

APPENDIX B

Stormwater Agreements

RETURN TO:

**City of Sumner
Public Works Department
1104 Maple Street, Suite 260
Sumner WA 98390-1423**

Please make no mark in the margin space - Reserved for County Auditor's use only.

TYPE OF DOCUMENT:	Agreement to Maintain Stormwater Facilities
GRANTOR(S):	
GRANTEE:	City of Sumner, a Municipal Corporation
LEGAL DESCRIPTION:	Exhibit 'A' of this document
ABBREVIATED LEGAL DESCRIPTION:	
ASSESSOR TAXPARCEL I.D. No.:	
NAME OF PROJECT	
ADDRESS OF PROJECT	
PROJECT No.:	
Recording No:	

**AGREEMENT TO MAINTAIN STORMWATER FACILITIES
AND TO IMPLEMENT POLLUTION SOURCE CONTROL BEST MANAGEMENT
PRACTICES**

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between the CITY OF SUMNER, a municipal corporation hereinafter referred to as "City", and _____, (hereinafter referred to as "Owner").

WHEREAS, this agreement contains specific provisions with respect to maintenance of storm water facilities and use of pollution source control (BMPs); and

WHEREAS, Owner owns the above-described real property, which is situated in Pierce County, State of Washington, as set forth in Exhibit 'A', which is attached hereto and made a part hereof; and

WHEREAS, Owner has constructed improvements including, but not limited to, building, pavement, and stormwater facilities on the above-described real property; and

WHEREAS, A property owner has the responsibility for complying with the provisions in this agreement regarding stormwater structures and best management practices regardless of whether the property is leased.

In consideration of the mutual benefits to be derived therefrom, it is mutually agreed as follows:

A. City and Owner enter into this agreement in order to further the goals of City to ensure the protection and enhancement of City's water resources. The Owner covenants and agrees that they, their heirs, successors, and assigns are responsible for the operation, maintenance, and repair of the stormwater facilities identified in this covenant and the implementation of a pollution source control program on the property. The responsibilities of each party to this agreement are identified below:

1. Owner shall:

- a) Develop, document, and submit to the City a stormwater facility maintenance program for Owner's property that both follows, the BMP maintenance standards in the currently adopted Stormwater Management Manual for Western Washington (Manual), as interpreted by the City, and the standards and requirements provided by a treatment structure manufacturer. Implement this program sufficiently to keep all stormwater facilities in good working order and operating so as to satisfy the design and performance standards of the program, surface and ground water standards, and the Manual. (A program example is included herein as "Exhibit 1").
- b) Develop, submit to the City, and implement a pollution source control program included herein as "Exhibit 2" which prevents pollutants from entering the stormwater system. Minimum requirements and example BMPs are provided in Exhibit 2 and in the currently adopted Stormwater Management Manual for Western Washington. Implementation of a source control program must contain at a minimum the BMPs applicable for all sites, as provided in the Manual.
- c) Maintain a clear and complete record of the steps taken to implement the stormwater facility maintenance and pollution source control programs. The records shall be available for inspection at the request of City staff.

The maintenance records shall catalog the action taken, who took it, when it was done, how it was done, and any problems encountered, or follow-up actions recommended. Maintenance items ("deficiencies") developed as part of the maintenance program shall be inspected on a monthly or more frequent basis, as necessary. Owner is encouraged to take lists from the Stormwater Management Manual for Western Washington and use them to complete its monthly inspections. These completed checklists would then, in combination, comprise the biannual logbook, along with any receipt, manifest, or proof of payment to a contractor, or designated person or party to perform the required maintenance.

