
 - Project name and address;
 - Inspection date;
 - The Best Management Practice inspected and the inspected components; and
 - Summary of inspection results, including necessary repairs and maintenance.

Pictures of each Best Management Practice inspected shall be taken at the time of inspection and attached to the report.

The Owner shall retain copies of the Best Management Practice inspection reports, and maintenance and repair records, and submit copies of the same to the City by **June 1st** for each Best Management Practice requiring an annual inspection. If the Best Management Practices are to be inspected more frequently, as specified in the City-approved OMP, the Owner shall submit inspection reports based on the schedule prescribed within the OMP.

Inspection reports shall be submitted to:

[CITY CONTACT INFO]

8. The Owner grants permission to the City, its employees and authorized agents, to enter upon the Property and to inspect all aspects of the Best Management Practices whenever the City deems inspection necessary. The City shall provide the Owner copies of the City inspection findings and a directive to commence with any necessary repairs.
9. The Owner shall make all repairs within **ten (10) days** of their discovery through Owner inspections or through a request for the City. If repairs will not occur within **ten (10) days**, the Owner must receive written approval from the City for an alternative repair schedule.
10. In an event of any default or failure by the Owner in the performance of any of the Owner’s obligations under this Agreement, the OMP or otherwise with respect to maintenance of the Best Management Practices, as determined by the City, or, in the event of an emergency as determined by the City, after providing reasonable notice to the Owner, the City may enter onto 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 City for costs expended by the City in performing such necessary maintenance or repairs within **thirty (30) days** upon demand by the City. Outstanding costs shall constitute a lien against the Owner’s properties. Nothing herein shall be interpreted as obligating the City to maintain the Best Management Practices.

INDEMNIFICATION

11. The Owner hereby agrees that it shall save, hold harmless and indemnify the City and its representatives, officers, employees and agents 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 Best Management Practices, 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 Best Management Practices.

12. It is expressly understood by the parties hereto that execution of this Agreement is not intended to create in the public, or any member thereof, any rights as a third party beneficiary, or to authorize anyone who is not a party to maintain a suit for any damages arising out of or in any way related to the terms of this Agreement.

COVENANT

13. This Agreement shall be a covenant that runs with the land of the Property and shall inure to the benefit of and shall be binding upon the parties hereto, and their respective heirs, successors and assigns, and all subsequent owners of the Property, in perpetuity.
14. The Owner shall promptly notify the City when the Owner legally transfers any of the Owner's responsibilities for the Best Management Practices. The Owner agrees that an explicit condition of any future sale or transfer of the Property or any part thereof shall be the transferee's assumption of this Agreement and all of the Owner's obligations hereunder. The Owner shall supply the City with a copy of any document or transfer, executed by both parties.
15. Upon execution of the Agreement, it shall be recorded in the Recorder's Office of the county in which the Property is located, at the Owner's sole expense.

AMENDMENT AND TERMINATION

16. This Agreement may only be amended or terminated pursuant to a written amendment or written consent to termination executed by both the Owner and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER:

Authorized Representative

Name

Title

Date

CITY OF MIDDLETOWN:

Susan Cohen, Acting City Manager

Approved as to form:

Date

Law Director

EXHIBIT A
to Stormwater Best Management Practices
Post-Construction Operation and Management Agreement
(Operation and Management Plan)