

QUAKERTOWN BOROUGH, BUCKS COUNTY
ORDINANCE NO. 1238
Adopted: September 7, 2022

**AN ORDINANCE OF THE BOROUGH OF QUAKERTOWN,
BUCKS COUNTY, PENNSYLVANIA AMENDING THE
QUAKERTOWN BOROUGH CODE BY ADDED A NEW CHAPTER
21A, STORMWATER MANAGEMENT AND REPEALING IN FULL
PART 8, STORMWATER MANAGEMENT, OF CHAPTER 22,
SUBDIVISION AND LAND DEVELOPMENT.**

WHEREAS, Quakertown Borough Council has determined that changes to the natural stormwater patterns will adversely affect the Borough and region; and

WHEREAS, Quakertown Borough Council has the authority under the Pennsylvania Storm Water Management Act, the Pennsylvania Borough Code, and the Borough's Home Rule Charter to manage and control stormwater; and

WHEREAS, Quakertown Borough Council has determined that revisions to the Borough's existing stormwater regulations are necessary to help maintain the natural hydrologic regime and minimize the negative impacts occasioned by changing natural hydrologic patterns.

NOW THEREFORE, Quakertown Borough Council does hereby **ENACT** and **ORDAIN** as follows:

ARTICLE I. – AMENDMENT TO THE BOROUGH CODE

A new Chapter 21A, Stormwater Management, is hereby added to Code of Borough of Quakertown and shall read as follows:

Chapter 21A MS4 STORMWATER MANAGEMENT ORDINANCE

Part 1. GENERAL PROVISIONS

§101. Short Title

This Ordinance shall be known and may be cited as the "Borough of Quakertown MS4 Stormwater Management Ordinance."

§102. Statement of Findings

The Borough Council finds that:

- A. Inadequate management of accelerated runoff of stormwater resulting from development throughout a watershed increases runoff volumes, flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and storm sewers, greatly

increases the cost of public facilities to carry and control stormwater, undermines flood plain management and flood control efforts in downstream communities, reduces groundwater recharge, threatens public health and safety, and increases nonpoint source pollution of water resources.

- B. A comprehensive program of stormwater management (SWM), including reasonable regulation of development and activities causing accelerated runoff, is fundamental to the public health, safety, and welfare and the protection of people of the Commonwealth, their resources, and the environment.
- C. Stormwater is an important water resource that provides groundwater recharge for water supplies and supports the base flow of streams.
- D. The use of green infrastructure and low impact development (LID) are intended to address the root cause of water quality impairment by using systems and practices which use or mimic natural processes to: 1) infiltrate and recharge, 2) evapotranspire, and/or 3) harvest and use precipitation near where it falls to earth. Green infrastructure practices and LID contribute to the restoration or maintenance of pre-development hydrology.
- E. Federal and state regulations require certain municipalities to implement a program of stormwater controls. These municipalities are required to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES) program.

§103. Purpose

The purpose of this Chapter 21A is to promote health, safety, and welfare within the Borough and its watershed by minimizing the harms and maximizing the benefits described in Section 102 of this Chapter 21A, through provisions designed to:

- A. Meet legal water quality requirements under state law, including regulations at 25 Pa. Code 93 to protect, maintain, reclaim, and restore the existing and designated uses of the waters of this Commonwealth.
- B. Preserve natural drainage systems.
- C. Manage stormwater runoff close to the source, reduce runoff volumes, and mimic predevelopment hydrology.
- D. Provide procedures and performance standards for stormwater planning and management.
- E. Maintain groundwater recharge to prevent degradation of surface and groundwater quality and to otherwise protect water resources.
- F. Prevent scour and erosion of stream banks and streambeds.
- G. Provide proper operation and maintenance of all stormwater best management practices (BMPs) that are implemented within the Borough.
- H. Provide standards to meet NPDES permit requirements.

§104. Statutory Authority

The Borough is empowered to regulate land use activities that affect runoff by the authority of the Pennsylvania Municipalities Planning Code, as amended (the Act of July 31, 1968, P.L. 805, No. 247) and/or the Pennsylvania Stormwater Management Act, as amended (the Act of October 4, 1978, P.L. 864 (Act 167), 32 P.S. Section 680.1 *et seq.*).

§105. Applicability

All regulated activities and all activities that may affect stormwater runoff, including land development and earth disturbance activity, are subject to regulation by this Chapter 21A.

§106. Repealer

Any other ordinance provision(s) or regulation of the Borough inconsistent with any of the provisions of this Chapter 21A is hereby repealed to the extent of the inconsistency only.

§107. Severability

In the event that a court of competent jurisdiction declares any section or provision of this Chapter 21A invalid, such decision shall not affect the validity of any of the remaining provisions of this Chapter 21A.

§108. Compatibility with Other Requirements

Approvals issued and actions taken under this Chapter 21A do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other code, law, regulation, or ordinance.

§109. Erroneous Permit

Any permit or authorization issued or approved based on false, misleading, or erroneous information provided by an applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization is unlawful. No action may be taken by a board, agency, or employee of the Borough purporting to validate such a violation.

§110. Waivers

- A. If the Borough determines that any requirement under this Chapter 21A cannot be achieved for a particular regulated activity, the Borough may, after an evaluation of alternatives, approve measures other than those set forth in this Chapter 21A, subject to this Section 110, Subsections B and C.
- B. Waivers or modifications of the requirements of this Chapter 21A may be approved by the Borough if enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that the modifications will not be contrary to the public interest and that the purpose of the Chapter 21A is preserved. Cost or financial burden shall not be considered a hardship. Modification may be considered if an alternative standard or approach will provide equal or better achievement of the purpose of the Chapter 21A. A request for modifications shall be in writing and accompany the Stormwater Management Site Plan

submission. The request shall provide the facts on which the request is based, the provision(s) of the Chapter 21A involved, and the proposed modification.

- C. No waiver or modification of any regulated stormwater activity involving earth disturbance greater than or equal to one (1) acre may be granted by the Borough unless that action is approved in advance by the Pennsylvania Department of Environmental Protection (DEP) or the Bucks County Conservation District.

Part 2. DEFINITIONS

§201. Interpretation

For the purposes of this Chapter 21A, certain terms and words used herein shall be interpreted as follows:

- A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.
- B. The word “includes” or “including” shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.
- C. The words “shall” and “must” are mandatory; the words “may” and “should” are permissive.
- D. The word “person” includes an individual, firm, association, organization, partnership, trust, company, corporation, unit of government, or any other similar entity.
- E. The words “used” or “occupied” include the words “intended, designed, maintained, or arranged to be used, occupied, or maintained.”

§202. Definitions

These definitions do not necessarily reflect the definitions contained in pertinent regulations or statutes, and are intended for this Chapter 21A only.

Agricultural Activity – Activities associated with agriculture such as agricultural cultivation, agricultural operation, and animal heavy use areas. This includes the work of producing crops, including tillage, land clearing, plowing, disking, harrowing, planting, and harvesting; pasturing and raising of livestock; and installation of conservation measures. Construction of new buildings or impervious area is not considered an agricultural activity.

