



INSTRUCTIONS FOR COMPLETING THE STORMWATER AGREEMENT

1. **Complete one copy of the Stormwater Agreement with Exhibits A, B and C.**
2. Page 1, first paragraph:
 - a. Leave the effective date blank
 - b. Add status of landowner (i.e. individual(s) or companies)
 - c. Add landowners address
3. Page 1, third paragraph (Recital B.):
 - a. Add address of the landowner's real estate including zip code. If address has been changed, indicate both the newest/final address that has been approved by the City Assessor, and the previously known address(es).

Example: 210 Main Street (previously 200 Main Street and 100 Mill Street)
 - b. Add parcel number(s) – see Exhibit A , the “Property”
4. Page 1, fourth paragraph (Recital C.): Do not change this paragraph; it includes all generic landowner uses and does not have to be specific to the real estate.
5. Page 5: Notarized landowner's signature:
 - a. Type the landowner name(s)
 - b. Add landowner signature(s)
 - c. Add notary signature, date, stamp and expiration date
6. Attach Exhibits:
 - a. Exhibit A – Legal description of the real estate for which this Agreement applies
 - b. Exhibit B – Location map(s) with location of Property, & accurate location of each stormwater BMP affected by this Agreement
 - c. Exhibit C – List all stormwater BMPs (Manufacturer, Model & location reference)
7. Submit a draft to: Jean Talanda, Environmental Programs Manager, talandaj@kalamazoo.org
8. Provide the “Return Agreement Information” in the spaces below for the City to return a copy of the finalized/signed and recorded agreement:

Contact _____, phone number _____

Email _____

Mail address _____
9. After approval of the draft agreement, provide the **agreement and this page** via mail or hand delivery to: Jean Talanda, Environmental Programs Manager, 1415 N. Harrison, Kalamazoo, MI 49007-2565 (269-337-8583, talandaj@kalamazoo.org). (Do not print double sided.)
 - a. The City's Director of Public Services will sign page 6 of the agreement and notarize.
 - b. The City will have the document recorded and will return a copy of the recorded document to the owner once received.

PUBLIC SERVICES DEPARTMENT

Water Resources Division

1415 N. Harrison Street, Kalamazoo, MI 49007
Ph. 269.337.8701, Fx. 269.337-8699

STORMWATER AGREEMENT

THIS AGREEMENT, effective _____, 20___, between the City of Kalamazoo, a Michigan municipal corporation, whose address is 241 West South Street, Kalamazoo, Michigan, Kalamazoo, Michigan 49007 (City) and _____

whose address is _____ (Landowner).

Recitals:

- A. The City is regulated under the U.S. Environmental Protection Agency's (EPA) Phase II Stormwater Program since it has a municipal separate storm sewer system (identified in the Performance Standards as MS4). Therefore, the City is required to have a National Pollutant Discharge Elimination System (NPDES) Permit for its discharge of stormwater. The Michigan Department of Environmental Quality (MDEQ) administers the NPDES permit program for the State of Michigan (33 U.S.C. 1251 et seq., P.L. 92-500, 95-217) under Part 31, Water Resources Protection, of Michigan's "Natural Resources and Environmental Protection Act", 1994 PA 451 (NREPA).
- B. Landowner owns real estate in the City at _____, Kalamazoo, MI 4900_ - Parcel No(s) _____ and which is more specifically described in Exhibit A (Property).
- C. Landowner uses the Property for multi-family residential, commercial, and industrial purposes, or a combination of those uses. Landowner is making improvements to the Property that require approval under the City's Site Plan Review process, or is modifying the existing stormwater discharge system on the Property that either impacts the City's system or the retention of stormwater on the Property. As a result of those uses, improvements or modifications, Landowner agrees: (i) to install and maintain stormwater best management practices (BMPs) on the Property in accordance with approved plans and conditions; and (ii) to ensure that the BMPs continue serving the intended function in perpetuity.
- D. Before signing this Agreement the Landowner, including its representatives, contractors or agents, has reviewed or had the opportunity to review the Performance Standards, work sheets or other documents maintained by the City relating to the City's regulation of its Stormwater Program and this Agreement.

THEREFORE, in consideration of the above recitals and the covenants, conditions, and restrictions stated below, the parties agree as follows:

