

# **STORMWATER MANAGEMENT AND EROSION & SEDIMENT CONTROL**

**Local Law No. 7 of the year 2007**

## **A Local Law Providing for Stormwater Management and Erosion and Sediment Control**

**Adopted August 7, 2007**

Be it enacted by the Town Board of the Town of Kirkwood, in the County of Broome, as follows:

### **Article 1. General Provisions**

#### **Section 1. Findings of Fact**

It is hereby determined that:

1.1 Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;

1.2 This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;

1.3 Clearing and grading during construction tend to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;

1.4 Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;

1.5 Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;

1.6 Substantial economic losses can result from these adverse impacts on the waters of the municipality;

1.7 Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;

1.8 The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.

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1.9 Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

### **Section 2. Purpose**

The purpose of this local law is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in Section 1 hereof. This local law seeks to meet those purposes by achieving the following objectives:

2.1 Meet the requirements of Minimum Measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02 or as amended or revised;

2.2 Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;

2.3 Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;

2.4 Minimize increases in pollution caused by stormwater runoff from land development activities, which would otherwise degrade local water quality;

2.5 Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and

2.6 Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

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## Section 3. Statutory Authority

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the Town Board of the Town of Kirkwood has the authority to enact local laws and amend local laws and for the purpose of promoting the health, safety or general welfare of the Town of Kirkwood and for the protection and enhancement of its physical environment. The Town Board of the Town of Kirkwood may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

## Section 4. Applicability

4.1 This local law shall be applicable to all land development activities as defined in this local law.

4.2 The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may

(1) Review the plans,

(2) Upon approval by the Town Board of the Town of Kirkwood, engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board, or

(3) Accept the certification of a licensed professional that the plans conform to the requirements of this law.

4.3 All land development activities subject to review and approval by the Planning Department, Planning Board, Zoning Board of Appeals or Town Board of the Town of Kirkwood under subdivision, zoning, site plan, and/or special permit regulations shall be reviewed subject to the standards contained in this local law.

4.4 All land development activities not subject to review as stated in section 4.3 shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this law.

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## Section 5. Exemptions

The following activities may be exempt from review under this law.

- 5.1 Agricultural activity as defined in this local law.
- 5.2 Silvicultural activity except that landing areas and log haul roads are subject to this law.
- 5.3 Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- 5.4 Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Office.
- 5.5 Any part of a subdivision if a plat for a subdivision that has been approved by the Town of Kirkwood and construction activities have started on or before the effective date of this law.
- 5.6 Land development activities for which a building permit has been approved on or before the effective date of this law.
- 5.7 Cemetery graves.
- 5.8 Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- 5.9 Emergency activity immediately necessary to protect life, property or natural resources.
- 5.10 Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- 5.11 Landscaping and horticultural activities in connection with an existing structure.

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## Article 2. Stormwater Control

### Section 1. Definitions

The terms used in this local law or in documents prepared or reviewed under this local law shall have the meanings as set forth below:

**Agricultural Activity** -the activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

**Applicant** -a property owner or agent of a property owner who has filed an application for a land development activity.

**Building** -any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

**Catch basin** -(drain inlet) a structure which allows the entry of surface runoff into a storm sewer by connection to the storm sewer.

**Channel** – a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

**Clearing** – any activity that removes the vegetative surface cover.

**Department** – the New York State Department of Environmental Conservation.

**Design Manual** -the New York State Stormwater Design Manual, most recent version including applicable updates that serves as the official guide for stormwater management principles, methods and practices.

**Developer** -a person who undertakes land development activities.

**Erosion Control Manual** -the most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book".

**Grading** -excavation or fill of material, including the resulting conditions thereof.

**Impervious Cover** -those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

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**Industrial Stormwater Permit** -a State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

**Infiltration** -the process of percolating water into the subsoil.

**Jurisdictional Wetland** -an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

**Land Development Activity** -construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

**Landowner** -the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

**Maintenance Agreement** -a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

**Nonpoint Source Pollution** -pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

**Phasing** -developing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the development of the next.

**Pollutant of Concern** -sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

**Project** -land development activity.

**Recharge** -the replenishment of underground water reserves.

**Sediment** -solid material, both mineral and organic, that is in suspension, is being transported, or has been removed from its site of origin by erosion.

**Sediment Control** -measures that prevent eroded sediment from leaving the site.

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**Sensitive Areas** -cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species, Critical Environmental Area designated by the Municipality.

**SPDES General Permit for Construction Activities GP-O2-01** -A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

**SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-O2-02** -A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

**Stabilization** -the use of practices that prevent exposed soil from eroding.

**Stop Work Order** -an order issued which requires that all construction activity on a site be stopped.

**Stormwater** -rainwater, surface runoff, snowmelt and drainage.

**Stormwater Hotspot** -a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

**Stormwater Management** -the use of structural or non-structural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

**Stormwater Management Facility** -one or a series of stormwater management practices installed, stabilized and operated for the purpose of controlling stormwater runoff.

