

RECORDING REQUESTED BY:
CITY OF DUBLIN

When Recorded Mail To:

City Clerk
City of Dublin
100 Civic Plaza
Dublin, CA 94568

Fee Waived per GC 27383

Space above this line for Recorder's use

PWSW or BLDG (if applicable): _____

Address: _____

Tract or Parcel # (if applicable): _____

STORMWATER MANAGEMENT MAINTENANCE AGREEMENT

This Stormwater Management Maintenance Agreement ("Agreement") is entered into by and between the City of Dublin ("City") and _____, the Property Owner of real property described in Exhibit A of this Agreement ("Property Owner").

RECITALS

- A. On November 19, 2015, the Regional Water Quality Control Board, San Francisco Bay Region, adopted Order R2-2015-0049, CAS612008, issuing the Municipal Regional Stormwater NPDES permit ("MRP") for the San Francisco Bay Region; and
- B. The City is a permittee of the MRP; and
- C. Provision C.3.h of the MRP requires the City to implement an Operation and Maintenance Verification Program ("Program") for stormwater treatment systems, which are defined as "any engineered system designed to remove pollutants from stormwater runoff by settling, filtration, biological degradation, plant uptake, media absorption/adsorption or other physical, biological or chemical process," and "includes landscape-based systems such as grassy swales and bioretention units as well as proprietary systems" (MRP, pg. 151). As part of this program, the City is required to ensure that all installed stormwater treatment systems or measures are adequately operated and maintained by entities responsible for such stormwater treatment systems or measures, such as the Property Owner; and
- D. The Property Owner is the owner of real property commonly known as _____ (the "Property"), which is more particularly described in Exhibit A, upon which stormwater treatment measure(s), flow duration controls and/or full trash capture device(s) (collectively referred to as "stormwater controls") are to be constructed or located, operated and maintained; and
- E. The stormwater controls more particularly described in Exhibit B – Stormwater

Management Site Plan, of which the full scale project plans and any revisions thereto approved under _____ are on file with the Public Works Department of the City; and

- F. The City is the permittee public agency with jurisdiction over the Property; and
- G. The Property Owner, its administrators, co-owners, executors, successors, heirs, assigns or any other persons, including any homeowners association (collectively hereinafter referred to as "Property Owner") recognizes that the stormwater controls must be installed and maintained on the Property as indicated in this Agreement and as required by the MRP; and
- H. The City and the Property Owner agree that the health, safety and welfare of the citizens of the City, together with the provisions of Dublin Municipal Code Chapter 7.74 and other applicable City guidelines, require that the stormwater controls detailed in Exhibit B are to be constructed, operated and maintained on the Property by the Property Owner; and
- I. The Property Owner accepts the responsibility for constructing, operating, and maintaining the stormwater controls on the Property.

NOW, THEREFORE, with reference to the above recitals and in consideration of the mutual promises, obligations, and covenants herein, the Property Owner agrees as follows:

SECTION 1: CONSTRUCTION OF TREATMENT MEASURES

The on-site stormwater controls described in Exhibit B shall be constructed by the Property Owner in strict accordance with the approved plans and specifications identified for the development and any other requirements thereto which have been approved by the City in conformance with appropriate City ordinances, guidelines, criteria and other written direction.

SECTION 2: OPERATION & MAINTENANCE RESPONSIBILITY

This Agreement shall serve as the signed statement by the Property Owner accepting responsibility for operation and maintenance of stormwater controls as set forth in this Agreement until the responsibility is legally transferred to another entity.

SECTION 3: MAINTENANCE OF TREATMENT MEASURES

The Property Owner shall not destroy or remove the stormwater controls from the Property nor modify the stormwater management system in a manner that lessens its effectiveness, and shall, at its sole expense, adequately maintain the stormwater controls in good working order acceptable to the City and in accordance with the Maintenance Plans attached as Exhibit C. This includes all pipes, channels or other conveyances built to convey stormwater to the stormwater controls, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as maintaining the described stormwater controls in good working condition so that these facilities continue to operate as originally designed and approved. The Maintenance Plan shall include a detailed description of and schedule for long-term maintenance activities.

In the event the stormwater controls are destroyed damaged, removed, or modified in a manner that lessens their effectiveness, the Property Owner, at its sole expense, shall restore them such that they perform as intended.

SECTION 4: SEDIMENT MANAGEMENT

The Property Owner shall manage sediment accumulation resulting from the normal operation of the stormwater controls appropriately. The Property Owner shall provide for the removal and disposal of accumulated sediments. Disposal of accumulated sediments shall not occur on the Property, unless provided for in the Maintenance Plan. Any disposal or removal of accumulated sediments or debris shall be in compliance with all federal, state and local law and regulations.