- d) Submit an annual report to City regarding implementation of the programs referenced in "a" and "b" above. The report must be submitted on or before May 15th of each calendar year and shall contain, at a minimum, the following:
 - (1) Name, address and telephone number of the business, the person or the firm responsible for plan implementation, and the person completing the report.
 - (2) Time period covered by the report.
 - (3) A chronological summary of activities conducted to implement the programs referenced in "a" and "b" above for the previous calendar year. A photocopy of

the applicable sections of the maintenance records, with any additional explanation needed, shall normally suffice. For any activities conducted by paid parties not affiliated with Owner, include a copy of the invoice for services.

(4) An outline of planned activities for the current year.

2. *City shall:*

- a. Provide technical assistance to Owner in support of its operation and maintenance activities conducted pursuant to its maintenance and source control programs. Said assistance shall be provided upon request, and as City time and resources permit, at no charge to Owner.
- b. Review the annual report and conduct a minimum of one (1) site inspection per year to discuss performance and problems with Owner. More frequent inspections are at the discretion of the City, based on the performance of identified best management practices to protect stormwater quality.
- c. Review this program with Owner and if necessary consider reasonable modification no more than once every three (3) years.

B. Remedies:

1. If the City determines that maintenance or repair work is required to be performed on the stormwater facility existing on Owner's property, the Director of the Department of Public Works shall give the owner of the property within which the drainage facility is located, and the person or agent in control of said property, notice of the specific maintenance and/or repair required. The Director shall set a reasonable time in which such work is to be completed by the persons who were given notice. If the above required maintenance and/or repair is not completed within the time set by the Director, written notice will be sent to the persons who were given notice stating City's intention to perform such maintenance and bill Owner for all incurred expenses. The City may perform the notified maintenance, at the Owner's expense, 30 days after the date of the notice. Notwithstanding the foregoing, the City shall be under no obligation to inspect, maintain or repair the stormwater facilities.
2. If at any time City determines that the existing system creates any imminent threat to public health or welfare, the Director may take immediate measures to remedy said threat. Under such circumstances no notice to the persons listed in B.1 above shall be required, but the City shall give the Owner immediate notice of the remedial measures so taken.
3. The persons listed in B.1 above shall assume all responsibility for the cost of any maintenance and for repairs to the stormwater facility. Such responsibility shall include reimbursement to City within thirty (30) days of the receipt of the invoice for any such work performed. Overdue payments will require payment of interest at the current legal rate for liquidated judgments. If legal action ensues, any costs or fees incurred by City will be borne by the parties responsible for said reimbursements.

4. In the event Owner of the property fails to pay City within thirty (30) days from the date that the costs were incurred, City shall have the right to file a lien against the real property for all charges and expenses incurred. A lien specifying the expenses incurred and giving a legal description of the premises sought to be charged shall be filed with the County Auditor within ninety (90) days from the date of the completion of the work. The same may at any time thereafter be collected in the manner provided for foreclosure of mechanic's liens under the laws of the State of Washington except the City may file for recording a notice of claim of lien up to one year after it has ceased to perform maintenance and repairs to the stormwater facility.

C. Covenant Scope and Intent:

1. This agreement is intended to protect the value and desirability of the real property described above and to benefit all the citizens of the City. It shall run with the land as an equitable covenant and be binding on all parties having or acquiring from Owner or their successors, any right, title or interest in the property or any part thereof, including but not limited to leasehold tenants, contract purchasers, subtenants, and adverse possessors. This covenant shall run with the land even in the absence of the transfer of some interest in land, other than the covenant itself, between Owner and the City. This covenant shall not be governed by the mutuality rule. The burden of the covenant can run independently from the benefit of the covenant, and the benefit need not run. The benefit may be in gross or personal to Owner or the City. Owner waives its right to assert any defenses to the enforcement of this covenant, including, but not limited to, the change of neighborhood doctrine, laches, estoppel, balancing of hardships, and abandonment. If Owner breaches any term of this covenant and agreement, then all remedies in equity and at law, including, but not limited to, injunctions, mandamus, declaratory judgments, and damages, shall be available to the City. The covenant touches and concerns the land that is described as the property and shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of all citizens of City.

