

CHAPTER 3

MAINTENANCE AND MONITORING AGREEMENT

Chapter 3
Maintenance and Monitoring Agreements

I. BACKGROUND

Section 13-117(H) of the Zoning Ordinance requires the submission of a long-term schedule for inspection and maintenance of stormwater management facilities that includes all maintenance requirements and persons responsible for performing maintenance. If the designated maintenance responsibility is with a party other than the City of Alexandria, a maintenance agreement between the responsible party and the City is also required.

Section 5-4-7(b)(7)(d) of the existing City Code further requires that applicants who chose a stormwater management option which involves stormwater detention must provide the City with a plan for maintenance of the facility and the party responsible for performing the maintenance. If the designated maintenance responsibility is with an organization other than the City, a maintenance agreement must be executed between the responsible party and the City.

II. POLICY

It is the policy of the City that all stormwater quality management BMPs and all stormwater detention facilities be maintained by the owner. Maintenance agreements are therefore required in all cases where the owner is other than the City.

Approval of the use of unconventional BMPs discussed in Chapter 2 of this supplement is conditioned by the requirement that the developer agree to participate with the City and the Northern Virginia Planning District Commission (NVPDC) in a program of monitoring to establish the actual pollutant removal efficiency of the BMP. The approval of other experimental BMPs for which criteria is not provided in Chapter 2 will be conditioned on the developer agreeing to monitor the BMP at the developer's expense to establish the actual pollutant removal efficiency. A clause setting forth such agreements will be included in maintenance agreement for unconventional or experimental BMPs.

The maintenance and monitoring agreements for each project must be concluded and executed by both parties prior to the release of the final site plan or the issuing of initial grading or construction permits to commence work on the site.

III. SCHEDULE OF INSPECTION and MAINTENANCE

A detailed long-term schedule for inspection and maintenance of the BMP facility or facilities shall be submitted with the storm-water management plan in the Plan of Development. The plan shall be detailed on drawing sheets the same size as the Site Plan and sealed by a Registered Professional Engineer or a Licensed Class IIIIB Surveyor.

IV. MAINTENANCE STANDARDS

Maintenance standards for conventional BMPs are set forth in Chapter 6 of the Northern Virginia BMP Handbook⁽¹⁾ and in Controlling Urban Runoff.⁽²⁾ Maintaining BMPs, A Guidebook for Private Owners and Operators in Northern Virginia published by the Northern Virginia Planning District Commission will also be utilized in developing maintenance plans for conventional BMPs in Alexandria (a copy is included as Appendix 3-2). Maintenance requirements for unconventional BMPs recognized for use in the City are delineated in detail in Appendix 2-3. These requirements shall be reproduced verbatim on the Stormwater Management Plan sheets of the Final Site Plan and will be cited in the Maintenance Agreement. Maintenance for other unconventional BMPs and experimental BMPs will be proposed by the applicant/developer and determined by the Director of Transportation and Environmental Services on a case-by-case basis.

V. MONITORING REQUIREMENTS

Unconventional BMPs must be designed to accommodate the installation, operation and maintenance of automatic equipment to measure the input and output flow rates and the chemical composition of the inflow, outflow and at intermediate points as may be required. At a minimum, this will usually require the installation of prefabricated or purpose-built monitoring manholes in the inflow and outflow pipes (see Appendix 2-8). The City and its consultants will conduct the monitoring program for unconventional BMPs unless otherwise agreed to by the Director. The length of the monitoring program and/or the number and size of storms to be monitored will be determined on a case-by-case basis. Developers/applicants are encouraged to proffer financial participation in the cost of the monitoring program. Such participation will be required when the Director determines that there is a need to establish the actual performance of the BMP, such as for BMPs for which design criteria is not given in Chapter 2 of this manual. The developer/applicant must pay the full cost of the monitoring program in the case of BMPs which the Director determines to be experimental.

VI. INSPECTIONS

In addition to the inspections required to be performed by the owner/operator as part of the Stormwater Management Plan, inspectors from the Department of Transportation and Environmental Services will perform quality assurance inspections on the BMP facilities semiannually. In instances where inadequate maintenance is observed, the owner will be notified and an adequate period specified for correction of the deficiencies. If the corrective work is not performed within the specified time, the City retains the right to perform the necessary corrections and bill the owner/operator. In cases of repeated instances of failure to perform required maintenance, sanctions may be imposed against the owner. Section 11-412 of the Alexandria Zoning Code allows the revocation of all City approvals regarding the land involved in such cases.

VII. STANDARD MAINTENANCE/MONITORING AGREEMENTS

Appendix 3-1 to this chapter contains standard maintenance and monitoring agreements for use with BMPs and stormwater detention facilities within Alexandria. The agreements consist of general requirements for use in all maintenance agreements and specific maintenance and monitoring paragraphs which must be included for the specific BMPs employed. Additional requirements for experimental BMPs will be determined during the Director's technical review of the BMP proposal.

VIII. TIMING OF SUBMISSION

The City staff will prepare a site-specific standard maintenance/monitoring agreement for each project and forward it to the developer as part of the bond estimate package. Final Site Plans or other permits allowing site clearing or construction to begin on the site will not be released by the City until the Maintenance Agreement has been executed by the developer, notarized, and returned to the City.