**Stormwater Management Officer** -an employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

**Stormwater Management Practices (SMP's)** – measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**Stormwater Pollution Prevention Plan (SWPPP)** -a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

**Stormwater Runoff** -flow on the surface of the ground, resulting from precipitation.

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**Stripping** -any activity which removes or significantly disturbs trees, brush, grass, or any other kind of vegetation.

**Surface Waters of the State of New York** -lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons, which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to manmade bodies of water, which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

**Swale** -a natural depression or wide shallow ditch used to route or filter runoff.

**Watercourse** -a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

**Watershed** -a region or area contributing stormwater ultimately to a particular watercourse or body of water.

**Waterway** -a channel that directs surface runoff to a watercourse or to the public storm drain.

### **Section 2. Stormwater Pollution Prevention Plans**

#### 2.1. Stormwater Pollution Prevention Plan Requirement

No application for approval of a land development activity shall be reviewed until the appropriate board has received a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the specifications in this local law.

#### 2.2 Contents of Stormwater Pollution Prevention Plans

2.2.1 All SWPPPs shall provide the following background information and erosion and sediment controls:

1. Background information about the scope of the project, including location, type and size of project.
2. Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands



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and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s); Site map should be at a scale no smaller than 1"=100'.

3. Description of the soil(s) present at the site;
4. Construction phasing plans describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at anyone time unless pursuant to an approved SWPPP.
5. Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
6. Description of construction and waste materials expected to be stored on- site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
7. Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
8. A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
9. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
10. Temporary practices that will be converted to permanent control measures;
11. Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

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12. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

13. Name(s) of the receiving water(s);

14. Delineation of SWPPP implementation responsibilities for each part of the site;

15. Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and

16. Any existing data that describes the stormwater runoff at the site.

2.2.2 Land development activities as defined in Section 1 of this Article and meeting Condition "A", "B" or "C" below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Section 2.2.3 below as applicable:

Condition A -Stormwater runoff from land development activity(ies) discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

Condition B -Stormwater runoff from land development activity(ies) disturbing five (5) or more acres.

Condition C -Stormwater runoff from land development activity(ies) disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.

2.2.3 SWPPP Requirements for Condition A, B and C:

1. All information in Section 2.2.1 of this local law;
2. Description of each post-construction stormwater management practice;
3. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;

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4. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
5. Comparison of post-development stormwater runoff conditions with pre-development conditions;
6. Dimensions, material specifications and installation details for each post-construction stormwater management practice;
7. Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
8. Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
9. Inspection and maintenance agreement binding on all subsequent landowners served by the onsite stormwater management measures in accordance with Article 2, Section 4 of this local law.
10. For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.

### 2.3 Other Environmental Permits

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

### 2.4 Contractor Certification

2.4.1 Each contractor and subcontractor who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

2.4.2 The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

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2.4.3 The certification statement(s) shall become part of the SWPPP for the land development activity.

2.5. Construction Permit Paperwork to be available and accessible at the construction site at all times from date of initiation of construction to the date of final stabilization:

- (1) SWPPP, including construction drawings and plans.
- (2) Notice of Intent (NOI) signed by the Owner and Preparer.
- (3) Acknowledgment Letter from DEC.
- (4) MS4 SWPPP Acceptance Form
- (5) Site log book including all inspection reports, certifications and SWPPP updates, modifications or addendums.
- (6) Current General Permit for Stormwater Discharges from construction activity.
- (7) For sites that disturb 5 or more acres a Letter of Permission from DEC or MS4 is required.

(Amended 2-2-10 by LL #4-2010)

2.6 Contractor Training

- (1) Owner will identify contractor(s) responsible for SWPPP implementation.
- (2) Contractor(s) will identify at least one individual trained in Erosion and Sediment Control (E&SC) by April 30, 2010.
- (3) Effective May 1, 2010 Contractor(s) trained individual must be on site on a daily basis during soil disturbance activities.
- (4) Trained individual must complete 4 hours of training in E&SC every 3 years.
  - (a) Only DEC-endorsed training will be accepted.
  - (b) Trained individual will have proof of training on site.

(Added 2-2-10 by LL #4-2010)

### **Section 3. Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control**

All land development activities shall be subject to the following performance and design criteria:

#### **3.1 Technical Standards**

For the purpose of this local law, the following documents shall serve as the official guides and specifications for Stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law:

3.1.1 The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual)

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3.1.2 New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual).

### 3.2 Equivalence to Technical Standards

Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Article 2, section 3.1 and the SWPPP shall be prepared by a licensed professional.

### 3.3 Water Quality Standards

Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

## **Section 4. Maintenance, Inspection and Repair of Stormwater Facilities**

### 4.1 Maintenance and Inspection During Construction

4.1.1 The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this local law. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent.

4.1.2 For land development activities as defined in Article 2, Section 1 of this local law and meeting Condition A, B and C in Section 2.2.2, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days for sites with five acres or less exposed and twice every seven days, separated by two full days, for sites with more than five acres exposed or in accordance with the current General Permit for Stormwater Discharges from construction activity. Inspection reports shall be maintained in a site logbook.  
(Amended 2-2-10 by LL #4-2010)

### 4.2 Maintenance Easement(s)

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Kirkwood to ensure that the facility is maintained in proper working condition to meet design standards and any other

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provisions established by this local law. The easement shall be recorded, by the grantor, in the office of the County Clerk after approval by the counsel for the Town of Kirkwood.

