

Chapter 32
Stormwater Management and Erosion Control
(Rep. & recr. #34-05)

32.12 Maintenance of Storm Water BMP's; Maintenance Agreement (Am. #14-18)

(a) Maintenance Agreement Required. (Am. #14-18) A maintenance agreement shall be required for all permanent storm water BMP(s) installed to comply with the requirements of this ordinance. The maintenance agreement shall be independent of all other restrictions or covenants and shall comply with all provisions of this section. The maintenance agreement shall be recorded with the County Register of Deeds as a property restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices. For sites where the existing drainage system meets the requirements of this ordinance, the Authority may require a maintenance agreement on pre-existing BMPs or internally drained areas to ensure the preservation and maintenance of the existing drainage system.

(b) Agreement Provisions. The maintenance agreement shall, at a minimum, contain the following information and provisions:

1. **Ownership.** (Am. #14-18) Identification of the owner(s) of the land parcel(s) where the storm water BMP(s) is located. Ownership shall be the same as those assigned maintenance responsibilities under sub. (6) of this subsection, unless otherwise designated in a regional storm water management plan and approved by the applicable unit(s) of government. For new land divisions, plats and certified survey maps, all storm water BMPs shall be located on outlots. For all privately owned outlots, ownership shall be by proportional undividable interest for all properties that are within the control of the applicant and drain to the BMP. However, the applicant may combine ownership of more than one BMP within the site;

2. **Location.** A legal description and survey map of the storm water BMP location(s), showing associated drainage or access easements required to maintain the BMP;

3. **Design.** Detailed drawings of each storm water BMP and a general description of its purpose and design, including but not limited to BMP dimensions and elevations, inlet and outlet designs and elevations and the drainage area served by the BMP. If possible, use as-built survey information.

4. **Maintenance plan.** (Am. #14-18) A description of all long term maintenance activities that will likely be required for each BMP included in the agreement, and an estimated time interval between each activity; No maintenance plan may include provision for pumping

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groundwater from a well to maintain proposed pond water levels, unless approved by the Authority to ensure compliance with this ordinance.

5. Access. Authorization for vehicle access, including a minimum 15-foot wide access easement dedicated to the local municipality and connecting to a public road right-of-way, to allow for future BMP maintenance work. The access easement shall be of adequate soil conditions or surfacing to withstand loads produced by standard construction equipment, and shall not include any area where channelized flow of runoff occurs or where storm water may pond to a depth greater than six (6) inches during a 100-year, 24-hour design storm.

6. Maintenance responsibility. Identification of the person(s), organization, municipality or other entity responsible for long-term maintenance of the storm water BMP. The assignment of maintenance responsibilities for a privately owned storm water BMP shall, at a minimum, include all properties that are within the control of the applicant and drain to the BMP. However, the applicant may combine the maintenance responsibilities of more than one BMP within the site;

7. Inspections. (Am. #14-18) Authorization for access to the property by representatives of the City of Waukesha to conduct inspections of the BMP, monitor its performance and maintenance, and notify the designated entity when maintenance or repair activities are necessary. A statement shall also be included that states that the entity under sub. (6) of this subsection shall, at their own cost and within a reasonable time period, have a BMP inspection conducted annually by a qualified professional, or more frequently upon written notification by the Authority, file a report and complete any maintenance or repair work recommended in the report;

8. Municipal maintenance. Authorization for the City of Waukesha or its designee to carry out any maintenance activities and associated inspections if the entity identified under par. 6 above does not perform the required activity within the specified time period in the notification or if the local municipality does not accept the work conducted by the designated entity;

9. Special assessment. (Am. #14-18) A statement that the City of Waukesha may exercise their statutory authority to levy and collect a special assessment or charge pursuant to subch. VII of ch. 66.0627 Wisconsin Statutes, for any services carried out relating to sub. (7) or (8) of this subsection;

10. Maintenance Performance Security The City of Waukesha may, at its discretion, require the submittal of a cash escrow, letter of

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credit, or performance security prior to issuance of the permit to ensure that the storm water practices are maintained by the responsible party and for expenses incurred by the City of Waukesha for services carried out related to sub. (7) or (8) of this subsection. The amount of the maintenance performance security shall be determined by the City of Waukesha, not to exceed ten (10) years of the maintenance costs estimated in the storm water plan.

Conditions for the release of maintenance performance security are as follows:

The maintenance performance security, minus any costs incurred by the City of Waukesha to conduct required maintenance, design, engineering, preparation, checking and review of designs, plans and specifications; supervision and inspection to ensure that construction is in compliance with applicable plans, specifications, regulations and ordinances; and legal, administrative and fiscal work undertaken to assure and implement such compliance, shall be released at such time that the responsibility for practice maintenance is passed on to another private entity, via an approved maintenance agreement, or to the City of Waukesha.

11. Restrictions Running With The Land. A statement confirming that the entire agreement shall be binding on all subsequent owners of the property upon which the storm water BMP is located and that the restrictions set forth herein shall run with the land and on any other property which is subject to maintenance responsibility in the agreement.

12. Agreement modifications. Sole authorization for the City of Waukesha to modify the provisions of the agreement upon 30-day notice to the current owner(s) and other parties responsible for maintenance of the storm water BMP. Any changes made to the agreement shall maintain the minimum items listed in this subsection and ensure the long term maintenance of the BMP;

13. Other. Other information as determined to be necessary by the Authority to ensure compliance with this ordinance.

(c) **Agreement Form, Approval and Recording.** 1. Form. The Authority shall provide the applicant with sample maintenance agreement forms that comply with the requirements of this section.

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2. Approval. The Authority shall review and approve the form and content of all maintenance agreements proposed under this ordinance and ensure compliance with all provisions of this section. If the agreement does not comply, the Authority shall notify the applicant what changes are needed in order to comply, in accordance with the plan review procedures in section 32.07(d).

3. Recording. Upon certification of compliance with subs. (1) and (2) of this subsection by the Authority, the maintenance agreement shall be recorded at the Waukesha County Register of Deeds referencing any plat, certified survey or other ownership transfer device pertaining to land which contains the subject storm water BMP or is subject to maintenance responsibility in the approved agreement. For new land divisions, the recording of the maintenance agreement shall occur simultaneously with the recording of the land division. However, no storm water BMP maintenance agreement shall be recorded prior to Authority approval.

4. Copy. The permit holder shall provide a copy of the recorded agreement, including evidence of the actual recording(s), to the Authority as a condition of release of the financial assurance under section 32.08(c).

(d) Maintenance Responsibilities Prior to a Maintenance Agreement. The permit holder and other responsible party shall be responsible for the maintenance of all storm water BMPs prior to permit termination under section 32.08(b).