

ORDINANCE NO. _____

AN ORDINANCE OF SOUTH HEIDELBERG TOWNSHIP, BERKS COUNTY, PENNSYLVANIA AMENDING THE SOUTH HEIDELBERG TOWNSHIP STORMWATER MANAGEMENT ORDINANCE NO. 244, AS PART OF THE TULPEHOCKEN CREEK AND COCALICO CREEK WATERSHED PLANS IN COOPERATION WITH THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE COUNTY OF BERKS TO: (1) AMEND AND RESTATE IN ITS ENTIRETY SECTION 402 ENTITLED “EXEMPTIONS” OF PART 4 ENTITLED “SWM SITE PLAN REQUIREMENTS”; TO AMEND OR ESTABLISH REGULATIONS INCLUDING REQUIREMENTS FOR EXEMPT ACTIVITIES, GENERAL EXEMPTIONS, EXEMPTIONS FOR SPECIFIC ACTIVITIES, AND MODIFIED REQUIREMENTS FOR SMALL PROJECTS; (2) AMEND AND RESTATE IN ITS ENTIRETY SECTION 1003 ENTITLED “APPENDIX C – SWM SITE PLAN APPLICATION” OF PART 10 ENTITLED “APPENDICES” TO AMEND AND RESTATE IN ITS ENTIRETY THE SWM SITE PLAN APPLICATION; (3) AMEND PART 10 ENTITLED “APPENDICES” TO ADD A NEW SECTION 1008 ENTITLED “APPENDIX H – SIMPLIFIED APPROACH FOR SMALL PROJECTS”, TO ADOPT REQUIREMENTS REGARDING PROJECTS THAT WILL RESULT IN BETWEEN 1,200 AND 3,000 SQUARE FEET OF NEW IMPERVIOUS SURFACE; AND (4) AMEND PART 10 ENTITLED “APPENDICES” TO ADD A NEW SECTION 1009 ENTITLED “APPENDIX I – OPERATION AND MAINTENANCE AGREEMENT FOR SMALL PROJECTS”, TO ADOPT A FORM OF OPERATION AND MAINTENANCE AGREEMENT FOR SMALL PROJECTS.

BE IT ENACTED AND ORDAINED, by the Board of Supervisors of South Heidelberg Township, Berks County, Pennsylvania (the “Township”), and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

SECTION 1. Section 402 entitled “Exemptions”, of Part 4 entitled “SWM Site Plan Requirements”, of the South Heidelberg Township Stormwater Management Ordinance No. 244 (the “Ordinance”, as the same is hereby amended and may be amended from time to time) is amended and restated in its entirety, as follows:

Section 402. Exemptions and Modified Requirements

(a) Requirements for Exempt Activities

- (1) An exemption from any requirement of this Ordinance shall not relieve the Applicant from implementing all other applicable requirements of this Ordinance or from implementing such measures as are necessary to protect public health, safety, and welfare, property and water quality.
- (2) An exemption shall not relieve the Applicant from complying with the requirements for State-designated special protection waters designated by PADEP as high quality (HQ) or exceptional value (EV) waters, or any other current or future State or municipal water quality protection requirements.
- (3) The Township may determine that an otherwise exempt regulated activity is not exempt if it is determined that the activity may exacerbate a known or suspected stormwater drainage problem.

- (4) The Township may revoke an exemption for a regulated activity if at any time during the execution of the activity the Township believes it may pose a threat to public health, safety, property and/or the environment.
- (5) An exemption pursuant to this Section shall not relieve the Applicant from complying with all other applicable municipal ordinances and/or regulations.

(b) General Exemptions

The following regulated activities are exempt from certain provisions of this Ordinance, as detailed in Table 402.1:

- (1) Activities that involve less than one thousand two hundred (1,200) square feet of new impervious surface AND less than five thousand (5,000) square feet of earth disturbance.
- (2) Activities that are listed in Subsection 402(c).

The exception criteria shall apply to the total cumulative activities on a property even if they take place in phases. The date from which cumulative activities and impervious area shall be considered is August 11, 2005 for properties with the Cocalico Creek watershed and February 26, 2004 for all other areas within the Township. These dates represent the adoption dates of the first South Heidelberg Township ordinance that regulated said activities.