SECTION 5: ANNUAL INSPECTION AND REPORT

The Property Owner shall conduct a minimum of one annual inspection of the stormwater controls before the wet season. This inspection shall occur between August 1st and October 1st each year. The results of the inspection shall be recorded on the Inspection and Maintenance Checklists, attached to this agreement as Exhibit D. The Property Owner shall, on an annual basis, complete the Stormwater Controls Operation and Maintenance Inspection Report (annual inspection report) attached to this Agreement as Exhibit E. The annual inspection report shall include all completed Inspection and Maintenance Checklists for the reporting period. The annual inspection report shall also include a record of the volume of all accumulated sediment removed from the stormwater controls.

The Property Owner shall retain each annual inspection report at a location on the Property for a period of at least five (5) years. The City may request the Property Owner to provide copies of any or all annual inspection reports prepared during the prior five years in order to verify that inspection and maintenance of all applicable stormwater controls have been conducted pursuant to this Agreement. The Property Owner shall comply with any subject request within five (5) working days.

SECTION 6: ANNUAL INSPECTION AND REPORT OF FULL TRASH CAPTURE

The Property Owner shall maintain all full trash capture device(s) installed on the property. Hydrodynamic separators are required to be serviced at least twice per seasonal cycle. Inlet filters are required to be serviced by a third-party company a minimum of three times per seasonal cycle. Additional information on the required maintenance of the full trash capture device(s) is included in Exhibit D. Maintenance records provided to the Property Owner by the third party company shall be submitted to the City in order to verify that the maintenance of the full trash capture device(s) have been conducted pursuant to this agreement. The maintenance records shall be submitted no later than December 31 of each year, under penalty of perjury, to the City of Dublin Environmental Coordinator at the City of Dublin, 100 Civic Plaza, Dublin CA, 94568 or another member of the City staff as directed by the City. The maintenance records shall include the volume of all accumulated sediment and trash removed from the full trash capture device(s).

SECTION 7: NECESSARY CHANGES AND MODIFICATIONS

At its sole expense, the Property Owner shall make any changes or modifications to the stormwater controls and/or the Maintenance Plans, Exhibit C, as the City may

determine to be reasonably necessary to ensure that the stormwater controls are properly maintained and continue to operate as originally designed and approved.

SECTION 8: ACCESS TO THE PROPERTY

The Property Owner hereby grants permission to the City; the San Francisco Bay Regional Water Quality Control Board (RWQCB); the Alameda County Mosquito Abatement District (Mosquito Abatement District); and their authorized agents and employees (hereinafter "Agencies") to enter upon the Property at reasonable times and in a reasonable manner to inspect, assess or observe the stormwater controls in order to ensure that stormwater controls are being properly operated and maintained and are continuing to perform in an adequate manner to protect water quality and the public health and safety. This includes the right to enter upon the Property when the Agency or Agencies has/have a reasonable basis to believe that a violation of this Agreement, the City's Stormwater Management Program, guidelines, criteria, or the MRP, and any amendments or re-issuances of this permit, is occurring, has occurred or threatens to occur. The above listed Agencies also have a right to enter the Property when necessary for abatement of a public nuisance or correction of a violation of the Inspection Report criteria. Whenever possible, Agencies shall provide reasonable notice, delivered pursuant to Section 10 of this Agreement, to the Property Owner before entering the property.

SECTION 9: FAILURE TO MAINTAIN STORMWATER CONTROLS

In the event the Property Owner fails to maintain the stormwater controls as shown on the approved Site Plan or comparable document in good working order acceptable to the City and in accordance with the Maintenance Plan, incorporated in the Agreement, the City, and its authorized agents and employees with reasonable notice, delivered pursuant to Section 10 of this Agreement, may enter the Property and take whatever steps it deems necessary and appropriate to return the stormwater controls to good working order. Such notice will not be necessary if emergency conditions require immediate remedial action. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that the City is under no obligation to maintain or repair the stormwater controls and in no event shall this Agreement be construed to impose any such obligation on the City.

SECTION 10: NOTICES

All notices herein required shall be in writing, and shall be given by personal delivery, by messenger or courier service, by registered United States mail, postage prepaid, or by electronic mail, addressed as set forth below:

Notices required to be given to the City shall be addressed as follows:

Environmental Coordinator
Environmental Services
City of Dublin
100 Civic Plaza, Dublin, CA 94568
Email: es@dublin.ca.gov

Notices required to be given to Property Owner or Property Manager shall be addressed as follows:

Company Name: _____

Attention: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____

E-mail address: _____

Any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address. Any notice sent by messenger or courier service shall be deemed received on the day of the actual delivery as shown by the confirmation of delivery by the messenger or courier service. Any notice sent by mail shall be deemed received two (2) days after the date of mailing. Any notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided the sender does not receive electronic notice of non-delivery. If the date of receipt of any notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon date of service.