Applicant – A landowner, developer, or other person who has filed an application to the Borough for approval to engage in any regulated activity at a project site in the Borough.

Best Management Practice (BMP) – Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from regulated activities, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of this Chapter 21A. Stormwater BMPs are commonly grouped into one of two broad categories or measures: “structural” or “non-structural.” In this Chapter 21A, non-structural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff, whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs 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, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the project site.

Borough – The Borough of Quakertown, Bucks County, Pennsylvania.

Conservation District – The Bucks County Conservation District, as defined in Section 3(c) of the Conservation District Law (3 P.S. §851(c)), that has the authority under a delegation agreement executed with DEP to administer and enforce all or a portion of the regulations promulgated under 25 Pa. Code §102.

Design Storm – The magnitude and temporal distribution of precipitation from a storm event measured in probability of occurrence (e.g., a 5-year storm) and duration (e.g., 24 hours) used in the design and evaluation of stormwater management systems. Also see Return Period.

Detention Volume – The volume of runoff that is captured and released into the waters of the Commonwealth at a controlled rate.

DEP – The Pennsylvania Department of Environmental Protection.

Disturbed Area – An unstabilized land area where an earth disturbance activity is occurring or has occurred.

Earth Disturbance Activity – A construction or other human activity which disturbs the surface of the land, including, but not limited to: clearing and grubbing; grading; excavations; embankments; road maintenance; building construction; and the moving, depositing, stockpiling, or storing of soil, rock, or earth materials.

Erosion – The natural process by which the surface of the land is worn away by water, wind, or chemical action.

Existing Condition – The dominant land cover during the 5-year period immediately preceding a proposed regulated activity.

FEMA – Federal Emergency Management Agency.

Floodplain – Any land area susceptible to inundation by water from any natural source or delineated by applicable FEMA maps and studies as being a special flood hazard area. Also includes areas that comprise Group 13 Soils, as listed in Appendix A of the Pennsylvania DEP Technical Manual for Sewage Enforcement Officers (as amended or replaced from time to time by DEP).

Floodway – The channel of the watercourse and those portions of the adjoining floodplains that are reasonably required to carry and discharge the 100-year flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by FEMA. In an area where no FEMA maps or studies have defined the boundary of the 100-year floodway, it is assumed--absent evidence to the contrary--that the floodway extends from the stream to 50 feet from the top of the bank of the stream.

Forest Management/Timber Operations – Planning and activities necessary for the management of forestland. These include conducting a timber inventory, preparation of forest management plans, silvicultural treatment, cutting budgets, logging road design and construction, timber harvesting, site preparation, and reforestation.

Green Infrastructure – Systems and practices that use or mimic natural processes to infiltrate, evapotranspire, or reuse stormwater on the site where it is generated.

Hydrologic Soil Group (HSG) – Infiltration rates of soils vary widely and are affected by subsurface permeability as well as surface intake rates. Soils are classified into four HSGs (A, B, C, and D) according to their minimum infiltration rate, which is obtained for bare soil after prolonged wetting. The NRCS defines the four groups and provides a list of most of the soils in the United States and their group classification. The soils in the area of the project site may be identified from a soil survey report that can be obtained from local NRCS offices or conservation district offices. Soils become less pervious as the HSG varies from A to D (NRCS^{1,2}).

Impervious Surface (Impervious Area) – A surface that prevents the infiltration of water into the ground. Impervious surfaces (or areas) shall include, but not be limited to: roofs; additional indoor living spaces, patios, garages, storage sheds and similar structures; and any new streets or sidewalks. Decks, parking areas, and driveway areas are not counted as impervious areas if they do not prevent infiltration.

Karst – A type of topography or landscape characterized by surface depressions, sinkholes, rock pinnacles/uneven bedrock surface, underground drainage, and caves. Karst is formed on carbonate rocks, such as limestone or dolomite.

Land Development (Development) – Inclusive of any or all of the following meanings: (i) the improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose involving (a) a group of two or more buildings or (b) the division or allocation of land or space between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features; (ii) any subdivision of land; (iii) development in accordance with Section 503(1.1) of the PA Municipalities Planning Code.

Low Impact Development (LID) – Site design approaches and small-scale stormwater management practices that promote the use of natural systems for infiltration, evapotranspiration, and reuse of rainwater. LID can be applied to new development, urban retrofits, and revitalization projects. LID utilizes design techniques that infiltrate, filter, evaporate, and store runoff close to its source. Rather than rely on costly large-scale conveyance and treatment systems, LID addresses stormwater through a variety of small, cost-effective landscape features located on-site.

NRCS – USDA Natural Resources Conservation Service (previously SCS).

Owner – The person which owns, in fee simple, the real estate containing all or part of the project site.

Peak Discharge – The maximum rate of stormwater runoff from a specific storm event.

Pervious Area – Any area not defined as impervious.

Project – Any proposal, work, or activity which falls under the rules and regulations of this Chapter 21A.

Project Site (Site) – The specific area of land where any regulated activities in the Borough are planned, conducted, or maintained.

Qualified Professional – Any person licensed by the Pennsylvania Department of State or otherwise qualified by law to perform the work required by this Chapter 21A.

Regulated Activities – Any earth disturbance activities or any activities that involve the alteration or development of land in a manner that may affect stormwater runoff.

Regulated Earth Disturbance Activity – Activity involving earth disturbance subject to regulation under 25 Pa. Code 92, 25 Pa. Code 102, or the Pennsylvania Clean Streams Law.

Retention Volume/Removed Runoff – The volume of runoff that is captured and not released directly into the surface waters of this Commonwealth during or after a storm event.

Return Period – The average interval, in years, within which a storm event of a given magnitude can be expected to occur one time. For example, the 25-year return period rainfall would be expected to occur on average once every 25 years; or stated in another way, the probability of a 25-year storm occurring in any one year is 0.04 (i.e., a 4% chance).

Riparian Buffer – A permanent area of trees and shrubs located adjacent to streams, lakes, ponds and wetlands.

Runoff – Any part of precipitation that flows over the land.

Sediment – Soils or other materials transported by surface water as a product of erosion.

State Water Quality Requirements – The regulatory requirements to protect, maintain, reclaim, and restore water quality under Title 25 of the Pennsylvania Code and the Pennsylvania Clean Streams Law.

Stormwater – Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

Stormwater Management Facility – Any structure, natural or man-made, that, due to its condition, design, or construction, conveys, stores, or otherwise affects stormwater runoff. Typical stormwater management facilities include, but are not limited to: detention and retention basins; open channels; storm sewers; pipes; and infiltration facilities.

Stormwater Management Site Plan – The plan prepared by the developer or its representative indicating how stormwater runoff will be managed at the project site in accordance with this Chapter 21A. Stormwater Management Site Plan will be designated as SWM Site Plan throughout this Chapter 21A.

Subdivision – As defined in the Pennsylvania Municipalities Planning Code, as amended (Act of July 31, 1968, P.L. 805, No. 247).

USDA – United States Department of Agriculture.

Waters of this Commonwealth – Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs, and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Watershed – Region or area drained by a river, watercourse, or other surface water of this Commonwealth.

