

**Storm Water Management Practice
Maintenance Agreement**

Document Number

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____, by and between **INSERT OWNER** hereinafter called the "Owner", and the City of New Berlin, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Owner is the owner of the following described lands situated in the City of New Berlin, County of Waukesha, State of Wisconsin, to-wit:

INSERT LEGAL DESCRIPTION

hereinafter called the "Property".

WHEREAS, the Owner is developing the property; and

WHEREAS, the Site Plan/Subdivision Plan known as **INSERT PROJECT NAME**, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for on-site storm water management practices 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 the City of New Berlin, require that on-site storm water management practices as defined in MMSD Chapter 13 and the New Berlin Municipal Code be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site storm water management practices 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 storm water management practices shall be constructed by the Owner, its successors and assigns, including any homeowners association, in accordance with the plans and specifications indicated in the Plan and applicable statutes, ordinances and rules. The storm water management practices shall serve the drainage area designated in the Plan.
2. The Owner, its successors and assigns including but not limited to any homeowners association, shall regularly inspect the storm water management practices and specifically the function of the approved storm water management system as often as conditions require, but in any event at least once each year. The standard Operation and Maintenance Report attached to this agreement as Exhibit A and by this reference made a part hereof shall be used for the purpose of the regular inspections of the storm water management practices. The Owner, its successors and assigns shall keep the Operation and Maintenance Reports from past inspections as well as a log of maintenance activity indicating the date and type of maintenance completed. The Reports and maintenance log shall be made available to the City for review. The purpose of the inspections is to assure safe and proper functioning of the facilities. The inspections shall cover all facilities including but not limited to berms, outlet structures, pond areas and access roads. Deficiencies shall be noted in the Operation and Maintenance Report.
3. The Owner, its successors and assigns, including any homeowners association, shall adequately maintain the storm water management practices, including but not limited to all pipes and channels built to convey storm water to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Adequate maintenance is herein

Name and Return Address

Nicole Hewitt
City of New Berlin
3805 S Casper Dr
New Berlin, WI 53151

NBC **INSERT TAX KEY**

defined as keeping the storm water management facilities in good working condition so that these facilities are performing their design functions and are in accordance with the Operation and Maintenance Standards attached to this agreement as Exhibit B and by this reference made a part hereof.

4. The Owner, its successors and assigns, including any homeowners Association, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the storm water management practices whenever the City deems necessary. The purpose of inspection is to investigate reported deficiencies and/or to respond to citizen complaints. The City shall provide the Owner, its successors and assigns, including any homeowners association, copies of the inspection findings and a directive to commence with the repairs if necessary. Corrective actions shall be taken within a reasonable time frame as established by the City Engineer.
5. If the Owner, its successors and assigns, including any homeowners Association, fails to maintain the storm water management practices in good working condition, consistent with the terms of the approved plans and specifications approved by the City and does not perform the required corrective actions and inspections in the specified time, the City may:
 - a. Issue a citation to the Owner, its successors and assigns. Each day that the violation exists shall constitute a separate offense, and shall be considered a continuing violation.
 - b. Perform the corrective actions identified in the inspection report and assess the Owner, its successors and assigns for the cost of such work. The cost of such work may be specially assessed against the property pursuant to Wisconsin Statutes Section 66.0703. If the facilities are located on an outlot owned collectively by homeowners association, the City may assess each member of the homeowners association according to the ownership interest in the facilities located on the property. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Owner outside of the easement for the storm water management practices, and in no event shall this Agreement be construed to impose any such obligation on the City.
6. The Owner, its successors and assigns, including any homeowners Association, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the storm water management practices (including sediment removal) is outlined on the approved plans, the schedule will be followed. The minimal amount of maintenance on the storm water management practices shall be in accordance with the Operation and Maintenance Standards (Exhibit B).
7. 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, including any homeowners association, shall reimburse the City upon demand, within thirty (30) days of receipt for all actual costs incurred by the City hereunder.
8. This Agreement imposes no liability of any kind whatsoever on the City, its officers, agents and employees, and the owner agrees to indemnify and hold the City harmless as and against any and all claims, actions, causes of action, demands, including attorney fees which the City may incur as a result of the failure of the storm water management system and/or actions taken or not taken by the City to enforce the terms of this agreement including, but not limited to, the performance of maintenance activities.
9. This Agreement shall be attached as an exhibit to any document which creates a homeowners association that is responsible for maintenance of the storm water management practices and be recorded at the Waukesha County Register of Deeds, and shall constitute 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. The owner shall provide the City with a copy of any document which creates a homeowners association that is responsible for the storm water management practices.
10. Notwithstanding anything in this Agreement to the contrary, in the event the Owner, or the Owner's successors and assigns, sell or otherwise transfer ownership in the Property, the Owner and the Owners successors and assigns, are hereby released from any and all liabilities and obligations under the terms of this Agreement.

11. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin and may only be modified in a writing executed by both parties.
12. The Owner stipulates that this agreement permits the City to have access to his or her property for purposes of storm water inspection and maintenance and that the Owner waives the right to an appraisal or to pursue any other rights it may have pursuant to Ch 32 of the Wisconsin statutes.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

FOR THE CITY OF NEW BERLIN

David Ament, Mayor

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

NOTARY PUBLIC, County of Waukesha, State of WI
My commission expires _____

PROPERTY OWNER

INSERT OWNER NAME

Company/Corporation/Partnership Name (Seal)

Print Name and Title

Signature

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

NOTARY PUBLIC, County of Waukesha, State of WI
My Commission Expires: _____

This document was drafted by:

Nicole Hewitt
3805 S Casper Dr
New Berlin, WI 53151

Approved for recording:

CERTIFICATION

I, Rubina Medina , duly appointed as City Clerk for the City of New Berlin, do hereby certify that the attached plans and maps are true and correct copy of the original and if they are not legible or readable, a copy of the original is available at the City of New Berlin Engineering Department.

Document: _____

File Number: _____

Date: _____

Name: Rubina Medina

Signature: _____

Title: City Clerk

EXHIBIT A Stormwater Basin Operation and Maintenance Report

Project: _____

Location: _____

Site Status: _____

Date: _____ Time: _____

Inspector: _____

Maintenance Item	Satisfactory / Unsatisfactory	Comments
1. Embankment and emergency spillway (Annual, After Major Storms)		
1. Vegetation and ground cover adequate		
2. Embankment erosion		
3. Animal burrows		
4. Unauthorized planting		
5. Cracking, bulging, or sliding of dam		
a. Upstream face		
b. Downstream face		
c. At or beyond toe		
downstream		
upstream		
d. Emergency spillway		
6. Pond, toe & chimney drains clear and functioning		
7. Seeps/leaks on downstream face		
8. Slope protection or riprap failure		
9. Vertical/horizontal alignment of top of dam "As-Built"		
10. Emergency spillway clear of obstructions and debris		
11. Other (specify)		
2. Riser and principal spillway (Annual)		
Type: Reinforced concrete _____		
Corrugated pipe _____		
Masonry _____		
1. Low flow orifice obstructed		
2. Low flow trash rack		
a. Debris removal necessary		
b. Corrosion control		
3. Weir trash rack maintenance		

EXHIBIT A
Stormwater Basin Operation and Maintenance Report

Maintenance Item	Satisfactory / Unsatisfactory	Comments
a. Debris removal necessary		
b. corrosion control		
4. Excessive sediment accumulation insider riser		
5. Concrete/masonry condition riser and barrels		
a. cracks or displacement		
b. Minor spalling (<1")		
c. Major spalling (rebars exposed)		
d. Joint failures		
e. Water tightness		
6. Metal pipe condition		
7. Control valve		
a. Operational/exercised		
b. Chained and locked		
8. Pond drain valve		
a. Operational/exercised		
b. Chained and locked		
9. Outfall channels functioning		
10. Other (specify)		
3. Permanent Pool (Wet Ponds) (monthly)		
1. Undesirable vegetative growth		
2. Floating or floatable debris removal required		
3. Visible pollution		
4. Shoreline problem		
5. Other (specify)		
4. Sediment Forebays		
1. Sedimentation noted		
2. Sediment cleanout when depth < 50% design depth		
5. Dry Pond Areas		
1. Vegetation adequate		
2. Undesirable vegetative growth		
3. Undesirable woody vegetation		
4. Low flow channels clear of obstructions		
5. Standing water or wet spots		
6. Sediment and / or trash accumulation		
7. Other (specify)		

EXHIBIT A
Stormwater Basin Operation and Maintenance Report

Maintenance Item	Satisfactory / Unsatisfactory	Comments
6. Condition of Outfall into Ponds (Annual , After Major Storms)		
1. Reprap failures		
2. Slope erosion		
3. Storm drain pipes		
4. Endwalls / Headwalls		
5. Other (specify)		
7. Other (Monthly)		
1. Encroachment on pond or easement area		
2. Complaints from residents		
3. Aesthetics		
a. Grass growing required		
b. Graffiti removal needed		
c. Other (specify)		
4. Any public hazards (specify)		
8. Constructed Wetland area (Annual)		
1. Vegetation healthy and growing		
2. Evidence of invasive species		
3. Excessive sedimentation in Wetland area		