**TABLE 402.1
Exemptions for Regulated Activities**

| Ordinance Section | Activities Listed in Subsection 402(c) | < 1,200 sq. ft. of New Impervious Surface AND < 5,000 sq. ft. of Earth Disturbance | 1,200 sq. ft. to 3,000 sq. ft. of New Impervious Surfaces AND < 5,000 sq. ft. of Earth Disturbance |
|---------------------------|---|---|--|
| Parts 1 and 2 | Not Exempt | Not Exempt | Not Exempt |
| Sections 301, 302 and 303 | Not Exempt* | Not Exempt* | Not Exempt* |
| Sections 304 through 309 | Exempt | Exempt | Exempt |
| Section 310 | Exempt | Exempt | Exempt* |
| Section 401 | Exempt | Exempt | Not Exempt |
| Sections 403 and 404 | Exempt | Exempt | Exempt* |

| | | | |
|--------------------------|------------|------------|------------|
| Sections 405 through 407 | Exempt | Exempt | Not Exempt |
| Part 5 | Exempt | Exempt | Not Exempt |
| Part 6 | Exempt | Not Exempt | Not Exempt |
| Part 7 | Exempt | Exempt | Not Exempt |
| Parts 8 and 9 | Not Exempt | Not Exempt | Not Exempt |

*** Table 402.1 Notes:**

1. Sections 301(d), 301(g), 301(l), 301(q), 303(b), 303(d), 303(e), 303(f), and 303(r) do not apply.
2. If any facilities are proposed that are covered by design criteria contained in Section 310 said facilities shall conform to the requirements of Section 310.
3. Applicants proposing new impervious surface of between 1,200 and 3,000 square feet and utilizing the Simplified Approach for Small Projects (Appendix H) shall submit a simplified SWM Site Plan that meets the requirements of Section 402(d).

(c) Exemptions for Specific Activities

The following specific regulated activities are exempt from certain provisions of this Ordinance, as detailed in Table 402.1:

- (1) Emergency maintenance work performed for the protection of public health, safety and welfare. This exemption is limited to repair of an existing facility; upgrades, additions or other improvements are not exempt. A written description of the scope and extent of any emergency work performed shall be submitted to the Township within two (2) calendar days of the commencement of the activity. A detailed plan shall be submitted no later than thirty (30) days following commencement of the activity. If the Township finds that the work is not an emergency, the Township may order that the work cease immediately and the requirements of this Ordinance shall be addressed as applicable.
- (2) Maintenance to an existing stormwater management system, facility, BMP or conveyance made in accordance with plans and specifications approved by the Township.
- (3) Use of land for gardening for home consumption.
- (4) Agricultural plowing and tilling.
- (5) Forest management and timber harvest operations.
- (6) Replacement of existing paved surfaces.

- (7) Public road shoulder improvements conducted within the existing roadway cross-section.
 - (8) Replacement in the exact footprint of an existing one- or two-family dwelling unit.
- (d) Modified Requirements for Small Projects
- (1) Regulated activities that involve 1,200 to 3,000 square feet of new impervious surfaces and less than 5,000 square feet of earth disturbance shall apply the requirements presented in the “Simplified Approach for Small Projects” found in Appendix H. This shall involve filing a SWM Site Plan Application and submitting a modified SWM Site Plan. The modified SWM Site Plan shall comply with the following Sub-Sections of this Ordinance:
 - 403(a)(1) through 403(a)(3)
 - 403(b)(7)
 - 403(b)(8)
 - 403(b)(11) through 403(b)(13)
 - 403(b)(21) and 403(b)(22)
 - 403(c)(1)(ii)
 - 403(d)(1) through 403(d)(3)
 - 403(f)(4)
 - (2) The applicant shall supply calculations for each proposed BMP, as described in Appendix H.
 - (3) The applicant shall submit four (4) copies of the SWM Site Plan and calculations to the Township with the application. The Township will forward one (1) copy to the Engineer for review, forward one (1) copy to the Codes Enforcement Officer, for information, and retain two (2) copies.
 - (4) The applicant shall be required to enter into a Maintenance and Inspection Agreement with the Township, generally conforming to Appendix I.

