



**OPERATIONS & MAINTENANCE AGREEMENT  
FOR STORMWATER MANAGEMENT PRACTICES**

**BACKGROUND**

THIS OPERATIONS & MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT PRACTICES (“**Agreement**”) made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between [Property Owner](#) (together with its successors and assigns in title to the Property “**Property Owner**”), and the City of Philadelphia (together with its successors and assigns), acting through the Water Department (“**City**” or “**PWD**”).

WHEREAS, the Property Owner is the owner of certain real property at [Address of Parcel\(s\)](#), Philadelphia, Pennsylvania, OPA Account # [#####](#), as described more particularly in **Exhibit A** attached hereto (“**Property**”);

WHEREAS, the Property Owner is proceeding to construct a building on the Property (“**Building**”);

WHEREAS, Section 14-602(7) of the Philadelphia Code entitled “Exception to Use Tables for Green Roofs” provides special density rules for buildings with a green roof, under certain terms and conditions;

WHEREAS, in order to take advantage of the special density rules for the Building, the Property Owner is proceeding to construct a green roof on the Building (“**Green Roof**”);

WHEREAS, Section 14-602(7)(c) of the Philadelphia Code requires the Green Roof to meet PWD design standards;

WHEREAS, Section 14-602(7)(d) of the Philadelphia Code specifies that the applicant intending to utilize the special density rules “must execute and record a deed restriction in favor of the City, approved as to form by the Law Department, which requires the green roof to be constructed and maintained, at a minimum, in accordance with the manufacturer’s guidelines, where applicable, and with Water Department standards, for the life of the building; and which allows the City to inspect the green roof for, or demand proof of, continued compliance with those requirements”;

WHEREAS, **Exhibit B**, attached hereto, details the design professional and/or manufacturer's maintenance guidelines for the Green Roof;

WHEREAS, the PWD Stormwater Management Guidance Manual ("**Manual**") details PWD standards for the design, construction and maintenance of a Green Roof;

WHEREAS, the City requires that the Green Roof be constructed and adequately maintained on a certain portion of the Building by the Property Owner in order to protect public health, safety and welfare and maintain and enhance water quality.

NOW, THEREFORE, in consideration of the foregoing Background, which is incorporated herein as if set forth below in full, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

### **AGREEMENT**

**1. Construction.**

(a) Property Owner shall construct the Green Roof in strict accordance with the Manual and the Post Construction Stormwater Management Plan ("PCSMP") that was most recently approved by the City.

(b) Property Owner shall submit to the City Record Drawings of the Green Roof and its components once the construction of the Green Roof has been completed.

**2. Operation & Maintenance Responsibility.**

(a) This Agreement shall serve as the signed statement by the Property Owner accepting responsibility for operation and maintenance of the Property's Green Roof as set forth in this Agreement until the responsibility is legally transferred to another entity, as provided in 2(b) below.

(b) This Agreement shall serve as notice to all successors and assigns of the title to Property of the obligations herein set forth. At such time as the Property is transferred, the new owner of the Property shall have the rights and responsibilities of the Property Owner under this Agreement.

(c) Property Owner, at Property Owner's sole expense, shall perform, or shall cause to be performed, the work reasonably necessary to keep the Green Roof in good working order and condition so that the Green Roof is performing its intended design functions within expected tolerances. This shall cover the Green Roof and all Green Roof-associated structures and areas including, but not limited to, all pipes, roof drains, and maintenance access, as well as all structures, improvements, and vegetation provided in accordance with the Manual.

### **3. Destruction and Removal; Changes and Alterations**

(a) Property Owner shall not destroy or remove or allow to be destroyed or removed the Green Roof from the Property or modify the Green Roof in a manner that materially lessens its effectiveness. It is understood and agreed that none of the following shall constitute a breach of this covenant: (i) subject to PWD approval, the destruction, removal or alteration of any such property or improvement as a result of a Force Majeure Event, as defined below, or (ii) subject to PWD approval, the removal and disposal of any Green Roof, provided that simultaneously with or prior to such removal, any such Green Roof shall be replaced with another Green Roof comparable (or better than) in all material respects to the removed Green Roof and with equal or better effectiveness.