Comments:

Actions to be Taken:

EXHIBIT B

WET DETENTION POND OPERATION AND MAINTENANCE STANDARDS

I. ROUTINE MAINTENANCE

A. Mowing

1. Side slopes, embankments, and emergency spillways that are not rock lined which have been planted with turf grasses should be mowed at least twice a year to prevent woody growth and control noxious weeds.
2. Adjacent to the residential areas, more frequent mowing, typically once a week during a normal growing season, is recommended for aesthetic and allergy control purposes.
3. Native grasses should be mowed to a height of 6" in mid to late summer or after they have achieved a height of 1-1/2 feet during the first growing season. Further mowing in subsequent growing seasons will not be required.
4. If possible, the native grass area should be burned off every three to four years in the spring of the year. Check local burning regulations as permits may be required.
5. If burning of the native grass areas is not possible, a 5 to 8" mowing every 3 to 4 years, may suffice as a substitute management technique. The mowed area should be raked and performed in the spring.

B. Inspections

1. Inspections of the ponds shall be completed on an annual basis or after significant rainfall events.
2. The inspections should be completed during wet weather conditions to determine if the ponds are functioning properly.
3. Inspection priorities shall be as follows:
 - a. Inspect the embankments for subsidence, erosion, cracking and tree growth.
 - b. Inspect the condition of the emergency spillway and overland flow path.
 - c. Inspect the pond for accumulation of sediment.
 - d. Inspect the outlet control structure for clogs, debris and material failures.
 - e. Inspect upstream and downstream channels from an erosion perspective.
 - f. Inspect any modifications that may have been done to the ponds following their initial construction.
 - g. Inspect the side slopes of the pond for erosion, slumping, cracking or woody plant materials.
4. As-built plans shall accompany the person responsible for the pond inspections.
5. Documentation of the inspections should be completed and filed. Documentation should include as a minimum:

- a. Inspectors name, affiliation and professional credentials if applicable.
 - b. Date, time and weather conditions.
 - c. Approximate rainfall total over a 24 hour period if applicable.
 - d. Existing embankment, outlet and inlet conveyance systems and vegetation condition.
 - e. Sediment depth at the outlet control structure and at a minimum one other location.
 - f. Identification of potential structural failures and repair needs.
 - g. Other pond conditions such as vegetation growth, algae growth and emergency spillway conditions.
 - h. Repair recommendations.
- C. Debris and Litter Removal.
1. Debris and litter removal from the pond surface shall be completed at least once a month.
 2. Particular attention should be paid to debris accumulating around the riser pipe to prevent potential clogging.
- D. Erosion Control.
1. The pond side slopes, embankments and emergency spillways may suffer from periodic slumpage and erosion.
 2. Corrective measures shall include regrading, filling and revegetation of the eroded or slumping areas.
 3. Rip rap at the pond outlet and emergency spillways should be inspected for displacement or undermining. Repairs shall be made upon discovery.
- E. Nuisance Control.
1. Biological control of algae and mosquitoes is preferred over chemical control. Consultation with local WDNR officials is recommended prior to the introduction of any biological control.
 2. Maintaining the native grass perimeter will aide in the control of geese.
 3. Mechanical controls should be used when feasible.
- II. NON-ROUTINE MAINTENANCE
- A. Structural Repairs and Replacement.
1. The outlets of the pond have been constructed utilizing concrete pipe. The estimate life of these structures is 75 to 100 years. Annual inspection of the structures will disclose any potential structural problems. If structural problems appear, repair or replace the outlet.
 2. Excessive or chronic drawdowns of the ponds may cause leaks or seepage through the embankments. Excessive drawdowns should be avoided and thus corrective measures for leakage and seepage can be avoided.

B. Sediment Removal.

1. A sediment clean out cycle of 10 to 15 years is recommended. Sediment removal may be necessary prior to 10 years if there is a substantial amount of land disturbance occurring within the contributory watershed. Annual inspections shall be made to insure that the design depth of the permanent water pool is maintained.
2. Sediment removed from the ponds shall be hauled to an upland area, spread and stabilized with vegetative material.
3. It is recommended that the sediment be tested to determine if land filling is necessary. Contact the local DNR prior to sediment sampling and testing to insure compliance with State standards and regulations.
4. Surveyed depths of the sediment storage area and permanent pool elevations shall be made immediately following the construction of the ponds and recorded on the as-built plans. Annual inspections shall include measure downs to determine sediment elevations in relation to the permanent pool elevation.

EXHIBIT C
LOCATION MAP