

APPENDIX D

Process to Establish Storm Water Management System as County Drain

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One option for meeting the requirement of ensuring maintenance of new storm water management systems in perpetuity is to establish the storm water management system as a County Drain upon completion of construction. Elements of this process include:

- The landowners transfer funds (\$2500) to the drainage district at its inception to establish a “permanent maintenance fund” for “future maintenance” (provided by Section 433 of Michigan Drain Code).
- Maintenance is performed by the Drain Commissioner’s Office (Wayne County Department of Environment-Facilities Management Division). Maintenance costs in excess of the initial maintenance fund are assessed to the landowners (based upon the percentage owned by each in the district) as follows:
 - For the collection system and open waterways, \$2500/mile can be assessed annually. If this amount is inadequate, there is provision for special assessments.
 - Costs for maintenance of detention ponds and other features are recovered through special assessments (Section 196 subsection 12).

At the request of a property owner/developer, Wayne County generally will consider an application for establishment of a new storm water system as a Chapter 18 Drain/drainage district for the following types of projects:

1. Projects where the storm water system lies on properties owned/operated by multiple parties
 - a. Large or regional projects
 - b. Subdivisions in townships.
2. Projects that present special circumstances of particular concern to the County, such as
 - a. projects contiguous with/that discharge to County property (e.g., Drains, Parks)
 - b. projects that have high potential for impacting adjacent or downstream County property (e.g., a County Road) if not maintained.

For applicable projects, a brief overview of the process required to establish a new storm water management system as a Chapter 18 Drain follows:

- A. Landowner(s) submit written request to the Drain Commissioner for establishment of the storm water management system as a Drain and establishment of the drainage area to the storm water management system as a Drainage District. An example request is attached as Exhibit A.
- B. Landowner(s) submit plans and specifications to Wayne County for review and approval. NOTE: The entire storm water management system must conform to County standards for materials and specifications.
- C. Landowner(s) and County Drain Commissioner sign a written agreement to establish the storm water management system as a Drain and to establish the drainage area to the storm water management system as a Drainage District. An example agreement is presented at Exhibit B.

- D. Landowner(s) pay costs to establish the Drain (administrative, inspection, permanent maintenance fund).
- E. Landowner(s) attach permanent Drain easement to deed. Copies of all recorded easements must be provided to the Wayne County Drain Commissioner.
- F. Landowner(s) obtains all necessary permits. Copies of all permits must be provided to the Wayne County Drain Commissioner
- G. Landowner(s) construct project with own funds.
- H. County performs inspection during construction.
- I. Landowner(s) provides As-Built Drawings for the development.
- J. County accepts project.

Questions regarding this methodology should be directed to Ms. Kerreen Conley, Deputy Drain Commissioner at 313-224-7679.

Exhibit A

EXAMPLE REQUEST TO ESTABLISH A COUNTY DRAIN AND DRAINAGE DISTRICT

Date _____

Mr. Kurt L. Heise
Wayne County Drain Commissioner
Wayne County Department of Environment
415 Clifford
Detroit, MI 48226

Reference: Proposed _____
Location _____
WCDPS Plan Review Number _____

Dear Mr. Heise:

We/I, as the owner/developer of the proposed _____,
_____, which will be located in the City/Township of _____
near the intersection of _____ Road and _____ Road (see attached location map), request the
following:

1. The establishment of the storm water management system for this property as a County Drain under the provisions the Michigan Drain Code of 1956 (as amended); and
2. The establishment of the drainage area to the storm water management system for this property as a Drainage District under the provisions the Michigan Drain Code of 1956 (as amended).

Please contact _____ at (____) _____
as needed regarding this request.

Very truly yours,

Property Owner #1

Property Owner #2

Attachment: Location Map

Cc: Ms. Kerreen Conley, Deputy Drain Commissioner, Wayne County Department of
Environment

Exhibit B

SAMPLE

**AGREEMENT FOR THE ESTABLISHMENT OF THE
_____ DRAIN AND THE _____ DRAIN
DRAINAGE DISTRICT PURSUANT TO SECTION 433 OF
ACT NO. 40 OF THE PUBLIC ACTS OF 1956, AS AMENDED**

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between Kurt L. Heise, Director, Wayne County Department of Environment and Wayne County Drain Commissioner, whose address is 415 Clifford, Detroit, Michigan 48226, hereinafter referred to as "Drain Commissioner" on behalf of the proposed _____ Drain Drainage District; and _____, a Michigan corporation, whose address is _____ and _____, a Michigan corporation, whose address is _____, a Michigan corporation, whose address is _____, hereinafter referred to as "Landowners".