Wetland – Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Part 3. STORMWATER MANAGEMENT STANDARDS

§301. General Requirements

- A. For all regulated activities, unless preparation of an SWM Site Plan is specifically exempted in Section 302:
 - 1. Preparation and implementation of an approved SWM Site Plan is required.
 - 2. No regulated activities shall commence until the Borough issues written approval of an SWM Site Plan, which demonstrates compliance with the requirements of this Chapter 21A.
- B. SWM Site Plans approved by the Borough, in accordance with Section 406, shall be on site throughout the duration of the regulated activity.
- C. The Borough may, after consultation with DEP, approve measures for meeting the state water quality requirements other than those in this Chapter 21A, provided that they meet the minimum requirements of, and do not conflict with, state law including, but not limited to, the Pennsylvania Clean Streams Law.
- D. For all regulated earth disturbance activities, erosion and sediment control BMPs shall be designed, implemented, operated, and maintained during the regulated earth disturbance activities (e.g., during construction) to meet the purposes and requirements of this Chapter 21A and to meet all requirements under Title 25 of the Pennsylvania Code and the Pennsylvania Clean Streams Law. Various BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual* (E&S Manual), No. 363-2134-008, as amended and updated (see Section 901).
- E. Impervious areas:
 - 1. The measurement of impervious areas shall include all of the impervious areas in the total proposed development even if development is to take place in stages.
 - 2. For development taking place in stages, the entire development plan must be used in determining conformance with this Chapter 21A.
 - 3. For projects that add impervious area to a parcel, the total impervious area on the parcel is subject to the requirements of this Chapter 21A; except that the volume controls in Section 303 and the peak rate controls of Section 304 do not need to be retrofitted to existing impervious areas that are not being altered by the proposed regulated activity.
- F. Stormwater flows onto adjacent property shall not be created, increased, decreased, relocated, or otherwise altered without written notification to the adjacent property owner(s). Such stormwater flows shall be subject to the requirements of this Chapter 21A.
- G. All regulated activities shall include such measures as necessary to:
 - 1. Protect health, safety, and property.
 - 2. Meet the water quality goals of this Chapter 21A by implementing measures to:

- a. Minimize disturbance to floodplains, wetlands, and wooded areas.
 - b. Maintain or extend riparian buffers.
 - c. Avoid erosive flow conditions in natural flow pathways.
 - d. Minimize thermal impacts to waters of this Commonwealth.
 - e. Disconnect impervious surfaces by directing runoff to pervious areas, wherever possible.
3. Incorporate methods described in the *Pennsylvania Stormwater Best Management Practices Manual* (BMP Manual) (see Section 901).
- H. The design of all facilities over karst shall include an evaluation of measures to minimize adverse effects.
- I. Infiltration BMPs should be spread out, made as shallow as practicable, and located to maximize use of natural on-site infiltration features while still meeting the other requirements of this Chapter 21A.
- J. Normally dry, open top, storage facilities should completely drain both the volume control and rate control capacities over a period of time not less than 24 and not more than 72 hours from the end of the design storm.
- K. The design storm volumes to be used in the analysis of peak rates of discharge should be obtained from the latest version of the Precipitation-Frequency Atlas of the United States, National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Spring, Maryland. NOAA's Atlas 14 can be accessed at: <http://hdsc.nws.noaa.gov/hdsc/pfds/> (see Section 901).
- L. For all regulated activities, SWM BMPs shall be designed, implemented, operated, and maintained to meet the purposes and requirements of this Chapter 21A and to meet all requirements under Title 25 of the Pennsylvania Code, the Pennsylvania Clean Streams Law, and the Pennsylvania Storm Water Management Act.
- M. Various BMPs and their design standards are listed in the BMP Manual (see Section 901).

§302. Exemptions

- A. Regulated activities that result in cumulative earth disturbances less than one (1) acre are exempt from the requirements in Section 303, Section 304, and Part 4 of this Chapter 21A.
- B. Agricultural activity is exempt from the SWM Site Plan preparation requirements of this Chapter 21A provided the activities are performed according to the requirements of 25 Pa. Code, Chapter 102.
- C. Forest management and timber operations are exempt from the SWM Site Plan preparation requirements of this Chapter 21A provided the activities are performed according to the requirements of 25 Pa. Code, Chapter 102.

- D. Exemptions from any provisions of this Chapter 21A shall not relieve the applicant from the requirements in Sections 301, D through K.
- E. The Borough may deny or revoke any exemption pursuant to this Section at any time for any project that the Borough believes may pose a threat to public health and safety or the environment.

§303. Volume Controls

The green infrastructure and low impact development practices provided in the BMP Manual shall be utilized for all regulated activities wherever possible. Water volume controls shall be implemented using the *Design Storm Method* in Subsection A or the *Simplified Method* in Subsection B below. For regulated activity areas equal or less than one (1) acre that do not require hydrologic routing to design the stormwater facilities, this Chapter 21A establishes no preference for either methodology; therefore, the applicant may select either methodology on the basis of economic considerations, the intrinsic limitations on applicability of the analytical procedures associated with each methodology, and other factors.

- A. The *Design Storm Method* (CG-1 in the BMP Manual) is applicable to any size of regulated activity (see Section 901). This method requires detailed modeling based on site conditions.
 - 1. Do not increase the post-development total runoff volume for all storms equal to or less than the 2-year 24-hour duration precipitation.
 - 2. For modeling purposes:
 - a. Existing (predevelopment) non-forested pervious areas must be considered meadow in good condition.
 - b. Twenty percent (20%) of existing impervious area, when present, shall be considered meadow in good condition in the model for existing conditions.
- B. The *Simplified Method* (CG-2 in the BMP Manual) provided below is independent of site conditions and should be used if the *Design Storm Method* is not followed (see Section 901). This method is not applicable to regulated activities greater than one (1) acre or for projects that require design of stormwater storage facilities. For new impervious surfaces:
 - 1. Stormwater facilities shall capture at least the first two (2) inches of runoff from all new impervious surfaces.
 - 2. At least the first one (1) inch of runoff from new impervious surfaces shall be permanently removed from the runoff flow, i.e., it shall not be released into the surface waters of this Commonwealth. Removal options include reuse, evaporation, transpiration, and infiltration.
 - 3. Wherever possible, infiltration facilities should be designed to accommodate infiltration of the entire permanently removed runoff; however, in all cases at least the first 0.5 inch of the permanently removed runoff should be infiltrated.
 - 4. This method is exempt from the requirements of Section 304, Rate Controls.

§304. Rate Controls

- A. For areas not covered by a release rate map from an approved Act 167 Stormwater Management Plan:

Post-development discharge rates shall not exceed the pre-development discharge rates for the 1-, 2-, 5-, 10-, 25-, 50-, and 100-year, 24-hour storm events. If it is shown that the peak rates of discharge indicated by the post-development analysis are less than or equal to the peak rates of discharge indicated by the pre-development analysis for 1-, 2-, 5-, 10-, 25-, 50-, and 100-year, 24-hour storms, then the requirements of this section have been met. Otherwise, the applicant shall provide additional controls as necessary to satisfy the peak rate of discharge requirement.