SECTION 2. Section 1003 entitled “Appendix C – SWM Site Plan Application”, of Part 10 entitled “Appendices”, of the South Heidelberg Township Stormwater Management Ordinance No. 244, is hereby amended and restated in its entirety, as follows:

Section 1003. Appendix C – SWM Site Plan Application
 (To be submitted with all SWM Site Plans that are not part of a subdivision or land development plan)

**South Heidelberg Township
 Stormwater Plan Application**

Application is hereby made for review of the Stormwater facilities submitted herewith and more particularly described below:

1. Name of Applicant(s): _____
Address _____
_____ Phone No. _____

2. Name of Owner(s): _____
(If other than Applicant)
Address: _____
_____ Phone No. _____

3. Applicant's interest, if other than owner: _____

4. Location of Parcel: _____

5. Engineer or Surveyor responsible for plan: _____
Address: _____
_____ Phone No. _____

6. Total Parcel Acreage: _____ Proposed New Impervious Area (Sq. Ft.): _____

7. Lot Use Proposed:
_____ Single Family _____ Commercial
_____ Two Family _____ Industrial
_____ Townhouse _____ Other (specify)
_____ Multi-Family

8. Size of proposed structure (footprint): _____

Signature of Applicant

Filing Fee Amount _____
Received by _____

| For Township Use Only | | |
|---|--|--|
| <input type="checkbox"/> Exempt | <input type="checkbox"/> Small Project | <input type="checkbox"/> Other |
| <1,200 ft ² Impervious Area and <5,000 ft ² Disturbance | 1,200 to 3,000 ft ² Impervious Area and <5,000 ft ² Disturbance | >3,000 ft ² Impervious Area or >5,000 ft ² Disturbance* |
| Fee - None | Required Fee \$ | Required Fee \$ |
| | Required escrow \$ | Required escrow \$ |
| Note: If greater than 5,000 ft ² of disturbance is proposed, Berks County Conservation District approval of an Erosion and Sedimentation Control Plan is required. | | |

SECTION 3. Part 10 entitled “Appendices”, of the South Heidelberg Township Stormwater Management Ordinance No. 244 is amended and supplemented to add a new Section 1008 entitled “Appendix H – Simplified Approach for Small Projects”, as follows:

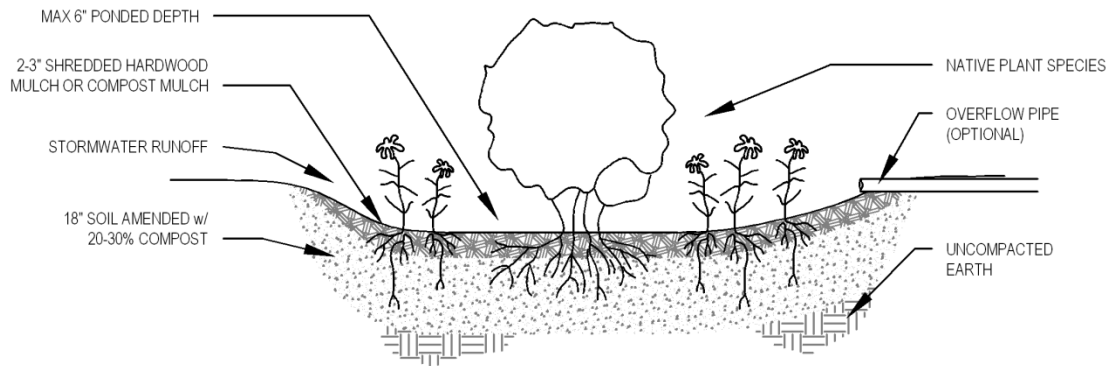
Section 1008. Appendix H - Simplified Approach for Small Projects

Regulated activities that will result in between 1,200 and 3,000 square feet of new impervious surface shall provide an infiltration BMP(s) that will store a volume of water equal to 1 inch of runoff from the entire new impervious surface area. One or more of the following BMPs may be used to accomplish this.

