

**Site Development and Stormwater Management System Maintenance Agreement**  
(for Private Developments)

This Site Development and Stormwater Management System Maintenance Agreement (the "Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, (the "Effective Date") between the City of Walker, a Michigan municipal corporation, whose address is 4243 Remembrance Road NW, Walker, Michigan, 49534 (the "City"); and \_\_\_\_\_, a Michigan \_\_\_\_\_, whose address is \_\_\_\_\_ (the "Developer").

**RECITALS**

A. The Developer is the fee simple owner of real property located in the City of Walker, Kent County, Michigan more specifically described on the attached Exhibit A (the "Property").

B. The Developer is seeking, or has obtained, a stormwater permit (the "Permit") in accordance with Chapter 67 of the Walker City Code entitled City of Walker Stormwater Management Ordinance ("Stormwater Ordinance").

C. The Stormwater Ordinance requires the Developer to enter into a maintenance agreement with the City to provide for the routine, emergency, and long-term maintenance of the methods, structures, areas, systems, plantings, trees, and other equipment or measures which are designed to receive, control, store, convey, infiltrate, or treat stormwater (individually "Stormwater Management Facility", collectively "Stormwater Management System").

D. Developer recognizes and acknowledges that the Stormwater Management System must be maintained in perpetuity, and accordingly, the Developer desires and intends to establish that any easement, covenant, obligation, or restriction contained herein is a permanent deed restriction and covenant running with the Property and binding all owners having any right, title, or interest in or to the Property.

**AGREEMENT**

1. **Exhibits.** This Agreement includes the following exhibits all of which shall be treated as if fully incorporated herein:

**Exhibit A:** Legal description of the Property.

**Exhibit B:** Location map(s) showing a location of the Property and an accurate location of each Stormwater Management Facility installed, constructed, or required to be maintained by this Agreement.

**Exhibit C:** A long-term maintenance plan ("Maintenance Plan") that prescribes those activities to be carried out to maintain compliance with this Agreement and the Stormwater Ordinance.

**Exhibit D:** Inventory of approved Stormwater Management Facilities.

2. **Compliance with Laws, Ordinance, and Permits.** Developer shall construct, install, operate, and maintain the Stormwater Management System in accordance with approvals received from the City, the Stormwater Ordinance, all state and local laws, and the terms of this Agreement.

3. **Operation of the Stormwater Management System.** The Developer shall be solely responsible for the installation, maintenance, and repair of the Stormwater Management System, and all accompanying Stormwater Management Facilities including, but not limited to, drainage easements and associated landscaping in accordance with the Maintenance Plan.

4. **Alterations.** The Developer shall not make any alterations or changes to the Stormwater Management System that are not in accordance with this Agreement without the prior written approval of the City and a subsequent amendment to this Agreement in accordance with Section 18 – “Amendment”.

5. **Easements.** The Developer, at its expense, shall secure from any affected neighboring landowners all easements and releases of rights-of-way necessary for the construction, operation, maintenance, and utilization of the Stormwater Management System and shall record said easements with the Register of Deeds. These easements and releases of rights-of-way shall not be altered, amended, vacated, released or abandoned without prior written approval of the City.

6. **Qualified Inspector.** The Developer, at its expense, shall retain the services of a qualified inspector as described in the Maintenance Plan to operate and ensure the maintenance of the Stormwater Management System in accordance with the Maintenance Plan.

7. **Document Production.** Upon request by the City, the Developer shall provide to the City records (logs, invoices, reports, data, etc.) of inspections, maintenance, and repair of the Stormwater Management System.

8. **Required Maintenance or Repair.** Upon written notification by the City, or its designee, that maintenance or repairs to the Stormwater Management System are required, the Developer shall complete the specified maintenance or repairs within a reasonable time frame as determined by the City. The Developer shall be liable for the failure to undertake any maintenance or repairs if the public health, safety and welfare are endangered or road improvements are damaged by Developer’s failure to undertake said maintenance or repairs.