- B. For areas covered by a release rate map from an approved Act 167 Stormwater Management Plan:

For the 1-, 2-, 5-, 10-, 25-, 50-, and 100-year, 24-hour storm events, the post-development peak discharge rates will follow the applicable approved release rate maps. For any areas not shown on the release rate maps, the post-development discharge rates shall not exceed the pre-development discharge rates.

Part 4. STORMWATER MANAGEMENT (SWM) SITE PLAN REQUIREMENTS

§401. Plan Requirements

The following items shall be included in the SWM Site Plan:

- A. Appropriate sections from Chapter 22 of this Code, Subdivision and Land Development, and other applicable Borough ordinances, shall be followed in preparing the SWM Site Plans.
- B. The Borough shall not approve any SWM Site Plan that is deficient in meeting the requirements of this Chapter 21A. At its sole discretion and in accordance with this Chapter, when a SWM Site Plan is found to be deficient, the Borough may either disapprove the submission and require a resubmission, or in the case of minor deficiencies, the Borough may accept submission of modifications.
- C. Provisions for permanent access or maintenance easements for all physical SWM BMPs, such as ponds and infiltration structures, as necessary to implement the Operation and Maintenance (O&M) Plan discussed in Subsection 401.E.9 below.
- D. The following signature block for the Borough:

“Borough Zoning Officer, or his or her designee, on this date _____, has reviewed and hereby certifies that the SWM Site Plan meets all design standards and criteria of the Borough of Quakertown MS4 Stormwater Management Ordinance.”

- E. The SWM Site Plan shall provide the following information:
 - 1. The overall stormwater management concept for the project.
 - 2. A determination of site conditions in accordance with the BMP Manual (see Section 901). A detailed site evaluation shall be completed for projects proposed in areas of carbonate geology or karst topography, and other environmentally sensitive areas, such as brownfields.
 - 3. Stormwater runoff design computations and documentation as specified in this Chapter 21A, or as otherwise necessary to demonstrate that the maximum practicable measures have been taken to meet the requirements of this Chapter 21A, including the recommendations and general requirements in Section 301.
 - 4. Expected project time schedule.
 - 5. A soil erosion and sediment control plan, where applicable, as prepared for and submitted to the approval authority.
 - 6. The effect of the project (in terms of runoff volumes, water quality, and peak flows) on surrounding properties and aquatic features and on any existing stormwater conveyance system that may be affected by the project.
 - 7. Plan and profile drawings of all SWM BMPs, including drainage structures, pipes, open channels, and swales.

8. SWM Site Plan shall show the locations of existing and proposed on-lot wastewater facilities and water supply wells.
9. The SWM Site Plan shall include an O&M Plan for all existing and proposed physical stormwater management facilities. This plan shall address long-term ownership and responsibilities for O&M, as well as, schedules and costs for O&M activities.

§402. Plan Submission and Resubmission

- A. Five (5) copies of the SWM Site Plan shall be submitted/resubmitted as follows:
 1. Three (3) copies to the Borough.
 2. One (1) copy to the Bucks County Conservation District.
 3. One (1) copy to the Bucks County Planning Commission.
- B. The submission/resubmission of a SWM Site Plan shall be accompanied by the applicable fee. Said fee shall be set by Borough Council in a separate resolution and may be revised from time to time.

§403. Plan Review

- A. SWM Site Plans shall be reviewed by the Borough for consistency with the provisions of this Chapter 21A and all other applicable Borough ordinances, codes, rules, and regulations.
- B. The Borough shall notify the applicant in writing within 45 days whether the SWM Site Plan is approved or disapproved. If the SWM Site Plan involves a Subdivision and Land Development Plan, the notification shall occur within the time period allowed by the Pennsylvania Municipalities Planning Code. If a longer notification period is provided by other law, statute, rule, regulation, or ordinance, the applicant will be so notified by the Borough.
- C. If the Borough disapproves the SWM Site Plan, the Borough will state the reasons for the disapproval in writing. The Borough also may approve the SWM Site Plan with conditions and, if so, shall provide the acceptable conditions for approval in writing.

§404. Modification of Plans

A modification to a submitted SWM Site Plan that involves a change in SWM BMPs or techniques, or that involves the relocation or redesign of SWM BMPs, or that is necessary because soil or other conditions are not as stated on the SWM Site Plan as determined by the Borough shall require a resubmission of the modified SWM Site Plan in accordance with this Part 4. The applicable review fee must accompany the resubmission of a modified SWM Site Plan.

§405. Resubmission of Disapproved SWM Site Plans

A disapproved SWM Site Plan may be resubmitted, with the revisions addressing the Borough's concerns, to the Borough in accordance with this Part 4. The applicable review fee must accompany the resubmission of a disapproved SWM Site Plan.

§406. Authorization to Construct and Term of Validity

The Borough's approval of an SWM Site Plan authorizes the regulated activities contained in the SWM Site Plan for a maximum term of validity of five (5) years following the date of approval. The Borough may specify a term of validity shorter than five (5) years in the approval for any specific SWM Site Plan. Terms of validity shall commence on the date the Borough signs the approval for an SWM Site Plan. If all the work/activities/facilities proposed on an approved SWM Site Plan are not completed according to Section 407 within the term of validity, then the Borough may consider the SWM Site Plan disapproved and may revoke any and all permits. SWM Site Plans that are considered disapproved by the Borough under this Section shall be resubmitted in accordance with Section 405 of this Chapter 21A.

§407. As-Built Plans, Completion Certificate, and Final Inspection

- A. The developer shall be responsible for providing as-built plans of all SWM BMPs included in the approved SWM Site Plan. The as-built plans and an explanation of any discrepancies between the as-built plans and the approved SWM Site Plan shall be submitted to the Borough.
- B. The as-built submission shall include a certification of completion signed by a qualified professional verifying that all permanent SWM BMPs have been constructed according to the approved SWM Site Plan and specifications. The latitude and longitude coordinates for all permanent SWM BMPs must also be submitted, at the central location of the BMPs. If any licensed qualified professionals created, drew, authorized, signed-off on, and/or otherwise contributed to the SWM Site Plan or the construction plans created therefrom, then a licensed qualified professional must sign the completion certificate.
- C. After receipt of the completion certification by the Borough, the Borough may conduct a final inspection.

Part 5. OPERATION AND MAINTENANCE

§501. Responsibilities of Developers and Landowners

- A. The Borough shall make the final determination on the continuing maintenance responsibilities prior to final approval of the SWM Site Plan. The Borough may require a dedication of such facilities as part of the requirements for approval of the SWM Site Plan. Such a requirement is not an indication that the Borough will accept the facilities. The Borough reserves the right to accept or reject the ownership and operating responsibility for any portion of the stormwater management controls.
- B. Facilities, areas, or structures used as SWM BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or conservation easements that run with the land.
- C. The Borough may require the O&M Plan to be recorded as a restrictive deed covenant that runs with the land.
- D. The Borough may take enforcement actions against any applicant and/or owner for any failure to satisfy the provisions of this Chapter 21A.

