October 24, 2016

Re: Stormwater Management Operation & Maintenance Agreement Documents

Dear Westtown Township Stormwater Management Permit Applicant:

Westtown Township has recently been made aware of some difficulties that applicants are having when attempting to record Stormwater Management Operation & Maintenance (O&M) Agreements with the Chester County Recorder of Deeds (RoD) Office. In order to assist you in expediting the process, please note the following requirements as set forth by the RoD Office:

1. The Stormwater O&M Agreement presented at the RoD Office must be the original document. This means that it must have the original signatures of the homeowner and the Township Official, as well as the original notary acknowledgement. The Township can perform the notary service as a courtesy to Westtown Residents. The RoD Office cannot record copied documents and/or documents without notarization.

2. Westtown Township requires that a stamped copy of the Stormwater O&M Agreement be returned to the Township prior to any permit(s) being issued. The RoD will only stamp the first page of copies of agreement. This will be sufficient to satisfy the Township’s requirement.

3. In order to return the original document, please bring a self-addressed stamped envelope with you to the RoD Office. This process takes approximately 4 to 6 weeks. If a self-addressed stamped envelope is not provided, the Recorder of Deeds Office will charge a $2.00 fee for that service.

4. The RoD Office can only accept cash or business checks. The cost for recording varies based on the number of pages and whether any maps are attached to the document. The Recorder of Deeds Office will aid you in calculating the cost. They can be reached at 610.344.6330.

5. A map is not required when an agreement is first recorded; however it does become a requirement when an amendment amending the map is recorded.

If you have any questions, please contact the Recorder of Deeds Office at 610.344.6330. Our hope is that this list will aid you in having to return multiple times.
ORDINANCE APPENDIX E

STORMWATER
BEST MANAGEMENT PRACTICES
AND CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT

SAMPLE AGREEMENT

REVISED
Chester County Water Resources Authority
February 19, 2013
STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this ____________ day of __________, 20__, by and between ____________________________________, (hereinafter the “Landowner”), and ____________________________________, Chester County, Pennsylvania, (hereinafter “Municipality”);

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Chester County, Pennsylvania, at Deed Book ___________ and Page ______, (hereinafter “Property”); and

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the stormwater Best Management Practices (herein after BMP(s)) And Conveyances Operations and Maintenance Plan approved by the Municipality (hereinafter referred to as the “O&M Plan”) for the Property, which is attached hereto as Appendix A and made part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and conveyances; and

WHEREAS, the Municipality and the Landowner, for itself and its administrators, executors, successors, heirs, 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 stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

WHEREAS, for the purposes of this agreement, the following definitions shall apply:

**BMP** – “Best Management Practice” –Those activities, facilities, designs, measures, or procedures as specifically identified in the O&M Plan, used to manage stormwater impacts from land development, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of the Municipality’s Stormwater Management Ordinance. BMPs may include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, manufactured devices, and operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff. The BMPs indentified in the O&M Plan are permanent appurtenances to the Property; and

**Conveyance** – As specifically identified in the O&M Plan, a man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other),
gutters, stream channels, and like facilities or features. The conveyances identified in the O&M Plan are permanent appurtenances to the Property; and

WHEREAS, the Municipality requires, through the implementation of the O&M Plan, that stormwater management BMPs and conveyances, as required by said O&M Plan and the Municipality’s Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors in interest, heirs, and assigns.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.

2. The Landowner shall construct the BMP(s) and conveyance(s) in accordance with the final design plans and specifications as approved by the Municipality __________________________(title of approved plans) ___________(date).

3. The Landowner shall inspect, operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Municipality and in accordance with the specific inspection and maintenance requirements in the approved O&M Plan.

4. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and conveyance(s) whenever it deems necessary for compliance with this Agreement, the O&M Plan and the Municipality’s Stormwater Management Ordinance. Whenever possible, the Municipality shall notify the Landowner prior to entering the Property.

5. The Municipality intends to inspect the BMP(s) and conveyance(s) at a minimum of once every [__________] years to determine if they continue to function as required.

6. The Landowner acknowledges that, per the Municipality’s Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:
   a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is constructed as part of the approved O&M Plan;
   b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;
   c. Allow the BMP or conveyance to exist in a condition which does not conform to the approved O&M Plan or this Agreement; and
   d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or conveyance.
7. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Municipality, the Landowner shall be in violation of this Agreement, and the Landowner agrees that the Municipality or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and conveyance(s). 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 that 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 within [_______] days of delivery of an invoice from the Municipality. Failure of the Landowner to make prompt payment to the Municipality may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

9. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and conveyance(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

10. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Municipality’s employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and conveyance(s) either by the Landowner or Municipality. In the event that a claim is asserted or threatened against the Municipality, its employees, agents or designated representatives, the Municipality shall notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Municipality, or, at the request of the Municipality, pay the cost, including attorneys’ fees, of defense of the same undertaken on behalf of the Municipality. If any judgment or claims against the Municipality’s employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Municipality, including attorneys, regarding said damages, judgments or claims.

11. The Municipality may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Municipality shall include its reasonable attorney’s fees and costs incurred in seeking relief under this Agreement.

12. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Municipality of its rights of enforcement hereunder.
13. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.

14. This Agreement shall inure to the benefit of and be binding upon, the Municipality and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.

15. Additional items or conditions, as required by the Municipality (per Subsection 703.B of this Ordinance), as attached herein:
This Agreement shall be recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, and shall constitute a covenant running with the Property, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL) For the Municipality:

(SEAL) For the Landowner:

ATTEST:

_____________________________ (City, Borough, Township)

County of Chester, Pennsylvania
I, ____________________________, a Notary Public in and for the County and State aforesaid, whose commission expires on the __________ day of __________________, 20__, do hereby certify that ______________________________ whose name(s) is/are signed to the foregoing Agreement bearing date of the __________ day of ________________, 20__, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS __________ day of __________, 20__.

_____________________________ ________________________________
NOTARY PUBLIC (SEAL)