

STORMWATER MANAGEMENT

215 Attachment 2

Town of Brighton

Schedule B: Storm Drainage Maintenance Agreement

STORM DRAINAGE MAINTENANCE AGREEMENT

(PROJECT NAME)

THIS AGREEMENT is made as of the ____ day of _____, 20__ by and between the TOWN OF BRIGHTON (the "Town") and _____, having offices at _____, (the "Sponsor").

WHEREAS, the Sponsor is the owner of property located at *(Street Address)* in the Town of Brighton, bearing tax ID number(s) _____ or any address or tax ID number(s) subsequently assigned to the ~~*(resubdivided)*~~ property (the "Site"); and,

WHEREAS, the Sponsor intends to construct a *(Stormwater Management Facility)* *(Bio-Retention Area(s))* and *(Specify other BMPs)* at the Site; and,

WHEREAS, the Sponsor is obligated to comply with Federal, State and local regulations regarding stormwater quantity and quality mitigation, inclusive of **Chapter 215, Stormwater Management of the Town Code of the Town of Brighton**; and,

WHEREAS, the Town and the Sponsor mutually desire to provide stormwater quantity attenuation and enhanced stormwater quality mitigation measures in conjunction with the development of the Site, specifically, the installation of an on site drainage system comprised of **inlet structures, piping, swales, wetland vegetation, aquatic pond plantings, Stormwater Management Pond, Bio-Retention Area(s), discharge structure/piping, (Specify other BMPs) and appurtenances (the "Improvements")**; and,

WHEREAS, the proper performance of the Improvements require discharge to *(a tributary of)* *(water body name)*, which *(has)* *(has not)* been identified as an impaired surface water body by the New York State Department of Environmental Conservation (NYSDEC); and,

WHEREAS, the Sponsor will incorporate the Improvements into the scope of Site work associated with the construction of its project at their sole expense; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto as set forth herein, it is agreed as follows:

1. The Improvements

The work shall consist of installing: ***inlet structures, piping, swales, wetland vegetation, aquatic pond plantings, Stormwater Management Pond, Bio-Retention Area(s), discharge structure/piping, (Specify other BMPs)*** and necessary appurtenances as described within the engineering report and depicted upon the project plans as designed by ***Design Professional*** for the Sponsor.

BRIGHTON CODE

2. Maintenance

During the term of this Agreement, the Sponsor shall bear all responsibility, including, but not limited to, the inspection, cleaning, flushing, dredging, repair, removal of invasive species and all other maintenance procedures (collectively, the "Maintenance") of the onsite drainage system, *(Stormwater Management Facility) (Bio-Retention Area(s)) and (Specify other BMPs)*, and appurtenances necessary for the Improvements to operate in accordance with the required protocol per the engineering report, manufacturers' recommendations, other accepted engineering standards, guideline and practices as set forth by the Town of Brighton, Irondequoit Watershed Collaborative, NYSDEC and other applicable agencies. At a minimum, the Maintenance shall be performed no less than once a year, between May 1st and May 31st of each year. A detailed report certifying the extent of the Maintenance procedures shall be provided to the Town DPW by June 15th of each year, prepared by a professional engineer licensed to practice in the State of New York or other professional qualified to perform such work subject to the approval of the Town which shall not be unreasonably conditioned, withheld, or delayed.

The Sponsor shall also bear all responsibility for the Maintenance necessary for the proper operation of the *(Stormwater Management Facility) (Bio-Retention Area(s)) and (Specify other BMPs)* in the immediate vicinity of the Site.

Neither the Sponsor, nor any servant, agent, invitee, employee, tenant or contractor thereof shall substantially obstruct, impede or interfere in the reasonable use and enjoyment of the Improvements.

3. The Costs of Improvements

The costs of construction and/or installation of all Improvements shall be borne solely by the Sponsor.

4. No Liability

The Town shall not be responsible for any loss or damage incurred by the Sponsor or its agents, tenants, employees, contractors or invitees, in connection with this Agreement. Furthermore, no language contained herein shall be construed as the Town assuming any obligations of the Sponsor, relieving the Sponsor of their duties associated with the inspection, operation and/or maintenance of the system(s).

5. Indemnity

The Sponsor shall indemnify and hold the Town harmless at all times from and after the date of this Agreement, including from all claims, damage, liability and expense, including legal fees, arising from, related to or in any way connected with the Improvements, the Maintenance, or the Agreement, except claims, damage, liability and expenses caused by a negligent, willful or wrongful act or omission on the part of the Town and/or any of its employees, agents or contractors.

