

**INSPECTION AND MAINTENANCE AGREEMENT FOR  
PRIVATE STORMWATER FACILITIES**

This Inspection and Maintenance Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_, of the year, 20\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, its successors and assigns (hereinafter called the "Owner", whether one or more) and the City of Eden Prairie, a Minnesota municipal corporation (hereinafter called "City").

WITNESSETH, that

WHEREAS, the City is required by federal and state surface water quality regulations and its National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit to prevent surface water quality degradation from development and redevelopment activities within its jurisdiction;

WHEREAS, the City has adopted stormwater regulations as required by the MS4 permit and such regulations are contained in Section 11.55 of the Eden Prairie City Code;

WHEREAS, a structural stormwater Best Management Practice (BMP) is defined in the MS4 General Permit as "a stationary and permanent BMP that is designed, constructed and operated to prevent or reduce the discharge of pollutants in stormwater." These may include, but are not limited to green roofs, permeable pavement, bioretention basins, rain gardens, infiltration basins, sand filters, stormwater ponds, manufactured treatment devices, and structures that perform chemical treatment of stormwater;

WHEREAS, "structural stormwater BMPs" are called "stormwater facilities" in Section 11.55, Subd. 2 of Eden Prairie City Code;

WHEREAS, the Owner is the fee owner of real property located at \_\_\_\_\_(property address and/or PID)\_\_\_\_\_ and legally described on the attached Exhibit A ("Property");

WHEREAS, the Owner has constructed or will construct certain stormwater facilities on the Property that have been approved by the City in accordance with City Code;

WHEREAS, some or all of the stormwater facilities on the Property serve private property and are not owned, operated or maintained by the City ("Private BMPs"). A drawing showing the general area of Private BMPs is attached to this Agreement as Exhibit B for ease of identification;

WHEREAS the City's MS4 Permit requires the City to have an executed legal mechanism for the inspection and maintenance of Private BMPs.

NOW, THEREFORE, in consideration of the benefits received by the Owner as a result of the approval by the City, the Owner does hereby covenant and agree with the City as follows:

1. The Owner will provide long-term maintenance and continuation of the Private BMPs identified in Exhibit B, to ensure that all Private BMPs are and remain in proper working condition in accordance with the original design specifications. The Owner must perform inspection and maintenance activities utilizing the checklists provided in Exhibit C (or similar, approved in advance by City staff), as well as the recommendations set forth in the Minnesota Stormwater Manual.
2. Following final acceptance of the construction by the City, the Owner must maintain a copy of this Agreement on site, together with a record of all inspections and maintenance actions required by this Agreement. The Owner must document the inspections, remedial actions taken to repair, modify or reconstruct the system, the state of the Private BMPs, and notify the City of any planned change in ownership or management of the system.
3. All Private BMPs must undergo, at a minimum, one (1) inspection annually for two (2) years after completion and final acceptance of the construction. After two (2) annual inspections are approved by the City in writing, all private BMPs must undergo, at a minimum, one (1) inspection every five (5) years to document maintenance and repair needs and ensure compliance with the requirements of this Agreement and all federal, state and local regulations. An inspection report for each inspection must be filed with the City through its website within ninety (90) days of the inspection. The inspection frequency may be increased as deemed necessary by the City to ensure proper functioning of the Private BMPs.
4. If the City's NPDES permit is revised in a way that directs the City to manage stormwater treatment systems differently than specified in this agreement, the direction of the NPDES permit will supersede and override the provisions of this Agreement.
5. The Owner hereby grants permission to the City, its authorized agents, contractors, and employees the right of ingress, egress and access to enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting Private BMPs. The Owner hereby grants to the City the right to enter the Property to install and maintain equipment to monitor or test the performance of the Private BMPs for quality and quantity upon reasonable notice to the Owner. Whenever possible, the City will notify the Owner prior to entering the Property and will use its best efforts not to disturb the Owner's use and enjoyment of the Property while conducting such inspections.
6. In the event the City determines that the Private BMPs are not being maintained in good

working order, the City will give written notice to the Owner to repair, replace, reconstruct or maintain the Private BMPs within a reasonable time, not to exceed 30 days. If the Owner fails to comply with the City's notice within the time specified, Owner authorizes the City or its agents to enter the Property to repair, reconstruct, replace or perform maintenance on the Private BMPs at the Owner's expense. It is expressly understood and agreed that the City is under no obligation to maintain or repair any Private BMPs, and in no event will this Agreement be construed to impose any such obligation on the City.