§502. Operation and Maintenance Agreements

- A. Prior to final approval of the SWM Site Plan, the owner shall sign an Operation and Maintenance (O&M) Agreement (see Appendix A) covering all stormwater control facilities which are to be privately owned. The language of this O&M Agreement shall be to the Borough's satisfaction, and once executed, this O&M Agreement shall be recorded with the Bucks County Recorder of Deeds.
 - 1. The owner, and its heirs, grantees, successors, and assigns shall maintain all stormwater management facilities in accordance with the approved maintenance schedule in the O&M Agreement.
 - 2. The owner shall convey to the Borough any and all easements necessary to assure access to the stormwater management facilities for periodic inspections by the Borough and maintenance and repair, as necessary.
 - 3. The owner shall keep on file with the Borough the name, address, and telephone number of the person or company responsible for the inspection and maintenance of the stormwater management facilities; in the event of a change, new information shall be submitted by the owner to the Borough within ten (10) business days of the change.
- B. The owner is responsible for inspection, operation, maintenance, repair, and replacement (O&M) of the SWM BMPs. If the owner fails to adhere to the O&M Agreement, the Borough may perform the services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the subject property.

§503. Performance Guarantee

For SWM Site Plans that involve subdivision and land development, the applicant shall provide a financial guarantee to the Borough for the timely installation and proper construction of all

stormwater management controls as required by the approved SWM Site Plan and this Chapter 21A in accordance with the provisions of Sections 509, 510, and 511 of the Pennsylvania Municipalities Planning Code.

Part 6. FEES AND EXPENSES

§601. General

The Borough may include all costs incurred by it in reviewing the application and the SWM Site Plan, as well as inspecting and monitoring the project in the review fee charged to an applicant. As such, the review fee may include, but not be limited to, costs for the following:

- A. Administrative/clerical processing.
- B. Review of the SWM Site Plan.
- C. Attendance at meetings.
- D. Inspections.

Part 7. PROHIBITIONS

§701. Prohibited Discharges and Connections

- A. Any drain or conveyance, whether on the surface or subsurface, that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter a regulated small MS4 or to enter the surface waters of this Commonwealth is prohibited.
- B. No person shall allow, or cause to allow, discharges into a regulated small MS4, or discharges into waters of this Commonwealth, which are not composed entirely of stormwater, except (1) as provided in Subsection 701.C below and (2) discharges authorized under a state or federal permit.
- C. The following discharges are authorized unless they are determined to be significant contributors to pollution a regulated small MS4 or to the waters of this Commonwealth:
 - 1. Discharges or flows from firefighting activities.
 - 2. Discharges from potable water sources including water line flushing and fire hydrant flushing, if such discharges do not contain detectable concentrations of Total Residual Chlorine (TRC).
 - 3. Non-contaminated irrigation water, water from lawn maintenance, landscape drainage, and flows from riparian habitats and wetlands.
 - 4. Diverted stream flows and springs.
 - 5. Non-contaminated pumped ground water and water from foundation and footing drains and crawl space pumps.
 - 6. Non-contaminated HVAC condensation and water from geothermal systems.
 - 7. Residential (i.e., not commercial) vehicle wash water where cleaning agents are not utilized.
 - 8. Non-contaminated hydrostatic test water discharges, if such discharges do not contain detectable concentrations of TRC.
- D. In the event that the Borough or DEP determines that any of the discharges identified in Subsection 701.C significantly contribute pollutants to a regulated small MS4 or to the waters of this Commonwealth, the Borough or DEP will notify the responsible person(s) to cease the discharge.

§702. Roof Drains and Sump Pumps

Roof drains and sump pumps shall discharge to infiltration or vegetative BMPs wherever feasible.

§703. Alteration of SWM BMPs

No person shall modify, remove, fill, landscape, or alter any SWM BMPs, facilities, areas, or structures that were installed as a requirement of this Chapter 21A without the written approval of the Borough.

Part 8. ENFORCEMENT AND PENALTIES

§801. Right-of-Entry

Upon presentation of proper credentials, the Borough or its designated agent may enter at reasonable times upon any property within the Borough to inspect the condition of the stormwater structures and facilities in regard to any aspect regulated by this Chapter 21A.

§802. Inspection

The owner or the owner's designee (including the Borough for dedicated and owned facilities) shall inspect SWM BMPs, facilities, and/or structures installed under this Chapter 21A or previous iterations of the Borough's Stormwater Management Ordinance, according to the following frequencies, at a minimum, to ensure the BMPs, facilities, and/or structures continue to function as intended:

1. Annually for the first five (5) years.
2. Once every three (3) years thereafter.
3. During or immediately after the cessation of a 10-year or greater storm.

Inspections should be conducted during or immediately following precipitation events. A written inspection report shall be created to document each inspection. The inspection report shall contain the date and time of the inspection; the individual(s) who completed the inspection; the location of the BMP, facility, or structure inspected; observations on performance; and recommendations for improving performance, if applicable. Inspection reports shall be submitted to the Borough within thirty (30) days following completion of the inspection.

§803. Enforcement

- A. It shall be unlawful for a person to undertake any regulated activity except as provided in an approved SWM Site Plan, unless specifically exempted in Section 302.
- B. It shall be unlawful to violate Section 703 of this Chapter 21A.
- C. Inspections regarding compliance with the SWM Site Plan are a responsibility of the Borough.
- D. It shall be unlawful to violate any provision of this Chapter 21A. An owner and/or applicant shall comply with all applicable requirements of this Chapter and shall undertake its activities in compliance with this Chapter and its approved SWM Site Plan.

§804. Suspension and Revocation

- A. Any approval or permit issued by the Borough pursuant to this Chapter 21A may be suspended or revoked for:
 1. Non-compliance with or failure to implement any provision of the approved SWM Site Plan or O&M Agreement.

2. A violation of any provision of this Chapter 21A or any other applicable law, ordinance, code, rule, or regulation relating to the regulated activity or the project.
 3. The creation of any condition or the commission of any act during the project which constitutes or creates a hazard, nuisance, or pollution; or endangers the life or property of others.
 4. Failure to complete the project within the term of validity for the project approval.
- B. A suspended approval may be reinstated by the Borough when:
1. The Borough has inspected and approved the corrections to the violations that caused the suspension.
 2. The Borough is satisfied that the violation has been corrected.
- C. An approval that has been revoked by the Borough cannot be reinstated. The applicant may apply for a new approval under the provisions of this Chapter 21A.
- D. If a violation causes no immediate danger to life, public health, or property, at its sole discretion, the Borough may provide a limited time period for the owner to correct the violation. In these cases, the Borough will provide the owner, or the owner's designee, with a written notice of the violation and the time period allowed for the owner to correct the violation. If the owner does not correct the violation within the allowed time period, the Borough may revoke or suspend any, or all, applicable approvals and permits pertaining to any provision of this Chapter 21A.

