

# Cover Sheet

(this cover sheet is required by the Iredell County Register of Deeds Office for recordation purposes of the SCM O & M Agreement)

**Type of Document:** SCM Operation & Maintenance Agreement

**Grantor:** City of Statesville

**Grantee:** \_\_\_\_\_  
\_\_\_\_\_

**Prepared by:** City of Statesville

**Mail to Address:** City of Statesville

Engineering Department

P.O. Box 1111

Statesville, NC 28687-1111

**Physical Address:** 301 S. Center Street

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### GENERAL INFORMATION

Prior to the conveyance or transfer of any lot or building site to be served by a Stormwater Control Measure (SCM), and prior to issuance of any permit for development or redevelopment requiring an SCM, the applicant or owner of the site must execute the below operation and maintenance agreement that will be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the SCM.

This operation and maintenance agreement must be approved by the Stormwater Program Manager prior to construction plan approval.

The original signed and executed maintenance agreement will be given to the Stormwater Program Manager before a certificate of occupancy will be issued.

The property owner should maintain a record of the operation and maintenance agreement. If unable to locate, a copy may be requested from the Stormwater Program Manager.

The operation and maintenance agreement must be referenced on the final plat. If no subdivision plat is recorded for the site, then the operation and maintenance agreement must be referenced upon any instrument of title recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

**SCM OPERATION AND MAINTENANCE AGREEMENT**

**WHEREAS**, the \_\_\_\_\_ (Owner), its administrators, executors, successors, heirs or assigns, recognizes that the structural Stormwater Control Measure (SCM) must be operated, maintained, and inspected in perpetuity as required by Section 8.05 of the Statesville Unified Development Ordinance for the development or redevelopment called, \_\_\_\_\_ (Project Name), located at \_\_\_\_\_ (Property), and located on parcels numbered \_\_\_\_\_ of the City of Statesville, North Carolina; and,

**WHEREAS**, the Owner is the owner of real Property more particularly described on the attached Exhibit A as recorded in the Register of Deeds of Iredell County in Deed Book \_\_\_\_\_ at page(s) \_\_\_\_\_, and,

**WHEREAS**, The City and the Owner agree that the health, safety and welfare of the citizens of the City require that the SCM(s) be constructed, operated, maintained, and inspected on the Property, and,

**WHEREAS**, the City of Statesville UDO Section 8.05 requires that SCM(s) as shown on the approved stormwater managements plans and specifications be constructed, operated, and maintained by the Owner.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

**SECTION 1.**

The SCM(s) shall be constructed by the Owner in accordance with the plans and specifications for the development or redevelopment.

**SECTION 2.**

The Owner shall maintain the SCM(s) in good working condition acceptable to the City and in accordance with the schedule of long-term maintenance activities provided in the Statesville Stormwater Design Manual and referenced documents contained therein. If the SCM(s) are not in good working condition acceptable to the City, then the Owner shall return the SCM(s) to good working condition.

**SECTION 3.**

The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect and monitor the SCM(s) whenever the City deems necessary. Whenever possible, the City shall provide notice prior to entry.

**SECTION 4.**

In the event the Owner fails to maintain the SCM(s) as shown on the approved plans and specifications in good working order acceptable to the City, the City, with due notice, may enter the property and take whatever steps it deems necessary to return the SCM(s) to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the property. It is expressly understood and agreed that the City is under no obligation to maintain or repair the SCM(s) and in no event shall this Agreement be construed to impose any such obligation on the City.

**SECTION 5.**

In the event the City, pursuant to the Agreement, performs work of any nature, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner shall reimburse the City, or shall forfeit any required bond upon demand within forty-five (45) days of receipt thereof for all the costs incurred by the City hereunder. If not paid within the prescribed period, the City shall secure a lien against the real property in the amount of such costs. Interest, collection costs, and attorney fees may be added to the recovery of costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to the City as a result of the Owner's failure to maintain the SCM(s).

**SECTION 6.**

It is the intent of this Agreement to ensure the proper maintenance of the SCM(s) by the Owner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or caused by stormwater runoff.

**SECTION 7.**

Pursuant to Section 8.05 of the Statesville UDO, the Owner shall provide the City with a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement providing for the maintenance of the SCM(s) for a period of perpetual duration. The performance security or bond shall be in the amount of annuity based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs approved under the permit, at a discount rate that reflects the City's cost of borrowing minus a reasonable estimate of long-term inflation. A copy of the bond or letter of credit is attached to this Agreement and by reference made a part thereof.

**SECTION 8.**

Homeowners and other associations, as Owner shall establish an escrow account to be spent solely on maintenance, repair, or reconstruction costs for SCM(s). Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to five (5) percent of the initial construction cost of the SCMs. The total sinking fund budget shall require ten (10) percent of the stormwater control project's original cost of construction within five (5) years following acceptance of the SCM by the City and shall be retained by the owner of the system. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

**SECTION 9.**

The Owner shall comply with the requirement of an annual inspection of the SCM(s) located on the Property and submit the results of the inspection to the City, as referenced in the Statesville UDO Section 8.05. The inspection shall be performed by a certified stormwater SCM inspection and maintenance professional and recorded on the SCM Inspection Forms provided by the City on the Stormwater Management website.

**SECTION 10.**

The Owner hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of the SCM(s) by the Owner or the City. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Owner, and the Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Owner shall pay for all costs and expenses in connection herewith.

**SECTION 11.**

The Agreement shall be referenced on the final plat. If no subdivision plat is recorded for the site, then the operation and maintenance agreement shall be referenced upon any instrument of title recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

**SECTION 12.**

This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest.

**SECTION 13.**

Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

**OPERATION AND MAINTENANCE AGREEMENT**

SO AGREED this \_\_\_\_\_ day \_\_\_\_\_ of 20\_\_\_\_\_

**Contact Information for Day-to-Day Operation & Maintenance of Stormwater Device(s):**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Business Phone No: \_\_\_\_\_ Business Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

**OWNER**

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

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

[NOTARIAL SEAL]

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

Print/type name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**STATE OF NORTH CAROLINA COUNTY OF \_\_\_\_\_**

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ personally came before me \_\_\_\_\_, who, being by me duly sworn says that (s)he is the \_\_\_\_\_ (title) of \_\_\_\_\_ (organization), and that by authority duly given and as the act of such entity, (s)he signed the foregoing instrument in its name on its behalf as its act and deed.

[NOTARIAL SEAL]

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

Print/type name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**STATESVILLE, NORTH CAROLINA**

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

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Print Name: \_\_\_\_\_

Stormwater Program Manager

City Manager

**STATE OF NORTH CAROLINA COUNTY OF \_\_\_\_\_**

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ personally came before me \_\_\_\_\_, who, being by me duly sworn says that (s)he is the \_\_\_\_\_ (title) of \_\_\_\_\_ (organization), and that by authority duly given and as the act of such entity, (s)he signed the foregoing instrument in its name on its behalf as its act and deed.

[NOTARIAL SEAL]

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

Print/type name: \_\_\_\_\_

My commission expires: \_\_\_\_\_