1. Recitals. The above recitals are acknowledged as true and correct, and are incorporated by reference into this paragraph.
2. Installation and Maintenance. Landowner is solely responsible for the installation, maintenance and repair of the stormwater BMPs.
3. Inspections and Repairs. Landowner shall regularly inspect, maintain, repair or replace the private stormwater BMPs consistent with the Manufactured Treatment Device (identified in the Performance Standards as MTD) as recommended by the manufacturer, and those recommendations provided in the “Low Impact Development Manual for Michigan – A Design Guide for Implementers and Reviewers” (Southeast Michigan Council of Governments and MDEQ, 2008), and “Michigan Nonpoint Source Best Management Practices Manual” (MDEQ, 2014).
4. Submittal of Reports. Landowner shall annually submit a report to the City – on the form provided by the City – regarding stormwater BMPs Operation & Maintenance for each of the MTDs and other BMPs. Landowner shall deliver the report to the City’s Environmental Programs Manager either by mail to 1415 N. Harrison Street, Kalamazoo, MI 49007, via fax at 269-337-8535, or via e-mail to the current manager, talandaj@kalamazoocity.org, within 30 calendar days of the inspection date.
5. Modifications to the Stormwater System. Landowner shall contact the City for approval prior to any design modifications to the stormwater treatment and/or conveyance system on the Property.
6. City’s Access to the Property. Landowner, its successors and assigns, hereby grants the City, its authorized agents and employees, the right to enter upon the Property to inspect the stormwater BMPs whenever the City reasonably considers an inspection necessary in carrying out the intent and purpose of this Agreement. For example, an inspection may occur: (i) to follow-up on reported deficiencies in Landowner’s exercise of stormwater BMPs; or (ii) to address lack of submitted documentation Landlord is required to submit to the City; or (iii) to respond to citizen complaints. The City shall provide Landowner with copies of the inspection findings, including any directive to perform maintenance, repairs or replacements, if necessary, to the stormwater conveyance system on the Property.
7. Default by Landowner/Remedies. If Landowner fails to maintain the stormwater BMPs and associated stormwater conveyance system in good working condition acceptable to the City, the City may enter upon the Property and take whatever steps necessary to correct deficiencies, including those identified in the inspection report. Landowner is responsible to pay the costs the City incurred for those repairs. The City will provide an itemized list of the repairs in an invoice to

Landowner, which is due within 30 days of the date on the invoice. To secure any amount owed by Landowner to the City under this Paragraph, the City has the right to place a lien against the Property in the same manner as delinquent taxes, including accruing interest, penalties and administrative expenses until the lien is fully satisfied.

It is expressly understood and agreed that the City is under no obligation to routinely inspect, maintain or repair the stormwater BMPs or stormwater conveyance system; and in no event shall this Agreement be construed to impose those obligations on the City.

8. No Liability of the City. This Agreement imposes no liability of any kind whatsoever on the City and the Landowner agrees to hold the City harmless from any liability if the stormwater BMPs and/or stormwater conveyance system failure to operate properly.
9. Compliance with other Laws. This Agreement does not replace or change the requirements of the Landowner to comply with all other applicable federal, state and local laws, rules and regulations; specifically including, without limitation, Ordinance No. 1825 (Wellhead Protection Overlay), Ordinance No. 1826 (Performance Standards for Groundwater Protection Within Wellhead Protection Capture Zones and Stormwater Management) and Chapter 29 of the Code of Ordinances (Stormwater System).
10. Binding Effect/Third Parties. This Agreement is binding on and shall inure to the benefit of the parties to this Agreement and their respective successors. Neither party may assign this Agreement without the prior written consent of the other party. The parties do not intend to confer any benefits on any person, firm, corporation, or other entity which is not party to this Agreement.
11. Governing Law. This Agreement is governed under applicable Michigan law. Both parties had the assistance of or the opportunity to seek legal counsel regarding the signing of this Agreement. Therefore, no construction or ambiguity of this Agreement is resolved against either party.
12. Waiver. A party does not waive any of its rights under this Agreement if that party fails to complain about an act or omission by the other party, no matter the duration of that act or omission. And a waiver by either party, whether expressed or implied, of any breach of a provision in this Agreement is not considered a waiver or consent to any subsequent breach of this same or other provision.

13. Exhibits. This Agreement includes the following exhibits Landowner agrees to provide:

Exhibit A: Legal description of the real estate for which this Agreement applies (“Property”).

Exhibit B: Location map(s) showing a location of the Property and an accurate location of each stormwater BMP affected by this Agreement.

Exhibit C: A List of all stormwater BMPs, including Manufacturer, Model, and locational reference to Exhibit B.

14. Headings. Headings in this Agreement are for convenience only and are not intended to interpret or construe its provisions.

15. Entire Agreement/Counterparts. This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them. The parties may sign this Agreement in counterparts, which together shall comprise a single agreement, and the effective date for which is the date it is signed by both parties.

16. Authorization. Each of the parties represents and warrants to the other that this Agreement and its execution by the individual(s) on its behalf are authorized by the city commission, the board of directors or other governing body or organizational agreement of that party.

17. Definitions. The terms set forth in this Agreement shall have the same meaning as commonly used, except any term that is defined under statutes, ordinances or laws identified above, or any other applicable state statute shall have the meaning set forth under that ordinance, statute or law, including any subsequent amendments.

18. Recording. The City reserves the right to file a memorandum reflecting the existence of this Agreement with the Kalamazoo County Register of Deeds.

By:
Its:

STATE OF MICHIGAN }
 } ss.
COUNTY OF KALAMAZOO }

The foregoing instrument was acknowledged before me on _____,
20____, by _____.

Notary Public
Kalamazoo County, Michigan
My commission expires: _____

CITY OF KALAMAZOO

By: James J. Baker, P.E.
Its: Director of Public Services

STATE OF MICHIGAN }
 } ss.
COUNTY OF KALAMAZOO }

The foregoing instrument was acknowledged before me on _____,
20___, by James J. Baker, P.E., Director of Public Services, City of Kalamazoo.

Notary Public
Kalamazoo County, Michigan
My commission expires: _____

Prepared By & After Recording Return To:
The Office of City Attorney - Clyde Robinson, City Attorney
241 West South Street
Kalamazoo, MI 49007
(269) 337-8185