WITNESSETH:

WHEREAS, Section 433 of Act No. 40 of the Public Acts of 1956, as amended, authorizes the Drain Commissioner to enter into an Agreement with Landowners to establish a drain which was constructed by the Landowners to service an area on lands owned by Landowners as a County Drain; and

WHEREAS, Landowners, pursuant to Sections 425 and 433 of Act No. 40 of the Public Acts of 1956, as amended, wish to provide drainage service to their own lands and have requested same to be established and dedicated as a County Drain under the jurisdiction of the Wayne County Drain Commissioner; and

WHEREAS, Landowners have been advised and understand and agree to assume or have already assumed the total cost of the construction of the Drain to include engineering, inspection, easement acquisition, legal and administrative expenses and the Drain Commissioner's similar costs related or associated with this Agreement; and

WHEREAS, Landowners understand that the Drain constructed, or to be constructed, pursuant to this Agreement, when finally accepted by the Drain Commissioner, will be known as the _____ Drain (See Exhibit A for route and course description) and that the lands owned by _____ described in Exhibit B and the lands owned by _____ described in Exhibit C, etc. will be known and constituted collectively as the _____ Drain Drainage District; and

WHEREAS, Landowners further understand that as the owners of the lands included in this Agreement in the Township/City of _____ in which said Drain and the lands to be drained thereby are located, that these above described lands will hereafter be subject to assessments pursuant to the Drain Code for the cost of construction, operation, inspection and maintenance of the Drain;

provided, however, such assessment obligation shall be based upon the percentage ownership of the ____ acres of developable land approximately depicted on Exhibit E; and

WHEREAS, Landowners have agreed to assume and pay all costs as set forth herein; and

WHEREAS, Landowners have obtained, at their expense, a certificate from a registered professional engineer satisfactory to the Drain Commissioner to the effect that the existing Drain is the only reasonably available outlet for the proposed Drain and that there is sufficient capacity in the existing outlet for the proposed Drain to serve as an adequate outlet, without detriment to or diminution of the drainage service which the outlet presently provides. A copy of said certificate is attached hereto as Exhibit F.

NOW, THEREFORE, in consideration of the promises and covenants of each, the parties hereto agree to as follows:

1. The Drain Commissioner agrees to establish the ____ Drain as a County Drain, subject to the provisions of this Agreement, upon the satisfactory completion of the construction and inspection of the Drain. The route and course of the Drain is legally described in Exhibit A. The ____ Drainage District shall be established and composed of the lands legally described in Exhibits B, C, D and E.
2. Landowners agree that construction of the drainage facilities shall comply with the standards and specifications of the Wayne County Drain Commissioner's Office and consistent with the plans and specifications prepared by ____ for ____, Project No. ____, dated ____ and in compliance with all generally accepted construction methods.
3. Landowners agree to assume all costs of the project set forth in the above-mentioned plans, specifications and project designs. This cost shall include all costs set forth in this Agreement, and shall specifically include:
 - a. Drain Commissioner's actual attorney fees, recording costs, inspection and engineering costs relative to the drafting and implementation of this Agreement.
 - b. The establishment of a permanent maintenance fund pursuant to Section 433 in an amount of 5% of the construction cost but not to exceed \$2,500.00. This payment shall not relieve the subject property from any future assessments levied pursuant to the Drain Code of 1956, as amended.
4. The Landowners shall deposit the Balance Due with the Drainage District, to be used only for the purposes set forth in this agreement.
5. It is agreed that the Landowners shall convey to the Drainage District a map and legal description of the Drainage District as may be necessary to accomplish the purposes set forth and do so without charge. Landowners have granted the necessary easements which consist

of the conveyance pipes and detention/retention basins based upon the plans and specifications referenced in paragraph 2 above. These easements do not include any storage facilities in the parking areas. If any changes are made to the plans or specifications, no alterations will be made to the Drain and the easement areas referenced above, unless approved by the Drain Commissioner which approval shall not be unnecessarily withheld, conditioned or delayed and any necessary easements resulting therefrom are conveyed.