- (a) Rain Gardens - also referred to as bioretention, rain gardens are a method of treating relatively small volumes of stormwater by allowing water to pond in a surface depression. Native species are planted within the depression to improve water quality as well as aesthetics. Water quality improvements are achieved through filtration and settling of particles through a layer of mulch and through infiltration into the surrounding soil. Plant life also contributes to pollutant uptake and improvement of water quality. Construction of a rain garden shall be performed after all other areas of the site are stabilized to avoid clogging. During construction, compaction of the subgrade soil shall be avoided, and construction shall be performed with only light machinery. Additional resources on rain gardens can be found online:

www.raingardens.org/docs/rain_garden_factsheet.pdf
<http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/documents/rgmanual.pdf>
http://www.dof.virginia.gov/mgt/resources/pub-Rain-Garden-Tech-Guide_2008-05.pdf

**FIGURE H.1
TYPICAL RAIN GARDEN CONFIGURATION**



Sizing:

STEP 1 – Determine Area of Total New Impervious Surfaces (A)

STEP 2 – Determine Required Infiltration Volume (Rev)

$$\text{Rev (cubic feet)} = 1.0 \text{ (inch)} * A \text{ (square feet)} / 12 \text{ (inches/foot)}$$

STEP 3 – Sizing of Select Infiltration Method

$$(\text{Rev}) = (\text{Depth}) \times (\text{Width}) \times (\text{Length})$$

Example:

STEP 1 – Determine Area of Total New Impervious Surfaces

Suppose total impervious surfaces = 2,000 square feet

STEP 2 – Determine Required Infiltration Volume (Rev)

$$\text{Rev (cubic feet)} = 1.0 \text{ (inch)} * A \text{ (square feet)} / 12 \text{ (inches/foot)}$$

$$\text{Rev} = (1.0 \text{ inch}) * (2,000 \text{ square feet}) / (12 \text{ inches/foot})$$

$$\text{Rev} = 166.7 \text{ cubic feet}$$

STEP 3 – Sizing of Select Infiltration Method

Suppose a ponded depth of 0.5 feet (maximum ponded depth) is desired

$$(\text{Rev}) = (\text{Depth}) \times (\text{Width}) \times (\text{Length})$$

$$(166.7 \text{ cubic feet}) = (0.5 \text{ ft}) \times (\text{Width}) \times (\text{Length})$$

$$(\text{Width}) \times (\text{Length}) = \text{Surface Area} = 333.4 \text{ square feet (possibly 11 feet x 30 feet)}$$

Construction Issues:

The following must be addressed during construction to ensure proper function:

- Do not allow sediment to wash back into the bed during construction.
- Avoid compaction of the bottom. This can limit the infiltration capacity.
- An overflow pipe can be used to direct excess water to a particular location. If an overflow pipe is used, it shall be placed at the top of the depression, such that water is still allowed to pond.
- Plants used in the rain garden must be tolerant of both wet and dry conditions, as well as be suitable for your light and soil conditions. Plant selection guidance can be found in the internet links listed above.

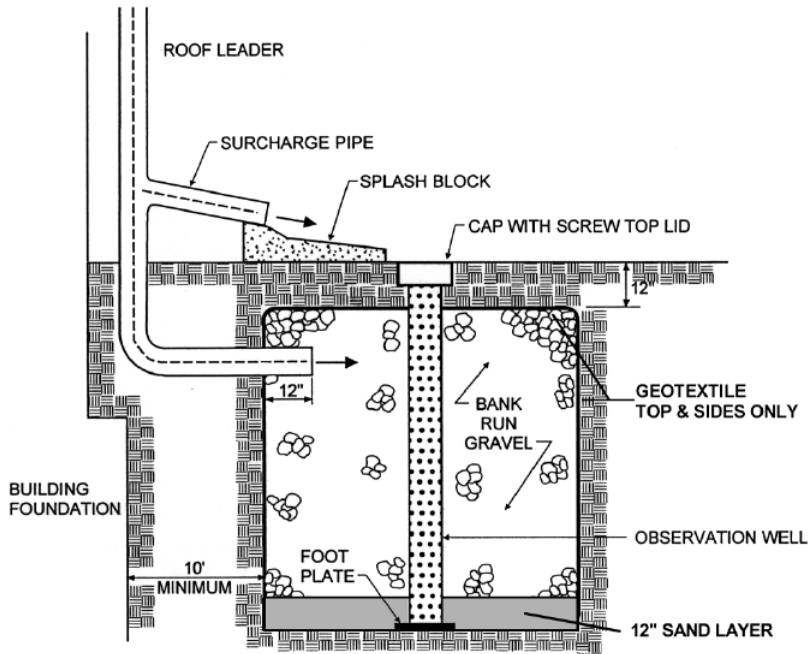
Maintenance Issues:

Rain Gardens require the following regular maintenance:

- While vegetation is being established, watering, pruning, and weeding may be required.
- Dead plant material must be removed every year. Perennial plantings may be cut down at the end of the growing season.
- Mulch shall be re-spread when erosion is evident and be replenished as needed. Once every 2 to 3 years the entire area may require mulch replacement.
- Rain Gardens shall be inspected at least two times per year for sediment buildup, erosion, vegetative conditions, or any other conditions that negatively impact the functionality of the system.
- During periods of extended drought, Rain Gardens may require watering.
- Trees and shrubs shall be inspected twice per year to evaluate health.