9. **Failure to Maintain.** If after written notification by the City pursuant to Section 8 and an opportunity to cure, the Developer does not operate and maintain the Stormwater Management System as required under the terms of this Agreement or the Stormwater Ordinance, the City shall be entitled, and is hereby expressly authorized by the Developer, to take one or more of the following actions (or any combination thereof as determined in the sole discretion of the City):

- a. The City or its agent or contractor may enter the Property and maintain the Stormwater Management System. Except in cases of emergencies, no less than fifteen (15) days before taking such action, the City shall provide to the Developer by first-class mail, notice of its intention and shall afford the Developer an opportunity to cure. The Developer hereby grants to the City and its agents a non-revocable license to enter the Property to effectuate this subsection. Any and all costs, fees, or expenses incurred by the City in maintaining the Stormwater Management System pursuant to this subsection shall be paid by the Developer within thirty (30) days and if not so paid may be, without further notice, assessed as a lien on the Property, to be collected in the same manner as *ad valorem* property taxes pursuant to Chapter 67 of the Walker City Code.

- b. Require the Developer to provide an irrevocable letter of credit in an amount sufficient to ensure maintenance of the storm water runoff facilities, in a form reasonably satisfactory to the City. The Developer shall provide the requested letter of credit within fifteen (15) days of receiving such a request from the City. The irrevocable letter of credit shall provide that the payment to the City shall be made upon submission by the City of notice that the Developer has not maintained the storm water runoff facilities as required by this Agreement. The irrevocable letter of credit shall provide that it shall automatically renew unless at least thirty (30) days prior written notice is given to the City.
- c. The City may create a special assessment district for the purpose of maintaining the storm water runoff facilities. The Developer, on behalf of itself and its successors, hereby consents to inclusion of the Property in any such special assessment district and expressly waives any and all notice or hearing requirements regarding the same and waives any objections or protests regarding the special assessment district. The Developer, on behalf of itself and its successors, agree that it shall, upon the request of the City, execute all petitions or other documents requested by the City for the establishment of the special assessment district.

It is expressly understood and agreed that the City is not obligated to maintain the Stormwater Management System and nothing in this Agreement shall be construed to impose an obligation on the City to maintain or take any action with respect to the Stormwater Management System.

**10. Recording.** Once this Agreement has been signed by both the City and Developer, the Developer shall record this Agreement with the Kent County Register of Deeds and provide a copy of the recorded document to the City.

**11. Binding Effect.** This Agreement, and all restrictions, covenants, and easements encompassed by this Agreement, shall run with the land and be binding upon the heirs, transferees, assigns, devisees, creditors, and successors of Developer.

**12. Future Owners.** In the event that the Property is sold, transferred, or leased, Developer, or a subsequent owner of the Property, shall provide information to the new owner, operator, or lessee regarding proper inspection, maintenance, and repair of the Stormwater Management System. Said information shall accompany the document of conveyance and include Exhibits B and C and this Agreement.

**13. Commencement and Appeal.** The Developer agrees that the rights, obligations, and responsibilities hereunder shall commence upon the Effective Date, subject to the right of Developer to object to requirements, rights, obligations, and responsibilities, which objection(s) shall be resolved in accordance with appeal provisions of the Chapter 67 of the Walker City Code, unless otherwise resolved informally by the City.

**14. Ownership.** The Developer and the City represent and warrant that they have the authority and capacity to sign this Agreement and bind the respective parties hereto.

**15. Indemnity.** The Developer, its agents, representatives, successors, and assigns shall defend, indemnify, and hold the City harmless from and against any claims, demands, actions, damages, injuries, costs, or expenses of any nature whatsoever, hereinafter “Claims”, fixed or contingent, known or unknown, arising out of or in any way connected with the design, construction, use, maintenance, repair or operation (or omissions in such regard) of the Stormwater Management System and any appurtenances, connections and

attachments thereto. This indemnity and hold harmless shall include any costs, expenses and attorney fees incurred by the City in connection with such Claims or the enforcement of this Agreement.

