

RECORDING REQUESTED BY
WHEN RECORDED MAIL TO:

CITY OF BERKELEY
PUBLIC WORKS DEPT.
STORMWATER PROGRAM
1947 CENTER STREET, 4TH FLOOR
BERKELEY, CA 94704

(THIS SPACE FOR RECORDER'S USE ONLY)

THIS MAINTENANCE AGREEMENT IS RECORDED AT THE REQUEST OF THE CITY OF BERKELEY,
A CALIFORNIA MUNICIPAL CORPORATION, AND IS EXEMPT FROM RECORDING FEE(S)
PURSUANT TO GOVERNMENT CODE § 6103 AND § 27383.

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Govt. Code 27361.6)

**STORMWATER TREATMENT MEASURES AND
HYDROMODIFICATION MANAGEMENT
CONTROLS MAINTENANCE AGREEMENT**

RECITALS

This Stormwater Treatment Measures and Hydromodification Management (HM) Controls Maintenance Agreement (“Agreement”) is entered into this _____ by and between the City of Berkeley (“City”) and _____, a property owner of real property described in this Agreement.

WHEREAS, On November 19, 2015, the Regional Water Quality Control Board, San Francisco Bay Region, adopted Order R2-2015-0049, the Municipal Regional Stormwater Permit (MRP) (CAS612008); and

WHEREAS, Provision C.3.h of this MRP, and as it may be amended or reissued, requires the permittee public agencies to provide minimum verification and access assurances that all treatment measures and HM controls (if any) shall be adequately operated and maintained by entities responsible for the stormwater treatment measures and HM controls; and

WHEREAS, the Property Owner, _____, is the owner of real property commonly known as _____ (the “Property”), and more particularly described in the attached legible reduced-scale copy of the Site Plan or comparable document (Exhibit A) upon which stormwater treatment measures and HM controls (if any) are located or to be constructed; and

WHEREAS, the City is the permittee public agency with jurisdiction over the Property.

WHEREAS, the Property Owner, its administrators, co-owners, executors, successors, heirs, assigns or any other persons, including any homeowners association (hereinafter referred to as “Property Owner”) recognizes that the stormwater treatment measure(s) and HM controls (if any) more particularly described and shown on Exhibit A, of which full-scale plans and any amendments thereto are on file with the Public Works Department of the City of Berkeley must be installed and maintained as indicated in this Agreement and as required by the NPDES permit.

WHEREAS, the City and the Property Owner agree that the health, safety and welfare of the citizens of the City require that the stormwater treatment measure(s) and HM controls (if any) detailed in the Site Plan or comparable document be constructed and maintained on the Property; and

WHEREAS, the City’s Stormwater Management Ordinance, guidelines, criteria and other written directions require that the stormwater treatment measure(s) and HM controls (if any), as shown on the approved Site Plan or comparable document, be constructed and maintained by the Property Owner

THEREFORE, in consideration of the benefit received by the Property Owner as a result of the City’s approval of the Site Plan, the Property Owner hereby covenants and agrees with the City as follows:

SECTION 1: CONSTRUCTION OF TREATMENT MEASURES AND HM CONTROLS

The on-site stormwater treatment measure(s) and HM controls (if any) shown on the Site Plan or comparable document 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 treatment measures and HM controls (if any) as set forth in this Agreement until the responsibility is legally transferred to another entity. Before the Property is legally transferred to another entity, the Property Owner shall provide to the City at least one of the following:

- 1) A signed statement from the public entity assuming post-construction responsibility for treatment measure and HM controls maintenance and that the treatment measures and HM controls (if any) meet all local agency design standards; or
- 2) Written conditions in the sales or lease agreement requiring the buyer or lessee to assume responsibility for operation and maintenance (O&M) consistent with this provision, which conditions, in the case of purchase and sale agreements, shall be written to survive beyond the close of escrow; or
- 3) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning O&M responsibilities to the home owners association for O&M of the treatment measures and HM controls (if any); or
- 4) Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of treatment measures and HM controls (if any).

SECTION 3: MAINTENANCE OF TREATMENT MEASURES AND HM CONTROLS

The Property Owner shall not destroy or remove the stormwater treatment measures and HM controls (if any) from the Property nor modify the stormwater treatment system and HM controls (if any) in a manner that lessens their effectiveness, and shall, at its sole expense, adequately maintain the stormwater treatment measure(s) and HM controls (if any) in good working order acceptable to the City and in accordance with the maintenance plan agreed hereto and attached as Exhibit B. This includes all pipes, channels or other conveyances built to convey stormwater to the treatment measure(s) and HM controls (if any), 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 facilities 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.