7. In the event the City, pursuant to this Agreement, performs work of any nature on Private BMPs on the Property, or expends any funds in the performance of said work for labor, use equipment, supplies, materials, and the like, the Owner will reimburse the City upon demand, within thirty (30) days of receipt of written request for reimbursement for all costs incurred by the City. If the City has not received payment from the Owner by the end of the thirty (30) day period, the City may use any other remedies available by law to collect the amount due from the Owner, and may also recover and collect from Owner the reasonable expenses of collection, including court costs, and attorney fees.
8. It is the intent of this Agreement to assure the City of proper maintenance of Private BMPs on the Property by the Owner; provided, however, that this Agreement will not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by the Private BMPs or stormwater management practices on the Property.
9. The Owner and the Owner's heirs, executors, administrators, assigns, and any other successors in interest, will indemnify and hold the City and its agents and employees harmless for, and defend against at its own expense, any and all damages, accidents, casualties, occurrence, claims, and expenses, including reasonable attorney's fees, which might arise or be asserted, in whole or in part, against the City from the construction, presence, existence, or maintenance of the Private BMPs subject to this Agreement. In the event a claim is asserted against the City, its officers, agents or employees, the City will notify the Owner, who must defend at Owner's expense any suit or other claim against the City with counsel acceptable to the City.
10. No waiver of any provision of this Agreement will affect the right of any party to enforce such provision or to exercise any right or remedy available to it in the event of another party's default.
11. The Owner must record this Agreement with the Hennepin County Recorder and/or Registrar of Titles' Office, as appropriate. This Agreement constitutes a covenant running with the land and will be binding upon the Owner and the Owner's heirs, administrators, executors, assigns, and any other successors in interest to the Property.
12. The Owner must have the Private BMPs inspected in accordance with Section 11.55 of City Code and certify to the City that the constructed facilities conform to the approved

stormwater management plan for the Property. If the constructed condition of the Private BMP or its performance varies significantly from the approved plan, appropriately revised calculations must be provided to the City and the plan must be amended accordingly.

13. The Owner agrees that for any Private BMPs to be maintained by a property owner's association, deed restrictions and covenants for property included in the association will:
  - (a) include mandatory membership in the property owner's association responsible for providing maintenance of the Private BMPs;
  - (b) require the association to maintain the private BMPs;
  - (c) prohibit termination of this maintenance responsibility by unilateral action of the association;
  - and (d) provide for unpaid dues or assessments to constitute a lien upon the property of individual owners within the association upon recording a notice of non-payment.
14. This Agreement must be re-approved and re-executed by the City if all or a portion of the Property is subdivided or assembled with other property or if Private BMPs or their drainage areas are modified, causing decreased effectiveness. New, repaired, or improved Private BMPs must be implemented to provide equivalent or better treatment when compared with the original structural stormwater BMPs.
15. The Owner must sweep all private streets, driveways, sidewalks, trails and parking areas within the Property as delineated in Exhibit B at least once each year, either in the spring following snowmelt or in the fall after leaf fall.
16. The Owner must submit inspection and maintenance records for each Private BMP to the City's Water Resources Coordinator through the City's website at the frequency required in this Agreement. The Owner may use the inspection and maintenance checklists found in Exhibit C, or similar documentation as approved by the City.
17. The City may seek any remedy in law or equity against the Owner for a violation of this Agreement.
18. In the event that this Agreement is inconsistent with Eden Prairie City Code regarding the inspection and maintenance of Private BMPs, the provisions which provide greater protection for water resources, as determined by the City in its sole discretion, will prevail.
19. The recitals set forth above are expressly incorporated herein.

*(signatures on following pages)*

IN WITNESS WHEREOF, Owner and the City have entered this Agreement as of the date written above.

**OWNER**

\_\_\_\_\_

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

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

**STATE OF MINNESOTA     )**  
**) ss.**  
**COUNTY OF \_\_\_\_\_ )**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the company.

\_\_\_\_\_  
Notary Public

**CITY OF EDEN PRAIRIE**

By \_\_\_\_\_  
Ronald A. Case  
Its Mayor

By \_\_\_\_\_  
Rick Getschow  
Its City Manager

**STATE OF MINNESOTA    )**  
**) ss.**  
**COUNTY OF HENNEPIN    )**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by Ronald A. Case and Rick Getschow, respectively the Mayor and the City Manager of  
the City of Eden Prairie, a Minnesota municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

City of Eden Prairie  
8080 Mitchell Road  
Eden Prairie, MN 55344

EXHIBIT A: Legal Description of Property

EXHIBIT B: Map of Private BMPs on Property, including City water body identification number and areas requiring street sweeping

EXHIBIT C: City of Eden Prairie Private Stormwater BMP Inspection Checklist and Maintenance Checklist