6. The Landowners further agree to provide, without charge, one (1) set of reproducible mylar "Record Drawings" of the Drain as built, which shall include design calculations showing flow rates, imperviousness factors, drainage district and sub-districts, easements and rights-of way locations, and any other data needed by the Drainage District for proper Drain operation and future assessment.
7. The foregoing payment of the cost of the project is agreed and understood as being for the sole benefit of the Drainage District at large or part thereof, and that such payment shall not relieve the subject property from any future assessments levied pursuant to the Michigan Drain Code of 1956, as amended, for construction, improvements and/or maintenance of the Drain arising by virtue of this Agreement or proper and legal petitions, hearings and procedures on such petitions. Provided, however, such assessment obligations shall be based upon the percentage of ownership of the ____ acres of developable land approximately depicted on Exhibit E.
8. Landowners shall secure all necessary permits or authorizations as may be required by local, state or federal law and provide copies to the Drain Commissioner. The Drain Commissioner shall also be provided copies of all correspondence and reports involving any governmental agency with respect to the Drain.
9. Landowners agree that after the Drain is accepted by the Drain Commissioner that said lands shall hereafter be liable for assessments levied for all costs incurred by the Drainage District (based upon the percentage ownership of the ____ acres of developable land approximately depicted on Exhibit E), including for the operation, maintenance and improvement of the Drain, as provided by this Agreement and by the Drain Code of 1956, as amended.
10. Landowners agree to hold harmless and indemnify the Drain Commissioner and the _____ Drainage District for any and all claims, damages, lawsuits, costs and expenses, including attorney fees, arising out of, or incurred as a result of, the construction, operation or maintenance of the Drain occurring prior to the Drain Commissioner's final acceptance of the Drain as an established County Drain. Notwithstanding the foregoing, Landowners' indemnity obligations under this Paragraph 11 shall not extend to any claims, damages, lawsuits, costs and expenses, arising out of the acts or omissions of the Drain Commissioner, its agents, employees and contractors, while on or about the land described in Exhibits B, C and D.

Nothing in this Agreement is to be construed to waive, alter, amend or modify any provision in statute or case law relative to the Drain Commissioner or Drainage District's grant of governmental immunity.

11. Modification, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties.

12. This Agreement shall become effective upon its execution by the Landowners and by the Drainage District and shall be binding upon the successors and assigns of each party.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

Kurt L. Heise
Wayne County Drain Commissioner

LANDOWNER A

By:
Its:

LANDOWNER B

By:
Its:

LANDOWNER C

By:
Its:

STATE OF MICHIGAN)

)ss

COUNTY OF)

On this _____ day of _____, 2005 before me, a Notary Public in and for said County, appeared Kurt L. Heise, Wayne County Drain Commissioner, on behalf of the _____ Drainage District to me personally known to be the person described in and who executed the foregoing instrument and acknowledged the same to be her free act and deed.

Notary Public
County, Michigan

My Commission Expires: _____

STATE OF MICHIGAN)

)ss

COUNTY OF)

On this _____ day of _____, 2005 before me, a Notary Public in and for said County, appeared _____, of _____, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his/her free act and deed.

_____, Notary Public
County, Michigan

My Commission Expires: _____

STATE OF MICHIGAN)

)ss

COUNTY OF _____)

On this _____ day of _____, 2005 before me, a Notary Public in and for said County, appeared _____, of _____, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his/her free act and deed.

_____, Notary Public
County, Michigan

My Commission Expires: _____

Prepared By:

Wayne County Drain Commissioner
415 Clifford, 7th Floor
Detroit, MI 48226
(313) 224-3631

When Recorded Return To:

Wayne County Drain Commissioner
415 Clifford, 7th Floor
Detroit, MI 48226
(313) 224-3631

Example

- Exhibit A: Drain route and course description
- Exhibit B: Legal description of lands in drainage district owned by LANDOWNER A
- Exhibit C: Legal description of lands in drainage district owned by LANDOWNER B
- Exhibit D: Legal description of lands in drainage district owned by LANDOWNER C

Add additional exhibits for additional landowners as necessary

- Exhibit E: Assessment obligation by landowner (based upon the percentage ownership of the _____ acres of developable land)
- Exhibit F: Certificate from a registered professional engineer specifying that the existing Drain is the only reasonably available outlet for the proposed Drain and that there is sufficient capacity in the existing outlet for the proposed Drain to serve as an adequate outlet.

EXAMPLE