SECTION 11: REIMBURSEMENT OF CITY EXPENDITURES

In the event the City, pursuant to this Agreement, performs work of any nature (direct or indirect), including any re-inspections or any actions it deems necessary or appropriate to return the stormwater treatment measure(s) and/or full trash capture device(s) in good working order as indicated in Section 9, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Property Owner shall reimburse the City of Dublin upon demand within thirty (30) days of receipt thereof for the costs incurred by the City hereunder, including reasonable mark-ups for overhead and expenses. If these costs are not paid within the prescribed time period, the City may assess the Property Owner the cost of the work, both direct and indirect, and applicable penalties. Said assessment shall be a lien against the Property, or prorated against the beneficial users of the Property or may be placed on the property tax bill and collected as ordinary taxes by the City. The actions described in this section are in addition to and not in lieu of any and all legal remedies as provided by law, available to the City as a result of the Property Owner's failure to maintain the stormwater controls.

SECTION 12: INDEMNIFICATION

The Property Owner shall indemnify, hold harmless and defend the City and its authorized agents, officers, officials and employees from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including attorney fees claimed or which might arise or be asserted against the City that are alleged or proven to result or arise from the construction, presence, existence or maintenance of the stormwater controls by the Property Owner or the City. In the event

a claim is asserted against the City, its authorized agents, officers, officials or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents, officers, officials or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith. This section shall not apply to any claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including attorney fees claimed which arise due solely to the negligence or willful misconduct of the City.

SECTION 13: NO ADDITIONAL LIABILITY

It is the intent of this Agreement to ensure the proper maintenance of the stormwater controls by the Property Owner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability not otherwise provided by law of any party for damage alleged to result from or caused by stormwater runoff.

SECTION 14: TRANSFER OF PROPERTY

This Agreement shall run with the title to the land. The Property Owner agrees that 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 present and subsequent owners of the Property. Before the Property is legally transferred to another entity, the Property Owner shall provide written notice of the Agreement to the transferee and provide the City a copy of such notice.

SECTION 15: SEVERABILITY

The provisions of this Agreement shall be severable and if any phrase, clause, section, subsection, paragraph, subdivision, sentence or provision is adjudged invalid or unconstitutional by a court of competent jurisdiction, or the applicability to any Property Owner is held invalid, this shall not affect or invalidate the remainder of any phrase, clause, section, subsection, paragraph, subdivision, sentence or provision of this Agreement.

SECTION 16: RECORDATION

This Agreement shall be recorded by the Property Owner or by the City by mutual Agreement, within thirty (30) days after the execution date of this Agreement as stated above among the deed records of the County Recorder's Office of the County of Alameda, California at the Property Owner's expense.

SECTION 17: RELEASE OF AGREEMENT

In the event that the City determines that the stormwater controls located on the Property are no longer required, then the City, at the request of the Property Owner shall execute a release of this Agreement, which the Property Owner, or the City by mutual agreement, shall record in the County Recorder's Office at the Property Owner's expense. The stormwater controls shall not be removed from the Property unless such a release is so executed and recorded.

SECTION 18: EFFECTIVE DATE AND MODIFICATION

This Agreement is effective upon the date on which all signatures are obtained. This Agreement shall not be modified except by written instrument executed by the City

and the Property Owner at the time of modification. Such modifications shall be effective upon the date of execution and shall be recorded.

SECTION 19: MISCELLANEOUS

The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

In the event of legal action occasioned by any default, inaction or action of the Property Owner, the Property Owner agrees to pay all costs incurred by the City in enforcing the terms of this Agreement, including reasonable attorney's fees, litigation expenses, including experts' fees and costs, and other costs which shall become part of the lien against the Party.

CITY:
CITY OF DUBLIN

PROPERTY OWNER:

By: _____
Laurie L. Sucgang
Assistant Public Works Director/City
Engineer

By: _____

Typed or Printed Name

Date

Title

Date

(Attach Notary Acknowledgment)

EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B – STORWATER MANAGEMENT SITE PLAN
Stormwater Treatment Measures, Full Trash Capture, and/or Flow Duration
Controls (as applicable)

EXHIBIT C – MAINTENANCE PLANS
Stormwater Treatment Measures, Full Trash Capture, and/or Flow Duration
Controls (as applicable)

EXHIBIT D – INSPECTION & MAINTENANCE CHECKLISTS
Stormwater Treatment Measures, Full Trash Capture, and/or Flow Duration
Controls (as applicable)

EXHIBIT E – ANNUAL INSPECTION REPORT