(b) Property Owner covenants and agrees that for the term of this Agreement, no change in grades or other alterations within the lines of the Green Roof shall be made and that no buildings and/or other structures either overhead or upon the roof surface, shall be constructed within the lines of or abutting the Green Roof unless the plans for such changes of grades, alterations or structures shall first be submitted to and approved in writing by the City. In addition, no alterations to, and no buildings and/or other structures that hinder the functioning of any Green Roof-associated structures and areas including, but not limited to, all pipes, roof drains, and maintenance access, as well as all structures, improvements, and vegetation provided in accordance with the Manual, shall be constructed unless the plans for such alterations, buildings, or structures shall first be submitted to and approved in writing by the City.

(c) Property Owner shall not be liable for any delay in the performance of its obligations pursuant to this Agreement, to the extent that such delay is caused, directly or indirectly, by an occurrence of fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, power outages, or any other causes beyond the reasonable control of Property Owner (a “Force Majeure Event”). Upon the occurrence of a Force Majeure Event, Property Owner shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as such Force Majeure Event continues and up to 72 hours thereafter, provided, however, that Property Owner uses commercially reasonable efforts to promptly recommence performance to the extent possible.

### **4. Inspection by Property Owner.**

Property Owner shall conduct inspections of the Green Roof, as needed, but not less than once per year. The purpose of the inspection is to ensure safe and proper functioning of the Green Roof. The inspection shall cover the Green Roof and all Green Roof-associated structures and areas including, but not limited to, all pipes, roof drains, and maintenance access, as well as all structures, improvements, and vegetation provided in accordance with the Manual.

**5. Recordkeeping.**

Property Owner shall retain a record of maintenance activities and inspections related to the Green Roof for a period of at least four (4) years. Such records shall verify that inspection and maintenance have been conducted pursuant to this Agreement. The City may request at any time that the Property Owner provide copies of any or all maintenance and inspection documentation prepared during the prior four years. Property Owner shall comply with any such requests within ten (10) business days after receipt of such request.

**6. Inspection by City.**

The Property Owner hereby grants permission to the City and the City's authorized agents and employees to enter upon the Property during normal daylight working hours or at any other reasonable time to inspect the Green Roof in order to ensure the Green Roof is being adequately maintained and is continuing to perform the designed function. Inspection includes monitoring, sampling, testing and examination to determine proper operation of the Green Roof. The City shall have the right to temporarily install and/or place on or near the Green Roof such devices as are necessary to conduct monitoring, sampling and/or testing of the discharges from the Green Roof or the Green Roof's effects.

**7. Failure of Property Owner to Maintain Green Roof.**

**(a) Nuisance.**

Property Owner agrees that failure to adequately maintain the Green Roof may constitute a public nuisance that is a threat to public health and safety and to the environment.

**(b) City may Perform Maintenance.**

In addition to any rights the City may have under law or this Agreement, if the City determines that the Property Owner has failed to adequately maintain the Green Roof in good working condition as determined by the City, the City may notify the Property Owner in writing of any deficiencies. If Property Owner fails to take action to correct those deficiencies within thirty (30) business days of receipt of such notice, the City and its authorized agents and employees may enter upon the Property and take whatever steps reasonably necessary to correct deficiencies identified and charge the reasonable costs (including administrative costs) thereof to the Property Owner. Where deficiencies cause imminent threat to public health, safety or the environment, the City may take immediate steps necessary to protect public health, safety and/or the environment and charge the costs (including administrative costs) thereof to the Property Owner. When the City charges its costs to the Property Owner pursuant to this Section, such charges shall be due within thirty (30) days of the date the bill is received.

**(c) Right to Lien.**

In the event the Property Owner fails to reimburse the City within thirty (30) days after receipt of demand under paragraph 7(b), the City may place a lien on the Property for the entire amount due to the extent permissible by law.

(d) Nothing in this Agreement shall limit the City's rights under the Municipal Claims and Tax Liens Act, 53 P.S. § 7101, *et seq.*

**8. No Waiver.**

No delay or failure on the part of the City to exercise any rights, powers, or remedies herein provided shall be construed as a waiver thereof or acquiescence of such breach or of any future breach.

**9. No Obligation by City.**

Despite any other provisions of this Agreement, this Agreement does not obligate the City to appropriate or spend money at any time or for any reason. It is expressly understood and agreed that the City is under no obligation to routinely inspect, maintain or repair the Green Roof and in no event shall this Agreement be construed to impose any such obligation on the City.