- (b) Dry wells - Dry wells are effective methods of infiltrating runoff from roof leaders. These facilities shall be located a minimum of ten (10) feet from the building foundation to avoid seepage problems. A dry well can be either a structural prefabricated chamber or an excavated pit filled with aggregate. Construction of a dry well shall be performed after all other areas of the site are stabilized to avoid clogging. During construction, compaction of the subgrade soil shall be avoided, and construction shall be performed with only light machinery. Depth of dry wells in excess of three and one half (3 ½) feet should be avoided. Gravel fill shall be an average one and one-half to two and one-half (1.5 to 2.5) inches in diameter and shall be homogeneously graded.

**FIGURE H.2
TYPICAL DRY WELL CONFIGURATION**



Source: Maryland Stormwater Design Manual

Note: Acceptable geotextiles include Mirafi 140N, Amoco 4547, Geotex 451 or approved equal.
Bank run gravel should be 1.5" to 2.5" in diameter (AASHTO #2 stone is preferable).

Sizing:

STEP 1 – Determine Area of Total New Impervious Surfaces (A)

STEP 2 – Determine Required Infiltration Volume (Rev)

$$\text{Rev (cubic feet)} = 1.0 \text{ (inch)} * A \text{ (square feet)} / 12 \text{ (inches/foot)}$$

STEP 3 – Sizing of Select Infiltration Method

$$(\text{Rev}) / (0.4) = (\text{Depth}) * (\text{Width}) * (\text{Length})$$

Note: Rev is divided by 0.4 to account for the void space in the stone bed

Example:

STEP 1 – Determine Area of Total New Impervious Surfaces

Suppose total impervious surfaces = 2,000 square feet

STEP 2 – Determine Required Infiltration Volume (Rev)

$$\text{Rev (cubic feet)} = 1.0 \text{ (inch)} * A \text{ (square feet)} / 12 \text{ (inches/foot)}$$

$$\text{Rev} = (1.0 \text{ inch}) * (2,000 \text{ square feet}) / (12 \text{ inches/foot})$$

$$\text{Rev} = 166.7 \text{ cubic feet}$$

STEP 3 – Sizing of Select Infiltration Method

Suppose a bed depth of 3 feet is desired

$$(\text{Rev}) / (0.4) = (\text{Depth}) \times (\text{Width}) \times (\text{Length})$$

$$(166.7 \text{ cubic feet}) / (0.4) = (3 \text{ feet}) \times (\text{Width}) \times (\text{Length})$$

$$(\text{Width}) \times (\text{Length}) = \text{Surface Area} = 138.9 \text{ square feet (possibly 9 feet x 16 feet)}$$

Construction Issues:

The following must be addressed during construction to ensure proper function:

- Do not allow sediment to wash back into the bed during construction.
- Avoid compaction of the bottom. This can limit the infiltration capacity.
- Observation well shall be constructed of perforated pipe such that the level of water in the well is the same as the level of water in the bed.
- Geotextile shall overlap a minimum of 16 inches at seams.

Maintenance Issues:

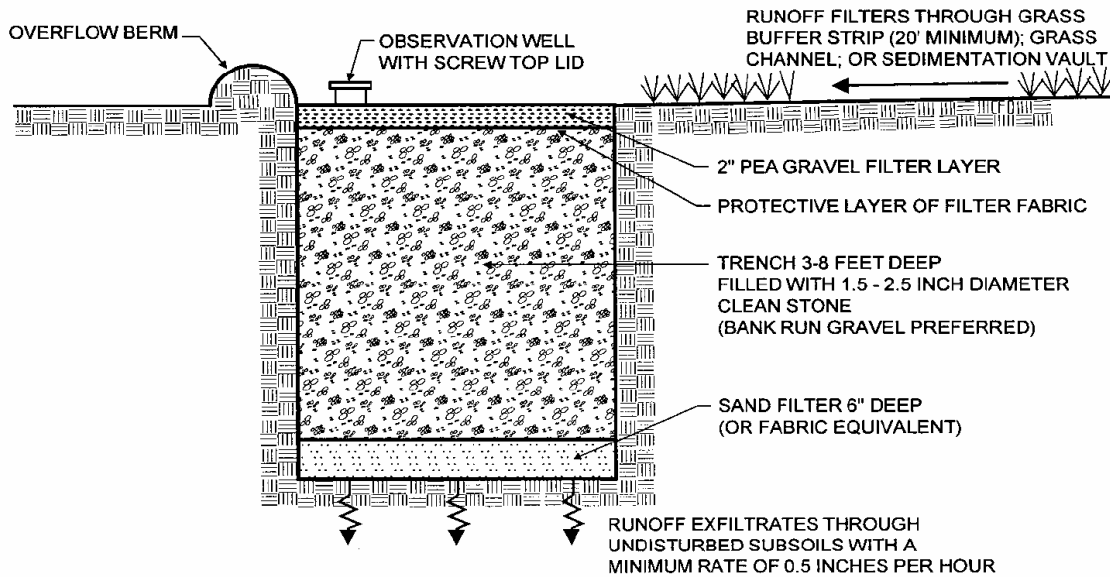
Dry Wells require the following regular maintenance:

- Inspect Dry Wells at least four times a year, as well as after every storm exceeding 1 inch of rain.
- Dispose of sediment, debris/trash, and any other waste material removed from a Dry Well at suitable disposal/recycling sites and in compliance with local, state, and federal waste regulations.
- Evaluate the drain-down time of the Dry Well to ensure the maximum time of 72 hours is not being exceeded. If drain-down times are exceeding the maximum, drain the Dry Well via pumping and clean out perforated piping, if included.
- Regularly clean out gutters and ensure proper connections to facilitate the effectiveness of the dry well.
- Replace filter screen that intercepts roof runoff as necessary.
- If an intermediate sump box exists, clean it out at least once per year.

- (c) Infiltration Trenches - An infiltration trench is a long, narrow, rock-filled trench with no outlet. Runoff is stored in the void space between the stones and infiltrates through the bottom and into the soil matrix. Infiltration trenches perform well for removal of fine sediment and associated pollutants. Pretreatment using buffer strips, swales, or detention basins is important for limiting amounts of coarse sediment entering the trench. Construction of an infiltration trench shall be performed after all other areas of

the site are stabilized. During construction, compaction of the subgrade soil shall be avoided, and construction shall be performed with only light machinery.

**FIGURE H.3
TYPICAL INFILTRATION TRENCH CONFIGURATION**



Source: Maryland Stormwater Design Manual

Note: Acceptable filter fabrics include Mirafi 140N, Amoco 4547, Geotex 451 or approved equal. Clean stone should be AASHTO #2 stone.

Sizing:

STEP 1 – Determine Area of Total New Impervious Surfaces (A)

STEP 2 – Determine Required Infiltration Volume (Rev)

$$\text{Rev (cubic feet)} = 1.0 \text{ (inch)} * A \text{ (square feet)} / 12 \text{ (inches/foot)}$$

STEP 3 – Sizing of Select Infiltration Method

$$(\text{Rev}) / (0.4) = (\text{Depth}) \times (\text{Width}) \times (\text{Length})$$

Note: Rev is divided by 0.4 to account for the void space in the stone bed

Example:

STEP 1 – Determine Area of Total New Impervious Surfaces

Suppose total impervious surfaces = 2,000 square feet

STEP 2 – Determine Required Infiltration Volume (Rev)

$$\text{Rev (cubic feet)} = 1.0 \text{ (inch)} * A \text{ (square feet)} / 12 \text{ (inches/foot)}$$

$$\text{Rev} = (1.0 \text{ inch}) * (2,000 \text{ square feet}) / (12 \text{ inches/foot})$$

$$\text{Rev} = 166.7 \text{ cubic feet}$$

STEP 3 – Sizing of Select Infiltration Method

Suppose a bed depth of 3 feet is desired

$$(\text{Rev}) / (0.4) = (\text{Depth}) \times (\text{Width}) \times (\text{Length})$$

$$(166.7 \text{ cubic feet}) / (0.4) = (3 \text{ feet}) \times (\text{Width}) \times (\text{Length})$$

$$(\text{Width}) \times (\text{Length}) = \text{Surface Area} = 138.9 \text{ square feet (possibly 5 feet x 28 feet)}$$