### 4.3 Maintenance after Construction

The owner or operator of permanent stormwater management practices (SMPs) installed in accordance with this law shall ensure they are operated and maintained to achieve the goals of this chapter. Proper operation and maintenance also includes, as a minimum, the following:

4.3.1 A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter. (Amended 2-2-10 by LL #4-2010)

4.3.2 Written procedures for operation and maintenance training of new maintenance personnel.

4.3.3 Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Article 2, section 3.3.

### 4.4 Maintenance Agreements

The Town of Kirkwood shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule A of this local law entitled Sample Stormwater Control Facility Maintenance Agreement. The Town of Kirkwood, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

## **Article 3. Administration and Enforcement**

### Section 1. Construction Inspection

#### 1.1 Erosion and Sediment Control Inspection

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The Town of Kirkwood Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Town of Kirkwood enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:

- 1.1.1 Start of construction.
- 1.1.2 Installation of sediment and erosion control measures.
- 1.1.3 Completion of site clearing.
- 1.1.4 Completion of rough grading.
- 1.1.5 Completion of final grading.
- 1.1.6 Close of the construction season.
- 1.1.7 Completion of final landscaping.
- 1.1.8 Successful establishment of landscaping in public areas.

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted, except for site stabilization, until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

### **1.2 Stormwater Management Practice Inspections**

The Town of Kirkwood Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

### **1.3 Inspection of Stormwater Facilities After Project Completion**

Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of

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contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

### 1.4 Submission of Reports

The Town of Kirkwood Stormwater Management Officer may require monitoring and reporting from entities subject to this law as are necessary to determine compliance with this law.

### 1.5 Right-of-Entry for Inspection

When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Town of Kirkwood the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in paragraph 1.3.

## Section 2. Performance Guarantee

### 2.1 Construction Completion Guarantee

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Kirkwood in its approval of the Stormwater Pollution Prevention Plan, the Town of Kirkwood may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Kirkwood as the beneficiary.

The security shall be in an amount to be determined by the Town of Kirkwood based on submission of final design plans, with reference to actual construction and landscaping costs.

The performance guarantee shall remain in force until the surety is released from liability by the Town of Kirkwood, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the Town of Kirkwood. Per annum



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interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

### **2.2 Maintenance Guarantee**

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Kirkwood with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Kirkwood may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

### **2.3 Recordkeeping**

The Town of Kirkwood may require entities subject to this law to maintain records demonstrating compliance with this law.

## **Section 3. Enforcement and Penalties**

### **3.1 Notice of Violation.**

When the Town of Kirkwood determines that a land development activity is not being carried out in accordance with the requirements of this local law, it may issue a written notice of violation to the landowner. The notice of violation shall contain:

- 3.1.1 the name and address of the landowner, developer or applicant;
- 3.1.2 the address, when available, or a description of the building, structure or land upon which the violation is occurring;
- 3.1.3 a statement specifying the nature of the violation;
- 3.1.4 a description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action;
- 3.1.5 a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

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3.1.6 a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) calendar days of service of notice of violation.

### **3.2 Stop Work Orders**

The Town of Kirkwood may issue a stop work order for violations of this law.

Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the Town of Kirkwood confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this local law.

### **3.3 Violations**

Any land development activity that is commenced or is conducted contrary to this local law, may be restrained by injunction or otherwise abated in a manner provided by law.

### **3.4 Penalties**

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars (\$350) or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars (\$700) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars (\$1000) or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

### **3.5 Withholding of Certificate of Occupancy**

If any building or land development activity is installed or conducted in violation of this local law, the Stormwater Management Officer may prevent the occupancy of said building or land.

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## 3.6 Restoration of lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Kirkwood may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

## **Section 4. Fees for Services**

The Town of Kirkwood may require any person undertaking land development activities regulated by this law to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Kirkwood or performed by a third party for the Town of Kirkwood.

## **Section 5. Severability and Effective Date**

### 5.1 Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this local law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this local law.

### 5.2 Effective Date

This Local Law shall be effective upon filing with the office of the Secretary of State.

## **Schedule A**

### **SAMPLE STORMWATER CONTROL FACILITY MAINTENANCE AGREEMENT**

Whereas, the Municipality of Kirkwood ("Municipality") and the ("facility owner") want to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the below named project, and;

Whereas, the Municipality and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Municipality and the facility owner agree as follows:

1. This agreement binds the Municipality and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.

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2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, not less than once in every five year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Municipality within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Municipality.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Municipality or in accordance with the recommendations of the inspecting engineer.
7. The facility owner shall provide to the Municipality within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of (a Bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the County Clerk, County of Broome, together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to\_\_\_\_\_.
9. If the Municipality ever determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective\_\_\_\_\_.