**10. Covenant Running with Land.**

The Property Owner agrees whenever the Property is held, sold, conveyed or otherwise transferred, the Property shall be subject to this Agreement which shall apply to, bind and be obligatory to all then current owner(s) of Property. This Agreement shall constitute a real covenant running with the land for the lifetime of the Building, and shall be binding on the Property Owner, its administrators, executors, heirs, assigns, and any other successors in interest, including, without limitation, any successors in title to the Property or any part thereof, whether or not they have actual notice of this Agreement and whether or not the deed of transfer specifically states that the transfer is under and subject to this Agreement. It is further understood and agreed that subject to the terms of this Agreement, the City shall have peaceful and quiet enjoyment of its rights under this Agreement free and clear of rights or consent of third parties other than those that exist as of the Effective Date of this Agreement.

**11. Reproduction and Release of the Plans.**

Property Owner authorizes the City to reproduce and release copies of the PCSMP that was most recently approved by the City to any subsequent Property owner as needed.

**12. Agreement to be Recorded.**

Property Owner shall record this Agreement in the Philadelphia Department of Records at the Property Owner's expense. The City shall be the sole beneficiary of the agreements, covenants, and restrictions set forth herein and such agreements, covenants,

and restrictions shall run with the land in favor of the City. Failure to record this Agreement shall not diminish the effect of this Agreement.

**13. Condominium Owners Association or Homeowners Association Declaration.**

(a) This Agreement and its Exhibits shall be attached and/or incorporated into any Declaration of a condominium owners' association or homeowners' association that is responsible for maintenance of the Green Roof. Failure to attach and/or incorporate this Agreement shall not diminish the effect of this Agreement.

(b) The Declaration shall require or be amended to require each unit to maintain the Green Roof and all Green Roof-associated structures and areas including, but not limited to, all pipes, roof drains, and maintenance access, as well as all structures, improvements, and vegetation provided in accordance with the Manual.

**14. Release of Agreement.**

In the event that the City determines that the Green Roof located on the Property is no longer required, then the City, at the request of Property Owner, shall execute a release of this Agreement, which the Property Owner shall record in the Philadelphia Department of Records at the Property Owner's expense. The Green Roof shall not be removed from the Property unless such a release is so executed and recorded.

**15. Amendments.**

This Agreement may only be amended, revised or modified by a written document signed by the Property Owner and the City.

**16. Remedies; Enforcement.**

Property Owner understands, acknowledges and agrees as follows:

(a) **Enforcement.** The City is an interested party to this Agreement and Property Owner consents to enforcement by the City administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein.

(b) **Injunctions.** Monetary damages would not be adequate or sufficient to compensate the City for a breach of any of the restrictions, covenants, obligations and/or agreements of this Agreement. Accordingly, in addition to any other remedies available to the City administratively, at law or equity, under this Agreement or otherwise, the City may obtain a mandatory and/or prohibitory injunction compelling the Property Owner to specifically perform and observe the restrictions, covenants, obligations and agreements contained in this Agreement or to remedy any failure on the part of the Property Owner to perform or observe any such restriction, covenant, obligation or agreement.

(c) **Exclusivity.** No right or remedy conferred upon the City in this Agreement is intended to be exclusive of any other right or remedy contained in this

Agreement or at law or equity. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Agreement now or hereafter available to the City at law, in equity, by statute or otherwise.

(d) **Right of Enforcement.** This Agreement binds and benefits the Property Owner and the City, and their respective successors and assigns. Only the City has the right to enforce the terms of this Agreement and exercise rights of release, transfer, assignment or other discretionary rights of the City. Owners of lots within the Property do not have the right to enforce the terms of this Agreement against owners of other lots within the Property. This Agreement is valid and enforceable even though or if: it is not appurtenant to an interest in real property; it can be or has been assigned; it is not of a character recognized traditionally in common law; it imposes a negative burden or affirmative obligations upon the owner of the Property; the benefit does not touch nor concern real property; there is no privity of estate or contract; or the City becomes the owner in fee of the Property.

(e) **Remedies Cumulative.** The description of City's remedies in this Section 16 does not preclude the City from exercising any other right or remedy that at any time be available to the City under federal, state, or local laws or regulations. If the City chooses to exercise one remedy, the City may nevertheless choose to exercise one or more of the other rights or remedies available to the City at the same time or at any other time.

#### **17. Representations and Warranties by Property Owner.**

Property Owner has the power and is duly authorized to execute this Agreement.

#### **18. Entire Agreement.**

This Agreement sets forth all agreements and understandings between the City and the Property Owner relating to the Green Roof and there are no agreements or understandings, either oral or written, between them other than as are set forth in this Agreement. Any agreement hereafter made shall be ineffective to change, modify or amend this Agreement in whole or part unless such agreement is in writing and has been executed by both the City and Property Owner. No oral representations, whenever made, by any City or Department official, employee or agent, or by any employee, agent or contractor of Property Owner shall be effective to modify the terms of this Agreement.