§805. Penalties

- A. Any person violating the provisions of this Chapter 21A shall be guilty of a summary offense, and upon conviction, shall be subject to a fine of not more than Six Hundred Dollars (\$600.00) nor less than Two Hundred Dollars (\$200.00) per day during which such violation shall continue, plus any and all costs incurred by the Borough in enforcing the violation, including but not limited to, court costs, consultant fees, attorney's fees, and expert witness fees plus all court costs and reasonable attorney fees . Each day that the violation continues shall constitute a separate offense, and each provision violated shall constitute a separate offense. All penalties shall be cumulative.
- B. Any violation of a provision of this Chapter 21A shall hereinafter be enforced by the Borough, in accordance with the procedures set forth in the Pennsylvania Borough Code (8 Pa.C.S.A. §101 *et seq.*), by either filing a civil enforcement proceeding or a non-traffic citation against the violator(s) with a Magisterial District Judge with jurisdiction or other court of competent jurisdiction, at the Borough's discretion. Notice of such enforcement proceeding shall be made in accordance with the applicable Pennsylvania Rules of Civil Procedure. If a defendant neither pays nor timely appeals any resulting judgment, the Borough may enforce the judgment pursuant to the applicable Rule of Civil Procedure.
- C. In addition, the Borough may institute injunctive, mandamus, or any other appropriate action or proceeding at law or in equity for the enforcement of this Chapter 21A and/or to restrain, prevent, or abate a violation of this Chapter. Any court of competent jurisdiction shall have the right to hear such actions and issue restraining orders, temporary or permanent

injunctions, mandamus, or other appropriate forms of remedy or relief. The expense of such proceedings shall be recoverable from the violator in any manner as may now or hereafter be provided by law.

§806. Public Nuisance

- A. The violation of any provision of this Chapter 21A is hereby deemed a public nuisance.
- B. Any person engaged in the implementation, construction, installation, inspection, maintenance, repair, rehabilitation, replacement, or removal of a stormwater management system, stormwater management facility, or BMP shall undertake such activities consistent with the SWM Site Plan and the Borough's approval thereof, and this Chapter. Any such activity conducted in violation of the approved Plan or this Chapter is hereby declared a public nuisance.

§807. Appeals

- A. Appeals from the determination of the Borough Zoning Officer, Borough Engineer, or Borough designee in the administration of this Chapter that relate to applications for subdivision and/or land development under Articles V and VII of the Pennsylvania Municipalities Planning Code shall be made to Borough Council within thirty (30) days of that determination or decision, pursuant to Section 909.1(b)(6) of the Pennsylvania Municipalities Planning Code.
- B. Appeals from the determination of the Borough Zoning Officer, Borough Engineer, or Borough designee in the administration of this Chapter that do not relate to applications for subdivision and/or land development under Articles V and VII of the Pennsylvania Municipalities Planning Code shall be made to Borough Zoning Hearing Board within thirty (30) days of that determination or decision, pursuant to Section 909.1(a)(9) of the Pennsylvania Municipalities Planning Code.
- C. Any person aggrieved by a decision of Borough Council or the Borough Zoning Hearing Board concerning this Chapter 21A shall appeal such decision to the Bucks County Court of Common Pleas within thirty (30) days of the issuance of said decision.

Part 9. REFERENCES

§901. References

1. U.S. Department of Agriculture, National Resources Conservation Service (NRCS). *National Engineering Handbook*. Part 630: Hydrology, 1969-2001. Originally published as the *National Engineering Handbook*, Section 4: Hydrology. Available from the NRCS online at: <http://www.nrcs.usda.gov/>.
2. U.S. Department of Agriculture, Natural Resources Conservation Service. 1986. *Technical Release 55: Urban Hydrology for Small Watersheds*, 2nd Edition. Washington, D.C.
3. Pennsylvania Department of Environmental Protection. No. 363-0300-002 (December 2006), as amended and updated. *Pennsylvania Stormwater Best Management Practices Manual*. Harrisburg, PA.
4. Pennsylvania Department of Environmental Protection. No. 363-2134-008 (March 31, 2012), as amended and updated. *Erosion and Sediment Pollution Control Program Manual*. Harrisburg, PA.
5. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Hydrometeorological Design Studies Center. 2004-2006. *Precipitation-Frequency Atlas of the United States, Atlas 14, Volume 2, Version 3.0*, Silver Spring, Maryland. Internet address: <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

ARTICLE II. – AMENDMENT TO THE BOROUGH CODE

Subsection 506.5.G of Chapter 22, Subdivision and Land Development, is hereby amended to read as follows:

- G. All stormwater design must conform with the Borough of Quakertown MS4 Stormwater Management Ordinance (Chapter 21A).

ARTICLE III. – AMENDMENT TO THE BOROUGH CODE

Part 8 of Chapter 22, Subdivision and Land Development, is hereby deleted in its entirety.

ARTICLE IV. - REPEALER

All Borough ordinances or parts of ordinances which are inconsistent herewith are hereby repealed but only to the extent of such conflict.

ARTICLE V. - SEVERABILITY

If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

ARTICLE VI. - EFFECTIVE DATE

This Ordinance shall become effective in accordance with the Pennsylvania Borough Code and the Quakertown Borough Charter.

QUAKERTOWN BOROUGH COUNCIL

Donald E. Rosenberger, President

ATTEST:

Scott C. McElree
Borough Manager/Secretary

Borough of Quakertown

APPENDIX A

**SAMPLE OPERATION AND MAINTENANCE (O&M) AGREEMENT
STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (SWM BMPs)**

Prepared By:

Return To:

TMP #

**STORMWATER FACILITIES
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____ with a mailing address of _____ (hereinafter the "***Landowner***"), and ***QUAKERTOWN BOROUGH***, with offices at 35 North Third Street, Quakertown, Bucks County, PA 18951 (hereinafter "***Borough***");

WITNESSETH

WHEREAS, Landowner is the owner of a tract of land in Quakertown Borough, Bucks County, Pennsylvania located at _____, otherwise known as Bucks County TMPs _____ and recorded by deed in the land records of Bucks County, Pennsylvania, Deed Book _____ at Page _____, (hereinafter referred to as the "***Property***"); and

WHEREAS, on _____, Landowner obtained final plan approval from the Borough for a _____ of the Property ("***Project***") pursuant to plans prepared by _____, consisting of _____ (____) sheets, numbered 1 through ____, dated _____, last revised _____; said plans being made a part hereof and incorporated herein by reference although not physically attached hereto (hereinafter referred to as the "***Plan***"); and

WHEREAS, Landowner is proceeding to develop the Property in accordance with the Plan; and

WHEREAS, the Borough, though the implementation of stormwater management regulations, requires that the Stormwater Management Facilities, as shown on the Plan, be constructed and adequately maintained by Landowner, his heirs, grantees, successors, and assigns; and

WHEREAS, the Borough and Landowner agree that the health, safety, and welfare of the residents of the Borough require that the Stormwater Management Facilities be constructed and maintained on the Property in accordance with the Plan; and

WHEREAS, Landowner proposes to locate, construct, install, and maintain certain Stormwater Management Facilities on and around the Property, as shown on the Plan; and

WHEREAS, as a condition of obtaining final approval of the Plan from the Borough, the Borough requires that Landowner execute and record this Agreement in the Office of the Recorder of Deeds of Bucks County, Pennsylvania for the purpose of ensuring that: (1) the Stormwater Management Facilities are located, constructed, installed, operated, and maintained by Landowner in accordance with the Plan; (2) following the completion of the duties of Landowner pursuant to the Plan, the Stormwater Management Facilities are continually and perpetually maintained, repaired, refurbished, reconstructed, and replaced by owner(s) of the land on which the Facilities are located; and (3) in the event of default of this Agreement by Landowner or his heirs, grantees, successors, and assigns, the Borough shall have the right to enter upon the Property to cure such default; and

WHEREAS, the Borough requires, through the implementation of the Plan, that Stormwater Management Facilities as required by said Plan and the Quakertown Borough Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, his heirs, grantees, successors, and assigns.

