

STORMWATER OPERATION AND MAINTENANCE AGREEMENT

**For
Structural Stormwater Management Facilities**

City of Mebane



October 15, 2023

Structural Stormwater BMP Maintenance Agreement

THIS AGREEMENT, made this ____ day of _____, 20____, by and between

_____, hereinafter referred to as the "OWNER(S)"
and the City of Mebane, North Carolina, hereinafter referred to as the "CITY",

WITNESSETH, that

WHEREAS, the OWNER is the owner of certain real property described as

_____ as recorded by deed in the land records
of _____ County, Deed Book _____ Page _____, Parcel Identification Number
_____ hereinafter called the "Property".

WHEREAS, the OWNER is proceeding to build on and develop the property; and

WHEREAS, the Site Plan/Subdivision Plan known as _____,
(Name of Plan/Development)

hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the CITY, provides for treatment of stormwater within the confines of the property; and

WHEREAS, the CITY and the OWNER, its successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of Mebane, North Carolina, require that on-site structural stormwater BMP facilities be constructed and maintained on the Property; and

WHEREAS, the CITY requires that on-site structural stormwater Management facilities as shown on the Plan be constructed and adequately maintained by the OWNER, its successors and assigns, including any homeowners association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site structural stormwater Management facilities shall be constructed by the OWNER, its successors and assigns, in accordance with the plans and specifications identified in the Plan. This agreement specifically relates to BMP No.(s) _____ as identified on said plans.
2. The OWNER, its successors and assigns, including any homeowners association, shall adequately maintain the structural stormwater BMP facilities in accordance with the approved Operation and Maintenance Plan or Manual(s). This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions.

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3. The OWNER, its successors and assigns, shall ensure the structural stormwater BMP facility is inspected by a qualified professional and shall submit an annual inspection report to the City. The inspection report shall be due annually 30 days from the date of the final structural stormwater Management facilities construction inspection. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection report. In the case of BMP's located in the Public Water Supply Watershed, annual inspections will be made by the city and paid for by the Owner from the fees collected at the time of BMP plan approval.
4. The OWNER, its successors and assigns, hereby grant permission to the CITY, its authorized agents and employees, to enter upon the Property and to inspect the structural stormwater Management facilities whenever the CITY deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The CITY shall provide the OWNER, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.
5. At the time the CITY approves the completed facility and issues final certificates of occupancy, the OWNER and/or maintaining entity (if single entity within water supply watersheds or HOA regardless of watershed) hereby agrees to guarantee proper future maintenance, operation, and repair of the facility and continuing each year thereafter. Additionally, to further ensure the proper future maintenance, operation, and repair of the facility, OWNER shall establish and maintain a fund to guarantee the obligation. The guarantee shall be in the form of a fund held by OWNER. The amount of guarantee shall be 10% of the total cost of constructing the facility based on actual contract prices for said facility. OWNER is afforded five (5) years from date of the final construction approval of the facility to fund the guarantee which funds shall be held in a segregated account. OWNER shall provide satisfactory proof of the fund on an annual basis to CITY beginning with the first anniversary date of the above noted CITY approval and continuing each year thereafter.

The OWNER and/or maintaining entity shall also pay to the CITY as this time a one-time fee for annual inspections for facilities located in the Public Water Supply Watershed, currently set at **\$5,000.00** per BMP.

The initial duration of the financial guarantee shall be for 20 years. The guarantee may be dissolved at any time by mutual agreement when the need for such guarantee no longer exists. Any funds remaining from such guarantee will be returned to the appropriate entity.

Upon the sale of the Property by OWNER, this agreement will be assigned to the purchaser as part of the purchase agreement. The purchaser shall be required to fulfill the remainder of the financial guarantee and assume the responsibilities outlined in this agreement. Upon receipt of a satisfactory replacement financial guarantee as provided herein, CITY shall release OWNER'S financial guarantee in full.

6. In the event the OWNER, its successors and assigns, fails to maintain the structural stormwater Management facilities in good working condition acceptable to the CITY or

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that maintenance and repairs are not being made as required or that any action is not being done in accordance with this agreement, the CITY shall notify the responsible entity who shall be given a reasonable time to correct such deficiencies. Should the responsible entity fail to act in a timely manner, or otherwise fail to correct the deficiencies, the CITY will institute appropriate action to obtain compliance including criminal or civil penalties, or both. In addition, the CITY may declare the responsible entity in default of this agreement and financial guarantee and use part or all of such guarantee funds to correct the deficiencies and may assume actual operation and maintenance. Default of this agreement does not release the responsible entity from liability/responsibility for the deficiencies, nor release the entity from this agreement. Likewise, default of this agreement does not prevent the CITY from taking action against the responsible entity to recover the cost of such actions to correct the deficiencies.

7. For all structural stormwater management facilities which are to be or are owned and maintained by a property owner's association or similar entity, the OWNER also agrees to the following provisions:
 - a. Acknowledgment that the association shall continuously operate and maintain the structural stormwater management facilities.
 - b. Establish adequate owner/property association dues which are to be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater control measures and devices of the particular site plan or subdivision.
 - c. Granting to the CITY a right of entry to inspect, monitor, maintain, repair, and reconstruct structural stormwater management facilities.
 - d. Allow the CITY to recover from the association and its members any and all costs the CITY may expend to maintain or repair the stormwater control and management facility or to correct any operational deficiencies as a result of default by the owner/association/responsible entity. Failure to pay to the CITY all of its expended costs, after thirty (30) days written notice, shall constitute a breach of the agreement. The CITY shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien herein authorized by the agreement against the property, or both in the case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.
8. The OWNER, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the structural stormwater management facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.
9. In the event the CITY, 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 OWNER, its successors and assigns, shall reimburse the CITY upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the CITY hereunder.
10. This Agreement imposes no liability of any kind whatsoever on the CITY and the OWNER agrees to hold the CITY harmless from any liability in the event the structural stormwater Management facilities fail to operate properly.

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11. This Agreement shall be recorded among the land records of Alamance County or Orange County as appropriate, North Carolina, and shall constitute a covenant running with the land, and shall be binding on the OWNER, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association.

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

Name of Company/Corporation/Partnership/Individuals (Seal if corporation)

By: _____

(Type Name)

(Type Title)

STATE OF NORTH CAROLINA

CITY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 20____, by

NOTARY PUBLIC

My Commission Expires: _____

CITY OF MEBANE, NORTH CAROLINA

City of Mebane (Seal)

By: _____

(Type Name)

(Type Title)

STATE OF NORTH CAROLINA

COUNTY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 20____, by _____.

NOTARY PUBLIC

My Commission Expires: _____

Approved as to Form:

City Attorney Date