D. Assignment:

Neither party to this Agreement shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions and interests under this Agreement, without the prior written approval of the other.

E. Indemnification:

Owner shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless to the extent permitted by law from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations, performed by Owner, or on Owner's behalf, that relate to the Stormwater Facilities and the subject matter of this agreement, or arising out of or in connection with activities the City undertakes on the Property.

(Notary Acknowledgement on Next Page)

CITY OF SUMNER

, Public Works Director

APPROVED as to form:

, City Attorney

EXHIBIT 'A' – STORMWATER MAINTENANCE AGREEMENT
Legal Description

A large, empty rectangular box with a thin black border, occupying most of the page. It is intended for a legal description.

EXHIBIT 1: STORMWATER FACILITY MAINTENANCE PROGRAM

INSTRUCTIONS

1. Complete the cover sheet and document current contact information on the first page
2. Identify and mark the types of Stormwater BMPs applicable to your site
3. Review the currently adopted Stormwater Management Manual for Western Washington to determine the appropriate maintenance standards for the BMPs noted
4. Inspect the site and note deficiencies in maintenance standards
5. Record deficiencies and whether maintenance has been conducted or is planned in the logbook
6. Include documentation for Source Control as outlined in Exhibit 2
7. Submit an annual report containing the above annually by May 15th of each calendar year, Mail or email report to:

ATTN: Stormwater Report
City of Sumner - Public Works Department
1104 Maple Street
Sumner, WA 98390

E-mail: SWreport@sumnerwa.gov

STORMWATER FACILITY MAINTENANCE PROGRAM – COVER SHEET

Report Time Period:
Site Name:
Associated Parcel #:
Site Address:
Site Mailing Address (<i>street, suite/unit, city, state, zip</i>):
Site Contact Name and Title: <input type="checkbox"/> property owner <input type="checkbox"/> agent / property manager <input type="checkbox"/> facility manager <input type="checkbox"/> occupant / business <input type="checkbox"/> contractor
Site Contact Mailing Address (<i>if different from site address</i>):
Site Contact Telephone number:
Site Contact email address:

Using the BMP maintenance tables found in the current adopted Stormwater Management Manual for Western Washington, inspect the stormwater structures on your properties. Identify on the table below which structures were inspected. Reference the Manual’s maintenance tables for structures that are applicable to your site or property to determine deficiencies.

<input type="checkbox"/> Detention Ponds <input type="checkbox"/> Infiltration Ponds <input type="checkbox"/> Evaporation Ponds <input type="checkbox"/> Tanks and vaults <input type="checkbox"/> Control structures <input type="checkbox"/> Catch basins <input type="checkbox"/> Debris Barriers (e.g. Trash Racks) <input type="checkbox"/> Energy Dissipators <input type="checkbox"/> Typical Biofiltration Swale <input type="checkbox"/> Wet Biofiltrations Swale <input type="checkbox"/> Vegetated Filter Strip <input type="checkbox"/> Wetponds <input type="checkbox"/> Wetvaults <input type="checkbox"/> Sand Filters (Aboveground/Open) <input type="checkbox"/> Sand Filters (Belowground/Enclosed) <input type="checkbox"/> Manufactured Media Filters	<input type="checkbox"/> API (Baffle Type) Oil/Water Separators <input type="checkbox"/> Catch Basin Inserts <input type="checkbox"/> Media Filter Drains <input type="checkbox"/> Compost-Amended Vegetated Filter Strips (CAVFS) <input type="checkbox"/> Bioretention <input type="checkbox"/> Permeable Pavement <input type="checkbox"/> Vegetated Roofs <input type="checkbox"/> Rainwater Harvesting <input type="checkbox"/> Downspouts, Sheet Flow, and concentrated Dispersion Systems <input type="checkbox"/> Downspout Full Infiltration <input type="checkbox"/> Post-Construction Soil Quality and Depth <input type="checkbox"/> Other: <input type="checkbox"/> Other:
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BMP	Deficiencies Noted	Maintenance Performed/Planned