APPENDIX 3-1 -- STANDARD MAINTENANCE AND MONITORING AGREEMENT

BMP FACILITIES MAINTENANCE/MONITORING
AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 19__, by and between _____, hereinafter called the "Landowner", and the City of Alexandria, Virginia (the "City");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property described _____ tax map, block, lot number as acquired by deed in the land records of the City of Alexandria, Virginia, Deed Book _____ at Page _____, hereinafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, Plan of Development/Site Plan/Subdivision Plan _____ hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for detention on-site treatment of stormwater within the confines of the property; and

WHEREAS, the City and the Landowner, its successors and assigns agree that the health, safety, and welfare of the residents of the City of Alexandria, Virginia, require that on-site stormwater management/Best Management Practices facilities be constructed and maintained on the property: and

WHEREAS, the City requires that on-site stormwater management/BMP facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns.

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: 1. The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the plans and specifications identified in the plans.

2. The Landowner, its successors and assigns, shall maintain the stormwater management/BMP facilities in good working

condition, acceptable to the City, so that they are performing their design functions.

3. The Landowner, its successors and assigns, hereby grants permission to the City, its authorized agents and employees, to enter upon the property, and to inspect the stormwater management/BMP facilities whenever the City deems necessary. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structures, pond areas, access roads, etc. When deficiencies are noted, the City shall give the Landowner, its successors and assigns, copies of the inspection report with findings and evaluations.

4. In the event the Landowner, its successors and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the City, the City may enter upon the Property and take whatever steps it deems necessary to maintain said stormwater management/BMP facilities and to charge the costs of the repairs to the Landowner, its successors and assigns. This provision shall not be construed to allow the City of Alexandria to erect any structure of a permanent nature on the land of the Landowner, outside of an easement belonging to the City. It is expressly understood and agreed that the City is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

5. The Landowner, its successors and assigns, will perform maintenance in accordance with the maintenance schedule for the stormwater management/BMP facilities including sediment removal as outlined on the approved plans and the following specific requirements:

(for extended dry detention facilities, wet ponds, or infiltration devices, insert the following:

Maintenance of the (insert type of facility) shall conform to the maintenance requirements contained in Chapter 6 of the Northern Virginia BMP Handbook published by the Northern Virginia Planning District Commission.

(for unconventional BMPs for which design criteria is provided in Chapter 2 of this manual, insert the following:

Maintenance of the (insert type of BMP facility) shall conform to the maintenance requirements contained in Chapter 2 of the Alexandria Supplement to the Northern Virginia BMP Handbook.

(for unconventional BMPs not detailed in Chapter 2 of this manual and for experimental BMPs, insert specific maintenance requirements as approved by the Director of Transportation and Environmental Services prior to release of the Final Site Plan).

6. In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like on account of the Landowner's or its successors' and assigns' failure to perform such work, the Landowner, its successors and assigns, shall reimburse the City upon demand, within _____ days of receipt thereof for all costs incurred by the City hereunder. If not paid within such _____ day period, the City shall have a lien against the property in the amount of such costs, plus interest at the Judgment Rate, and may enforce same in the same manner as a lien for real property taxes may be enforced.

7. The Landowner, its successors and assigns, shall indemnify and hold harmless the City and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City for the construction, presence, existence or maintenance of the storm-water management/BMP facilities by the Landowner, its successors and assigns.

In the event a claim is asserted against the City, its agents or employees, the City shall promptly notify the Landowners, their successors and assigns, and they shall defend, at their own expense, any suit based on such claim. If any judgment or claims against the City, its agents or employees shall be allowed, the Landowner, its successors and assigns shall pay all costs and expenses in connection therewith.

(The following additional paragraph shall be added for all agreements covering non-conventional or experimental BMPs:

8. The Landowner, its successors and assigns, hereby grants permission to the City, its authorized agents and employees, and to the Northern Virginia Planning District Commission, its authorized agents, employees and consultants, to enter upon the property, and to install, operate and maintain equipment to monitor the flow rate and pollutant content of the input flow, the effluent, and at intermediate points in the BMP. The landowner further agrees to design and construct the facility to provide access for monitoring as outlined in Chapter 2 of the Alexandria Supplement to the Northern Virginia BMP Handbook. The landowner further agrees to a contribution of (as established during the

Site Plan approval process -- in the case of experimental BMPs, the entire cost of the monitoring program, payable prior to the release of the Final Site Plan, towards the cost of the monitoring program.

8.or 9. This Agreement shall be recorded among the land records of the City of Alexandria, Virginia, and shall constitute a covenant running with the land and/or equitable servitude, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests.

WITNESS the following signatures and seals:

(Landowner) (Seal)

By: _____

Type Name

Type Title

ATTEST:

STATE OF _____

CITY OF _____

I, _____, a Notary Public in and for the City and State aforesaid, whose commission expires on the _____ day of _____, 19____, do hereby certify that _____

whose name(s) is/are signed to the foregoing Agreement bearing date of the _____ day of _____, 19____, has acknowledged the same before me in my said City and State.

GIVEN UNDER MY HAND THIS _____ day of _____, 19____.

NOTARY PUBLIC

WITNESS the following signatures and seals:

(Director) (Seal)
(Department of T&ES)

By: _____

Type Name

Type Title

ATTEST:

STATE OF _____

CITY OF _____

I, _____, a Notary Public
in and for the City and State aforesaid, whose commission expires
on the _____ day of _____, 19____, do hereby certify
that _____
whose name(s) is/are signed to the foregoing Agreement bearing
date of the _____ day of _____, 19____, has acknowledged
the same before me in my said City and State.

GIVEN UNDER MY HAND THIS _____ day of _____,
19____.

CHAPTER 3 END NOTES

1. Northern Virginia Planning District Commission, Northern Virginia BMP Handbook, Annandale, Virginia, 1992.
2. Metropolitan Washington Council of Governments, 1987, Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs, Department of Environmental Programs, MWCOG, Washington D.C., 276 pp.