NOW THEREFORE, in consideration of the foregoing statements, the Borough's approval of the Plan, and the following terms and conditions, the parties hereto agree as follows:

1. For the purposes of this agreement, the following definitions shall apply:

BMP (Best Management Practice) - Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Borough's Stormwater Management Ordinance, including but not limited to infiltration trenches, seepage pits, filter strips, bioretention, wet ponds, permeable paving, rain gardens, grassed swales, forested buffers, sand filters, and detention basins.

Stormwater Management Facility – Any structure, device, construct, or improvement (including, but not limited to, BMPs) designed, installed, constructed, and maintained for the purpose controlling and regulating stormwater.

2. All Stormwater Management Facilities shall be constructed by Landowner in accordance with the terms, conditions, and specifications identified in the Plan.

3. Landowner shall operate and maintain the Stormwater Management Facilities as shown on the Plan in good working order acceptable to the Borough and in accordance with the specific maintenance requirements noted on the Plan.

4. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite Stormwater Management Facilities by Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.

5. Landowner shall keep and maintain the Stormwater Management Facilities in good working condition. Landowner shall continually and perpetually perform such maintenance, repair, refurbishment, reconstruction, and replacement of said Facilities shown on the Plan and located on the Property, including but not limited to drainage swales, detention and retention basins, BMP's, stormwater piping systems, headwalls, inlet, and outlet structures, plantings, and all structures and facilities appurtenant to the foregoing, as may be necessary or advisable in the opinion of the Borough to ensure the structural integrity and the proper functioning thereof and to ensure compliance with all federal, state, and local laws, rules, and regulations pertaining thereto. At no time shall the Stormwater Management Facilities be removed or altered in any manner without the prior written approval of the Borough. In particular, Landowner, for himself, his heirs, grantees, successors, and assigns, agrees to the following:

- a. To regularly perform all inspections and maintenance of the Stormwater Management Facilities as is necessary and desirable to ensure the proper functioning of the Facilities.
- b. Not to alter any of the Stormwater Management Facilities in a manner which would adversely affect the proper functioning of one or more of the Facilities or cause any of the Facilities to differ from what is shown on the Plan, without written approval of the Borough.
- c. To remove debris and silt from the Stormwater Management Facilities to ensure that the Facilities remain in good working order.
- d. To make all repairs necessary to ensure the continued proper operation of the Stormwater Management Facilities.

6. Any and all Stormwater Management Facilities or erosion and sedimentation control facilities that have been damaged or fail to function properly, for any reason, shall be stabilized and reconstructed by Landowner to approved design grades and specifications as shown

on the Plan and approved by the Borough.

7. All open swale/drainage easements and drainage, detention, and/or retention basin easements shown on the Plan shall be maintained in a grassed or otherwise improved condition, in accordance with the grades and designs shown on the Plan. All such areas shall be kept free of all obstructions, including but not limited to, fill, temporary or permanent structures, and plants (other than what is shown on the Plan).

8. Whenever sedimentation is caused by stripping vegetation, grading, or other earth moving activities on the Property, it shall be the responsibility of Landowner to remove such sedimentation from all adjoining surfaces, drainage systems, and watercourses, and to correct and repair any damage caused by such sedimentation at his sole expense.

9. Landowner hereby agrees to retain a reputable service company to inspect any and all Stormwater Management Facilities installed and/or constructed as a part of this Project. Such inspection shall occur on an annual basis and, if required, this service company shall clean such structures by removing any debris or other material from them. The material removed must be disposed of at a DEP-permitted landfill or some other facility approved by DEP for the handling of such material. Landowner is specifically prohibited from flushing any debris or other material out of the Facilities.

10. Landowner hereby agrees to comply with all regulations promulgated by the Pennsylvania Department of Environmental Protection for the NPDES MS4 program applicable within the Borough.

11. Landowner hereby grants permission to the Borough, its authorized agents and employees, upon presentation of proper identification, to enter upon the Property at reasonable times to inspect the Stormwater Management Facilities whenever the Borough deems necessary. The purpose of such inspections is to ensure safe and proper functioning of the Facilities. The inspections shall cover each and every Facility and the appurtenant structures, including BMPs, berms, outlet structures, pond areas, access roads, etc. When inspections are conducted, the Borough shall give Landowner copies of any inspection report which may have been prepared. Maintenance inspections shall be performed at the discretion of the Borough. All reasonable costs for said inspections shall be borne by Landowner and payable to the Borough.

12. Landowner hereby grants and conveys to the Borough, its authorized agents and employees, a non-exclusive access easement over the Property for the sole purposes of: inspecting the Stormwater Management Facilities; maintaining, when necessary, these Facilities; curing any default by Landowner; and exercising the rights granted to the Borough under this Agreement. Nothing herein shall be construed to permit the Borough, its agents or employees to access dwellings, buildings, or accessory buildings on the Property. The Borough releases Landowner from all claims, losses, damages, liabilities, or any other demand for money or damages whatsoever, including, without limitation, all attorney's fees, arising out of or related in any way to the Borough's presence on the Property pursuant to this Agreement, except those based upon Landowner's negligence, gross negligence, or willful misconduct. Furthermore, the Borough warrants and shall forever defend against any such claims.

13. In the event of an emergency or the occurrence of special or unusual circumstances or situations, the Borough may enter the Property, without notification, to inspect the Stormwater Management Facilities and to perform any necessary maintenance and repairs to the Facilities, if the health or safety of the public is at jeopardy. Under such circumstances, the Borough shall notify Landowner of any inspection, maintenance, or repair undertaken within five (5) days of the activity. Landowner shall reimburse the Borough for its costs.

14. It is expressly understood and agreed that the Borough is under no obligation to inspect, maintain, or repair any of the Stormwater Management Facilities on the Property, and, in no event shall this document be construed to impose any such obligation upon the Borough.

15. In the event the Borough, pursuant to this Agreement, performs work of any nature on the Stormwater Management Facilities on the Property or expends any funds in performance of said work on account of Landowner's failure to perform such work, Landowner shall reimburse the Borough within thirty (30) days of receipt of an invoice for all costs and expenses (direct and indirect) incurred by the Borough related to such work. If this invoice is not paid within said thirty-day period, the Borough may enter a lien against the Property in the amount of such costs, or may proceed to recover its costs through proceedings in equity or at law as authorized under provisions of the Second Class Borough Code.