EXHIBIT 2: SOURCE CONTROL PROGRAM

INSTRUCTIONS

The guidance on the following page provides more detailed information, but at a minimum

1. Assess the property to identify potential sources of pollution. These could be activities conducted on, or materials stored at the property.
2. For identified potential sources of pollution, reference the currently adopted Stormwater Management Manual for Western Washington to see required BMPs for the specific applicable sources.
3. Document the sources of potential pollution and the Source Control BMPs which are being implemented
4. Together with your Stormwater Facility Maintenance Program annual report, submit the documentation created for your Source Control Program by May 15th of each year

EXHIBIT 2: SOURCE CONTROL PROGRAM GUIDANCE

The purpose of the Source Control Program is to proactively prevent stormwater pollution from impacting water quality. This is done through Operational Best Management Practices (BMPs) and where necessary, Structural BMPs.

Examples of Operational BMPs are storing materials indoors, promptly cleaning/repairing oil leaks, and training employees. If Operational BMPs are insufficient to prevent illicit discharges or violations of surface water quality, a Structural BMP such as additional water quality treatment may be necessary.

At a minimum, each site shall do the following:

1. Assess the property to identify potential sources of pollution. I.e. are there places where materials are stored, vehicles/buildings are washed, garbage is stored, etc.
2. For identified potential sources of pollution, reference the current adopted Stormwater Management Manual for Western Washington to see required Operational BMPs which are applicable
3. Document potential sources of pollution, the BMPs implemented to prevent pollution, and the people responsible for implementing and maintaining all BMPs and treatment for the activity

Some example BMPs which apply to all sites regardless of activities are below. This is not an exhaustive list, more BMPs may apply and are found in the current adopted stormwater manual. The site shall implement all applicable BMPs. For activities with no BMPs, the City can provide technical assistance on what activities are necessary as part of the annual inspection.

Example BMPs that apply to all sites:

1. Pollution Prevention Team

- **Responsibility:** Designate specific people (a "Pollution Prevention Team") to develop, implement, and maintain the sites specific source control BMPs

2. Good Housekeeping

- **Routine Cleaning:** Regularly sweep paved areas (parking lots, loading docks, storage areas) to remove debris. Vacuum sweeping is preferred.
- **Waste Management:** Use durable, leak-proof containers for all waste. Keep lids closed on all dumpsters and trash cans. Store waste and materials in a way which prevents leaks and spills to storm.
- **Prompt Repair:** Fix leaky equipment and vehicles immediately to prevent fluids from reaching the ground.

3. Spill Prevention and Cleanup

- **Spill Kits:** Maintain a spill kit (absorbent pads, booms, disposal bags) in a visible, accessible location near potential spill areas. Use the kit to promptly clean spills
- **Spill Plan:** Develop a spill plan outlining the areas of risk and cleanup procedures

4. Employee Training

- **Core Topics:** Spill response procedures, sources of pollution, best management practices for activities like vehicle cleaning or material handling

5. Inspections

- **Monthly Inspections:** Check for leaks, verify BMPs are still in good working order, identify issues to correct

6. Record Keeping

- **Documentation:** Maintain a log of all inspections, maintenance activities (e.g., sweeping dates), and any spills that occurred.
- **Reporting:** To report a spill or to determine if a spill is a substance of a reportable quantity, call the Ecology Southwest regional office (360) 407-6300 and ask for an oil spill operations or a dangerous waste specialist:

The following is an example of how a business could document the pollution source control program for annual submission. If contact information for Source Control Program differs from Stormwater Maintenance Program, submit a second coversheet with correct information:

Describe the potential sources of pollution including the types of activities conducted at the facility that could impact stormwater:

List all stormwater source control BMPs currently in place (e.g., spill kits, covered storage, sweeping):