Construction Issues:

The following must be addressed during construction to ensure proper function:

- Do not allow sediment to wash back into the bed during construction.
- Avoid compaction of the bottom. This can limit the infiltration capacity.
- Observation well shall be constructed of perforated pipe such that the level of water in the well is the same as the level of water in the bed.
- Filter fabric shall overlap a minimum of 16 inches at seams.

Maintenance Issues:

Infiltration Trenches require the following regular maintenance:

- Filter layer shall be inspected and cleaned at least 2 times per year.

SECTION 4. Part 10 entitled “Appendices”, of the South Heidelberg Township Stormwater Management Ordinance No. 244 is hereby amended and supplemented to add a new Section 1009 entitled “Appendix I – Operation and Maintenance Agreement for Small Projects”, as follows:

Section 1009. Appendix I – Operation and Maintenance Agreement for Small Projects

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, (hereinafter the “Landowner”), and _____ South Heidelberg Township, Berks County, Pennsylvania, (hereinafter “Municipality”).

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Berks County, Pennsylvania, at Deed Book _____ and Page _____, (hereinafter “Property”); and

WHEREAS, the Landowner recognizes that the stormwater management best management practices or BMPs (hereinafter referred to as “BMP” or “BMP(s)”) located on the Property at _____ (address of Property where BMP is located) must be inspected and maintained; and

WHEREAS, the Municipality and the Landowner, for itself and for its administrators, executors, successors, heirs, and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site BMP(s) be constructed and maintained on the Property; and

WHEREAS, for the purposes of this Agreement, the following definitions shall apply:

BMP – “Best Management Practice;” activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and ground water recharge and to otherwise meet the purposes of the Municipality’s Stormwater Management Ordinance, including, but not limited to infiltration trenches, dry wells, bioretention, rain gardens, etc.

Conveyance – A man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, and like facilities or features; and

WHEREAS, the Municipality requires that the BMP(s) and conveyances shown on Plan be constructed by the Landowner; the BMP(s) shall further be maintained by the Landowner, its administrators, executors, successors, heirs, and assigns in accordance with the associated operation and maintenance requirements included herein. The Plan and Worksheet are attached hereto and incorporated herein together as Exhibit “A” hereto; and

WHEREAS, the Municipality requires that stormwater management BMP(s) be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors, heirs, and assigns, in accordance with the following maintenance requirements:

1. Infiltration Trenches

- a. At least twice a year and after significant rainfall events the Landowner shall inspect the infiltration trench and remove any accumulated debris, sediment and invasive vegetation.
- b. Vegetation along the surface of an infiltration trench shall be maintained in good condition, and any bare spots re-vegetated as soon as possible.
- c. Vehicles shall not be parked or driven on an infiltration trench, and care shall be taken to avoid excessive compaction by mowers.
- d. Any debris, such as leaves blocking flow from reaching an infiltration trench shall be routinely removed.

2. Rain Garden

- a. Any debris, such as leaves blocking flow from reaching a rain garden shall be routinely removed.
- b. Pruning and weeding shall be performed as needed, including removal of invasive species, especially while vegetation is being established.
- c. Mulch cover shall be maintained, re-spread and replaced as needed to prevent erosion, reduce weed growth and assist with plant survival, without restricting the infiltration of stormwater.
- d. At least twice a year the Landowner shall inspect the rain garden for sediment buildup, ground cover and vegetative conditions and make any needed repairs.
- e. Watering shall be performed as needed for plant life, especially during periods of extended dry weather and drought.
- f. Trees and shrubs shall be inspected at least twice per year by the Landowner to evaluate their health. If they are in poor health they shall be replaced.

3. Dry Wells

- a. Dry wells shall be inspected by the landowner at least four (4) times a year and after significant rainfalls. Debris, trash, sediment, and any other waste material shall be removed and disposed of in compliance with applicable waste regulations.
- b. Gutters shall be regularly cleaned out.
- c. Dry wells that are damaged shall be fixed or replaced within two (2) weeks of being damaged.
- d. If an intermediate sump box exists in conjunction with a dry well, it shall be cleaned out at least once per year.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement and obligations of the Landowner as if fully set forth in the body of this Agreement.
2. The Landowner shall construct the BMP(s) in accordance with the specifications identified in the Plan and Worksheet.
3. The Landowner shall inspect, operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality and in accordance with the specific inspection and maintenance requirements outlined in this Agreement.

4. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from the public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary for compliance with this Agreement and the Municipality's Stormwater Ordinance. Whenever possible, the Municipality shall notify the Landowner prior to entering the Property.

5. The Landowner acknowledges that, per the Municipality's Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:

- a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is constructed as part of the Plan;
- b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;
- c. Allow the BMP or conveyance to exist in a condition which does not conform to the Plan or this Agreement; and
- d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals and automotive fluids to directly or indirectly enter any BMP or conveyance.

6. In the event the Landowner fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the Municipality the Landowner shall be in violation of this Agreement and the Landowner agrees that the Municipality or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). It is expressly understood and agreed that the Municipality 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 Municipality.

7. In the event the Municipality, 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, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within fifteen (15) calendar days of delivery of an invoice from the Municipality. Failure of the Landowner to make prompt payment to the Municipality may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

8. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.

9. The Landowner, its executors, administrators, assigns, heirs, and other successors in interests, hereby release and shall release the Municipality, its employees, agents and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Municipality and/or its said employees, agents or representatives, arising

out of the construction, presence, existence, or maintenance of the BMP(s) either by the Landowner or Municipality. In the event that a claim is asserted or threatened against the Municipality, its employees, agents or designated representatives, the Municipality shall notify the Landowner and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or threatened claim, suit, action or proceeding against the Municipality or, at the request of the Municipality, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of the Municipality. If any judgment or claims against the Municipality, its employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Municipality, including attorney's fees, regarding said damages, judgment or claims.

10. The Municipality may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Municipality shall include its reasonable attorney's fees and costs incurred in seeking relief under this Agreement.

11. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Municipality of its rights of enforcement hereunder.

12. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.

13. This Agreement shall inure to the benefit of and be binding upon, the Municipality and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.

This Agreement shall be recorded at the Office of the Recorder of Deeds of the County of Berks, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, in perpetuity.

WITNESS the following signatures and seals:

For the Municipality:

ATTEST: _____

For the Landowner:

County of Berks, Pennsylvania

I, _____, a Notary Public in and for the aforesaid Commonwealth, whose commission expires on the _____ day of _____, 20__, do hereby certify that _____ whose name(s) is/are signed to the foregoing Agreement bearing date of the _____ day of _____, 20__, has acknowledged the same before me in my said Commonwealth.

GIVEN UNDER MY HAND THIS _____ day of _____, 20__.

NOTARY PUBLIC

(SEAL)

SECTION 5. All ordinances or parts of ordinances, together with all amendments and supplements thereto, are hereby repealed to the extent that the same conflict with the provisions of this Ordinance. However, this Ordinance shall not affect any suit or prosecution pending or to be instituted to enforce any provision of such repealed Ordinance or to punish any offense against any such repealed ordinance committed prior to the effective date of this Ordinance.

SECTION 6. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance is declared for any reason to be illegal, unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, work or remaining portion of the Ordinance. The Board of Supervisors of the Township of South Heidelberg hereby declares that it would have adopted this Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more of the articles, sections, subsections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid.

SECTION 7. This Ordinance shall become effective five (5) days after the date of its enactment.

DULY ENACTED AND ORDAINED as an Ordinance of South Heidelberg Township this ____ day of _____, 2018.

SOUTH HEIDELBERG TOWNSHIP
BOARD OF SUPERVISORS

Thomas R. Byrne, Chairman

David A. Schaeffer, Vice Chairman

Doug Brown

Attest: _____
Doug Brown, Secretary

CERTIFICATE OF ENACTMENT

I, Doug Brown, Secretary of South Heidelberg Township, Berks County, Pennsylvania, do hereby certify that the foregoing Ordinance No. _____ was advertised in the *Reading Eagle*, a daily newspaper of general circulation in South Heidelberg Township, on _____, 2018 and was duly enacted and approved as set forth at a regular meeting of the Board of Supervisors held on _____, 2018.

[SEAL]

Doug Brown, Secretary