STORMWATER MANAGEMENT

6. Default

If the Sponsor fails in the due performances of any of its obligations under the terms of this Agreement, the Town shall have the right to issue a notice of default in accordance with the following:

A) After a twenty-four (24) hour period from the issuance of written, facsimile or electronic notice for correction of an emergency maintenance situation(s) and remedial action has not been performed to the satisfaction of the Town by the Sponsor or its agent(s); and/or

B) After a thirty (30) day period from the issuance of written, facsimile or electronic notice for correction of routine maintenance procedure(s) (including failure to properly perform the maintenance) and remedial action has not been performed to the satisfaction of the Town by the Sponsor or its agent(s);

In accordance with the above conditions, the Town may then issue written, facsimile or electronic notice for default and at its election, (a) cause the necessary maintenance to be performed immediately and to add the costs thereof to the property tax bill issued to the Sponsor for the Site and/or (b) to sue for damages for such breach and to seek such legal and equitable remedies as may be available to it, including the right to recover all expenses including legal fees.

An emergency is defined as, but not necessarily limited to, a situation that presents an immediate threat to the well-being of property, personal health and welfare of individuals and/or the general public, and/or the environment. Routine is defined as, but not necessarily limited to, the maintenance and care, recommended or otherwise, of the system(s) for its ability to operate in accordance with the intended performance parameters. Pursuant to paragraph #4, the Town assumes none of the Sponsor's obligations with regards to maintaining the system.

The Sponsor shall provide below the name, title and contact information of the person in their employ who shall be notified in accordance with the terms and conditions of this paragraph, and may be reached twenty-four hours a day. The Sponsor shall be responsible to promptly inform the Town of any changes that may occur with regards to this information.

CONTACT INFORMATION (please type or print all information)

NAME:

TITLE:

MAILING ADDRESS:

BRIGHTON CODE

PHONE NUMBERS:
(work, home, cell)

FAX NUMBER:

E-MAIL ADDRESS:

7. Term

The Term of this Agreement will commence upon execution by both Parties and will remain permanently in full force and effect from the date of this Agreement.

8. Successors and Assigns

The terms of this Agreement shall be perpetually binding upon the Sponsor, their heirs, successors and all subsequent property owners. This Agreement and the obligations thereof shall not be assigned, transferred or otherwise disposed of by the Sponsor. This Agreement and the rights and obligations created hereunder shall be perpetual and shall run with the land (both benefited and burdened).

9. Modifications

All prior understandings and agreements between the parties are merged within this Agreement, which alone represents the full and complete agreement between the parties. No changes may be made to any of the terms of this Agreement, nor any provision revised or waived, except in writing signed by both parties.

10. Severability

If a court of competent jurisdiction finds any provisions of this agreement invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated as being invalid. All other provisions of this agreement shall remain in full and separate effect.

11. Authorization

The undersigned represent that they are authorized to execute this Agreement on behalf of the Town or the Sponsor, and that the Town and the Sponsor are authorized to enter into this Agreement and perform its obligations described herein.

12. Filing

The Sponsor shall file this document at the Monroe County Clerk's Office upon its execution and provide a copy of the date/time stamped filed document to the Town along with the transaction receipt from the County Clerk's Office.

13. No Joint Venture or Partnership.

STORMWATER MANAGEMENT

The Sponsor and the Town expressly renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein shall be construed as making the Sponsor and the Town joint venturers or partners.

14. Governing Law

This Agreement shall be governed and construed in accordance with the substantive laws of the State of New York, excluding any principles of conflicts of laws. Any dispute arising under, in connection with, or incident to this Agreement or about its interpretation will be resolved exclusively in the state or federal courts located in Monroe County, New York. Each of the parties irrevocably submits to those courts' venue and jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first set forth above.

SPONSOR

TOWN OF BRIGHTON

Signature _____

Signature _____

Name (printed) _____

Name (printed) _____

Title _____

Title _____

STATE OF NEW YORK)

ss:

COUNTY OF MONROE)

On this ____ day of _____, 20 ____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on _____ the basis of satisfactory evidence to be the individual whose name is subscribed to within this instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

BRIGHTON CODE

STATE OF NEW YORK)

ss:

COUNTY OF MONROE)

On this ____ day of _____, 20 ____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on _____ the basis of satisfactory evidence to be the individual whose name is subscribed to within this instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

ss:

COUNTY OF MONROE)

On this ____ day of _____, 20 ____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on _____ the basis of satisfactory evidence to be the individual whose name is subscribed to within this instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

(Attach a copy (copies) of the applicable Site Plan, SWPPP Plan, or Utility Plan that illustrates the location and description of the proposed stormwater components (in relation to property lines) indicated in this Agreement – Attachments to be legible and sized at 8 ½" x 11" for filing purposes)