16. Landowner, for himself, his heirs, grantees, successors, and assigns, releases Quakertown Borough, its engineer, solicitor, and all other agents, servants, or employees from all claims, losses, damages, liabilities, or any other demand for money or damages whatsoever, including, without limitation, all attorney's fees, arising out of or related in any way to the construction, presence, existence, or maintenance of the Stormwater Management Facilities; the grant of this Agreement; Landowner's compliance with this Agreement; or the exercise of the rights granted to the Borough by this Agreement. Furthermore, Landowner, for himself, his heirs, grantees, successors, and assigns, warrants and shall forever defend against any such claims. This Release, however, shall not apply to claims, actions, losses, damages, costs, or liabilities arising out of the intentional negligence and/or willful conduct of the Borough, its engineer, solicitor, and all other agents, servants, or employees. In the event such a claim relating to the Facilities is asserted against the Borough, its engineer, solicitor, and all other agents, servants, or employees, the Borough shall promptly notify Landowner, and Landowner shall defend, at his own expense, any suit based on such claim. If any judgment or claims against the Borough, its engineer, solicitor, and all other agents, servants, or employees, shall be adjudicated against the Borough, Landowner shall pay all costs and expenses in connection therewith.

17. Landowner shall hold the Borough harmless and indemnify the Borough, its officers, employees, or agents, from and against any and all claims, actions, causes of action, judgments, costs, expenses and liabilities of any kind whatsoever incurred in connection with, arising from or as a result of death, accident, injury, loss, or damage to any person or any property in or about the subject Stormwater Management Facilities arising out of the performance by Landowner, his heirs, grantees, successors and assigns, in constructing, inspecting, operating, repairing, replacing, and/or maintaining such Facilities. Landowner further agrees that he, his heirs, grantees, successors, and assigns will reimburse the Borough for any expenses which the

Borough, its officers, employees, or agents, have incurred, including legal fees, engineering fees, expert witness fees, and judgments, as a result of claims filed or brought against the Borough, its officers, employees, or agents, related to the construction, inspection, operation, repair, replacement, and/or maintenance of the Stormwater Management Facilities.

18. If the Borough determines that a violation of the terms of this Agreement has occurred, it shall give written notice to Landowner of such violation, along with a list of responsibilities which have not been properly performed by Landowner, and demand corrective action sufficient to cure the violation. Landowner shall have fifteen (15) calendar days to accomplish, to the Borough's satisfaction, the responsibilities on the list. If Landowner fails to cure the violation(s) within these fifteen (15) days after receipt of notice thereof from the Borough, or under circumstances where the violation cannot reasonably be cured within a fifteen (15) day period, fails to begin curing such violation within the fifteen (15) day period, or fails to continue diligently to cure such violation until finally cured, the Borough may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement and to enjoin the violation, ex parte as necessary, by temporary or permanent injunction. The Borough's remedies described in this Agreement shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

Landowner agrees that the Borough's remedies at law for any violation of the terms of this Agreement are inadequate and that the Borough shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which the Borough may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

All reasonable costs incurred by the Borough in enforcing the terms of this Agreement against Landowner, including, without limitation, costs and expenses of suit, and reasonable attorney's fees, shall be borne by Landowner, if the Borough prevails.

Forbearance by the Borough to exercise its rights under this Agreement in the event of any breach of any term of this Agreement by Landowner shall not be deemed or construed to be a waiver by the Borough of such terms, or of any subsequent breach of the same, or any other term of this Agreement, or of any of the Borough's rights under this Agreement. No delay or omission by the Borough in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver. Landowner hereby waives any defense of laches, estoppel, or prescription.

In addition, upon failure of Landowner to fulfill any of his obligations under this Agreement, after notice to do so is provided as required above, the Borough may enter upon the Property and take such necessary and prudent work needed, in its sole and absolute discretion, to bring Landowner into compliance with this Agreement. All such work shall be conducted at Landowner's expense, and Landowner hereby agrees to assume and pay all costs incurred by the Borough in completing this work, including a ten percent (10%) surcharge for the Borough's administrative expenses, all professional fees and costs, and any costs associated with the filing of a municipal lien or lawsuit.

19. This Agreement shall be recorded with the Bucks County Recorder of Deeds. This Agreement is appurtenant to Property and shall be construed to be covenants running with the land

binding upon Landowner, his heirs, grantees, successors, and assigns.

20. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, grantees, successors, and assigns. The terms “Landowner”, “Quakertown Borough”, and “Borough” as used herein shall include their respective heirs, grantees, successors, and assigns.

21. The parties agree that this Agreement contains all of the agreements between the parties regarding the operation and maintenance of the Stormwater Management Facilities and that there are no other agreements or representations made by either of them. This Agreement sets forth the entire understanding between the parties as to the subject matter of this Agreement and any representations, oral or written, not contained therein, are without effect.

22. Landowner shall not assign this Agreement, in whole or any part, to any person or other entity without the prior written consent of the Borough. Any attempt at assignment without the prior written consent of the Borough shall be null and void, not binding on the Borough, and the same shall constitute a default under this Agreement.

23. This Agreement shall not be modified, amended, or terminated except by a written agreement executed by all of the parties.

24. It is expressly understood and agreed that no third party beneficiaries are created by this Agreement.

25. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania and Ordinances of Quakertown Borough. All the parties to this Agreement hereby consent to the exclusive jurisdiction of the Court of Common Pleas of Bucks County, Pennsylvania regarding any dispute arising out of or in connection with this Agreement. All the easement rights and responsibilities shall be exercised in compliance with all applicable laws, ordinances, rules, and regulations along with all approvals granted by all governmental authorities having jurisdiction over the Property and/or the Project, including, without limitation, Quakertown Borough.

26. If any ambiguity or ambiguities in this Agreement should be claimed by either Landowner or the Borough, or if any court of competent jurisdiction should determine that any ambiguity exists in this Agreement, any such ambiguity shall be resolved in favor of ensuring the proper inspection, maintenance, and operation of the Stormwater Management Facilities on the Property at the expense of Landowner.

27. The provisions of this Agreement shall be severable. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, unenforceable, unconstitutional, or void, for any reason, only such provision shall be illegal, invalid, unenforceable, unconstitutional, or void and the remainder of this Agreement shall be in full force and effect.

28. In the event that any of the provisions of this Agreement should, for any reason

whatsoever, not be noted or recited in any subsequent deed for the Property or any portion thereof, such terms, conditions and restrictions shall attach to the Property or any portion thereof under and pursuant to this Agreement notwithstanding the absence of such provisions in said deed.

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**QUAKERTOWN BOROUGH
STORMWATER FACILITIES OPERATION AND MAINTENANCE AGREEMENT**

(Signatures)

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereby cause this Agreement to be executed the day and year first above written.

LANDOWNER

Witness: _____

By: _____

Name:

Title:

BOROUGH

QUAKERTOWN BOROUGH

Approved by the proper action of Quakertown Borough Council on the _____ day of _____, A.D., 20____, at an official public meeting of the Borough with a quorum present and voting, with the proper officers of the Borough being directed to execute this Agreement and the Borough Secretary or Assistant Secretary, being directed to note this action upon the minutes of said meeting.

QUAKERTOWN BOROUGH COUNCIL

, President

ATTEST:

Borough Manager/Secretary