SECTION 4: SEDIMENT MANAGEMENT

Sediment accumulation resulting from the normal operation of the stormwater treatment measure(s) and HM controls (if any) will be managed appropriately by the Property Owner. The Property Owner will 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, on an annual basis, complete the Treatment Measure and HM Control Operation and Maintenance Inspection Report (annual report), attached to this agreement as Exhibit C. The annual report shall include all completed Inspection and Maintenance Checklists for the reporting period and shall be submitted to the City in order to verify that inspection and maintenance of the applicable stormwater treatment measure(s) and HM controls (if any) have been conducted pursuant to this agreement. The annual report shall be submitted no later than December 31 of each

year, under penalty of perjury, to **City Engineer, Attn: Stormwater Program, City of Berkeley, 1947 Center Street, 4th Floor, Berkeley, CA 94704** or another member of the City staff as directed by the City. The Property Owner shall provide a record of the volume of all accumulated sediment removed from the treatment measure(s) and HM controls (if any) in the annual report. The Property Owner shall conduct a minimum of one annual inspection of the stormwater treatment measure(s) and HM controls (if any) before the wet season. This inspection shall occur between August 1st and October 1st each year. More frequent inspections may be required by the maintenance plan (Exhibit B). The results of inspections shall be recorded on the Inspection and Maintenance Checklist(s) attached in Exhibit B.

SECTION 6: NECESSARY CHANGES AND MODIFICATIONS

At its sole expense, the Property Owner shall make changes or modifications to the stormwater treatment measure(s) and HM controls (if any) and/or the long-term maintenance plan (Exhibit B) as may be determined as reasonably necessary by the City to ensure that treatment measures and HM controls (if any) are properly maintained and continue to operate as originally designed and approved.

SECTION 7: ACCESS TO THE PROPERTY

The Property Owner hereby grants permission to the City; the San Francisco Bay Regional Water Quality Control Board (Regional Water Board); the Alameda County Mosquito Abatement District (Mosquito Abatement District); and their authorized agents and employees to enter upon the Property at reasonable times and in a reasonable manner to inspect, assess or observe the stormwater treatment measure(s) and HM controls (if any) in order to ensure that treatment measures and HM controls (if any) are being properly 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 it has a reasonable basis to believe that a violation of this Agreement, the City's stormwater management ordinance, guidelines, criteria, other written direction, or the MRP (Regional Board Order R2-2015-0049, and any amendments or reissuances 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 ordinance guideline, criteria or other written direction. Whenever possible, the City, Regional Water Board, or the Mosquito Abatement District shall provide reasonable notice to the Property Owner before entering the property.

SECTION 8: FAILURE TO MAINTAIN TREATMENT MEASURES AND HM CONTROLS

In the event the Property Owner fails to maintain the stormwater treatment measure(s) and/or HM 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, may enter the Property and take whatever steps it deems necessary and appropriate to return the treatment measure(s) and/or HM control(s) 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 treatment measure(s) and/or HM control(s) and in no event shall this Agreement be construed to impose any such obligation on the City.

SECTION 9: REIMBURSEMENT OF CITY EXPENDITURES

In the event the City, pursuant to the Agreement, performs work of any nature (direct or indirect), including any reinspections or any actions it deems necessary or appropriate to return

the treatment measure(s) and/or HM control(s) in good working order as indicated in Section 8, 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, or shall forfeit any required bond upon demand within thirty (30) days of receipt thereof for the costs incurred by the City hereunder. 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 treatment measure(s) and/or HM control(s).

SECTION 10: 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 treatment measure(s) and/or HM control(s) 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 11: NO ADDITIONAL LIABILITY

It is the intent of this agreement to insure the proper maintenance of the treatment measure(s) and HM controls (if any) 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 storm water runoff.

SECTION 12: PERFORMANCE FINANCIAL ASSURANCE

The City may request the Property Owner to provide a performance bond, security or other appropriate financial assurance providing for the maintenance of the stormwater treatment measure(s) and HM controls (if any) pursuant to the City's ordinances, guidelines, criteria or written direction.

SECTION 13: TRANSFER OF PROPERTY

This Agreement shall run with the title to the land. The Property Owner further agrees whenever the Property is held, sold, conveyed or otherwise transferred, it shall be subject to this Agreement which shall apply to, bind and be obligatory to all present and subsequent owners of the Property.

SECTION 14: 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 15: RECORDATION

This Agreement shall be recorded by the Property Owner, or by the City by mutual agreement, within 60 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 16: RELEASE OF AGREEMENT

In the event that the City determines that the stormwater treatment measures and/or HM controls (if any) located on the Property are no longer required, then the City, at the request of the Property Owner shall execute a release of this Inspection and Maintenance 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 treatment measure(s) and/or HM controls (if any) shall not be removed from the Property unless such a release is so executed and recorded.

SECTION 17: EFFECTIVE DATE AND MODIFICATION

This Agreement is effective upon the date of execution as stated at the beginning of this Agreement. 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.

Signature for the City

Date

Type or print name and title

Property Owner Signature

Date

Type or print Property Owner name and address

**EXHIBIT A
SITE PLAN**

EXHIBIT B
MAINTENANCE PLAN

EXHIBIT C
TREATMENT MEASURE OPERATION AND MAINTENANCE INSPECTION REPORT