16. Enforcement. The City shall have the right and power to enforce (or have interpreted), by any proceeding at law or equity, any of the restrictions, covenants, reservations, easements, liens, and charges now or hereafter imposed by the provisions of this Agreement. Failure by the City to enforce any covenant, lien, charge, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Enforcement includes suits for specific performance, injunctive relief, attorney's fees, costs, and/or damages.

17. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted."

18. Amendment. This Agreement may only be amended in a writing signed by the City and the owners of the Property or any portion thereof. No such amendment will be effective until it has been approved via a formal resolution from the Walker City Council and recorded in the Kent County Register of Deeds.

19. No Third-Party Beneficiaries. Nothing in the Agreement shall be intended to provide any third-party beneficiary rights to any persons or create a cause of action in favor of such persons.

20. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of governmental immunity or other defenses of the City to liability.

The parties have executed this Agreement on the day and year first above written.

**CITY OF WALKER**

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STATE OF MICHIGAN      )  
                                  ) ss.  
COUNTY OF KENT      )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me a Notary Public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the City of Walker, a Michigan municipal corporation, who, being first duly sworn, did say they signed this document on behalf of the City.

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\*

Notary Public, Kent County, Michigan  
My commission expires: \_\_\_\_\_  
\*Print or type name beneath signature

[DEVELOPER: \_\_\_\_\_]

By: \_\_\_\_\_  
\* \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN      )  
                            )  
                            ) ss.  
COUNTY OF KENT        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public, personally appeared  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a Michigan \_\_\_\_\_ who, being first duly sworn, did say they signed this document on  
behalf of said \_\_\_\_\_.

\_\_\_\_\_

Notary Public, \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_  
**\*Print or type name beneath signature**

Drafted by/After Recording, Return to:

Mr. Scott Conners  
Walker City Engineer  
Walker City Hall  
4243 Remembrance Road NW  
Walker, MI 49544

*Exhibit A*

*PPN:*

*Legal Property Description:*

*Exhibit B*

*Map:*

*Exhibit C*  
*Maintenance Plan*

## [PLAN TITLE]

### *e.g. Stormwater Best Management Practice Operation and Maintenance Plan*

Prepared for  
[SITE NAME]

Prepared by  
[NAME OF PREPARER]

[DATE]

#### **Purpose**

The purpose of this plan is to outline a long-term strategy to ensure regular inspection and proper long-term maintenance of stormwater best management practices at [SITE NAME] by property owner.

#### **Responsible Parties**

*Provide property owner a copy of this plan. Keep a master copy of the plan on file in the office of the Property Manager. The Property Manager is responsible for updating this list and providing copies of the plan to new responsible parties.*

#### **Maintenance Tasks and Schedules**

*This section is specific to the site and the BMPs.*

*Include:*

- Inspection and routine maintenance timeline*
- Maintenance activities*
- Manufacturer specified maintenance, if applicable*
- Emergency maintenance procedures or reference the location of other existing emergency procedures*
- Inspection and maintenance recordkeeping forms*

#### **Solid Waste Handling Procedures**

Properly handle and dispose of all solid waste removed from stormwater BMPs during the routine, corrective and emergency maintenance according to applicable laws and regulations.

#### **Recordkeeping**

Record all inspections and maintenance performed on the appropriate recordkeeping forms. Maintain records onsite for 5 years.

#### **Evaluation**

The responsible parties will evaluate the effectiveness and efficiency of this plan on an annual basis and update it accordingly.

*Exhibit D*

## Inventory

Type of Infrastructure	Quantity	Inspection Frequency
<b>Structural</b>		
<i>Example: Catch Basin</i>	10	Yearly
<b>Nonstructural</b>		
<i>Example: Grassed Waterway</i>	2	<i>Bi-monthly during growing season</i>