#### **19. Notices.**

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and sent to the party to be notified, at the following addresses:

Project Tracking Number: [Project Number #](#)

Property Owner:        [Company/Organization](#)  
                                 [Attn: Signatory Name, Business Title](#)  
                                 [Street Address \(From Worksheet 4\)](#)  
                                 [City, State, Zip Code](#)

City:                        City of Philadelphia Water Department  
                                 PWD Stormwater Plan Review  
                                 1101 Market Street, 4<sup>th</sup> Floor  
                                 Philadelphia, PA 19107

or to such other address as either party may give by notice to the other party. All such communications shall be sent by United States first-class mail, return receipt requested, or a nationally-recognized delivery service guarantying next business day delivery, in each case with all delivery and postage charges prepaid, and shall be deemed to have been received three (3) business days after deposit in the United States mail, as aforesaid, or one (1) business day after deposit in a nationally-recognized delivery service guarantying next business day delivery, as aforesaid.

**20. Miscellaneous.**

(a) **Headings.** The headings in this Agreement are for convenience only and are not a part of this Agreement. The headings do not in any way define, limit, describe or amplify the provisions of this Agreement or the scope or intent thereof.

(b) **Governing Law.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania without regard to the conflicts of law doctrines thereof. The parties to this Agreement agree to submit to the jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

(c) **No Joint Venture.** Nothing in this Agreement shall be construed as creating a joint venture or partnership between the City and the Property Owner.

(d) **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer a third-party beneficiary right upon any person or entity other than the City.

(e) **Waiver of Jury Trial.** IT IS MUTUALLY AGREED BY AND BETWEEN THE CITY AND THE PROPERTY OWNER THAT THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION PROCEEDING OR COUNTER-CLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

(f) **Severability and Partial Invalidity.** The provisions of this Agreement shall be severable. In the event that one or more provisions of this Agreement or the

application thereof for any reason or in any circumstance shall to any extent be held to be invalid, illegal or unenforceable in any respect, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain in force to the fullest extent permitted by law.

(g) **Background incorporated.** The Background recited above is hereby incorporated into and made a part of this Agreement.

(h) **Exhibits incorporated.** All exhibits attached to this Agreement are hereby incorporated into and made a material part of this Agreement.

(i) **Approval by City.** No review, approval and/or inspection by the City of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Property Owner in connection with the Project shall constitute a representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed or approved. No person or party shall rely in any way on such review or approval, and at all times the Property Owner shall use its own independent judgment as to the accuracy and quality of all such matters. The City's review or approval of any plans, designs, specifications, drawings, work or other materials submitted or performed by the Property Owner in connection with this Agreement shall not constitute or be construed to constitute approval otherwise required by any City departments, boards or commissions in connection with any aspect of the same. Furthermore, no review or approval of any plans, designs, specifications, drawings, work or other materials submitted or performed by Property Owner in connection with this Agreement by any City departments, boards or commissions shall constitute or be construed to constitute approval otherwise required by the City under this Agreement.

Project Tracking Number: [Project Number #](#)

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused the Agreement to be duly executed the day and year first above written.

**APPROVED AS TO FORM**

**City of Philadelphia  
Water Department**

\_\_\_\_\_  
City of Philadelphia  
Law Department

By:

\_\_\_\_\_  
Randy E. Hayman  
Commissioner

**Property Owner**

By:

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

Project Tracking Number: [Project Number #](#)

**ACKNOWLEDGEMENT**

COMMONWEALTH OF PENNSYLVANIA :  
 : ss.  
COUNTY OF \_\_\_\_\_ :

On this \_\_\_\_ day of \_\_\_\_\_ 2021, before me, a Notary Public for the Commonwealth of Pennsylvania, the undersigned Officer, personally appeared [Owner/Authorized Signatory](#), who acknowledged himself/herself to be the [Signatory's title](#) of [company/organization](#), and that s/he, as such [Signatory's title](#), being authorized so to do, executed the foregoing instrument for the purposes therein contained by executing the same by her/himself as such [Signatory's title](#).

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

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

Project Tracking Number: [Project Number #](#)

**Exhibit A**  
Property

(Attach Legal Description of Property)

Project Tracking Number: [Project Number #](#)

**Exhibit B**

*Attach O&M Schedule submitted by applicant*