

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

COUNTY OF SANTA CLARA
Clean Water Program
1553 Berger Drive
Bldg 1, 2nd Floor
San Jose, CA 95112

EXEMPT FROM RECORDING FEES
PURSUANT TO
GOVERNMENT CODE §§6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COUNTY OF SANTA CLARA
STORM WATER BEST MANAGEMENT PRACTICES
OPERATION AND MAINTENANCE AGREEMENT

Name of Developer/Owner: _____
County Assessor's Parcel Number: _____
Address: _____
Type of Improvements: _____
Type of Treatment BMP(s): _____

THIS STORM WATER BEST MANAGEMENT PRACTICES OPERATION AND MAINTENANCE AGREEMENT ("AGREEMENT") is dated this ____ day of _____, 2017, and is made by and between _____, whose address is _____, County Assessor's Parcel Number _____ ("OWNER"), and the COUNTY OF SANTA CLARA, a political subdivision of the State of California ("COUNTY").

RECITALS

This AGREEMENT is made and entered into with reference to the following facts:

- A. **COUNTY is required under the Federal Clean Water Act to obtain a National Pollutant Discharge Elimination System (NPDES) Permit and to implement the Permit.** COUNTY is authorized and required to regulate and control the disposition of storm and surface waters as set forth in Division B11 ½ of the Santa Clara County Code (the "ORDINANCE") as amended from time to time.
- B. OWNER is the owner of certain real property commonly known as _____, _____, Santa Clara County, California, more particularly described in Exhibit "A" attached hereto and incorporated herein (the "PROPERTY").
- C. OWNER desires to construct certain improvements on the PROPERTY that may alter existing storm water conditions on both the PROPERTY and adjacent lands.
- D. To comply with State and local law and to minimize adverse impacts due to these anticipated changes in existing storm and surface water flow conditions, OWNER is required by COUNTY to build and maintain, at OWNER's expense, storm water best management practices facilities ("FACILITIES"), more particularly described and shown in the Storm Water Management Plan prepared by _____ and dated _____, which plans and any amendments thereto are on file with the Clean Water Program of the County of Santa Clara, California, and are hereby incorporated by reference.

E. COUNTY has reviewed and approved the Storm Water Management Plan subject to the execution of this AGREEMENT.

NOW, THEREFORE, in consideration of the promises contained herein and the benefit received by OWNER, its successors and assigns, as a result of COUNTY's issuance of various permits and approvals, including approval of the Storm Water Management Plan, OWNER hereby covenants and agrees with COUNTY as follows:

1. Covenants Running With the Land; PROPERTY Subject to Agreement: The provisions of this AGREEMENT shall run with the land and shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the PROPERTY, or any portion thereof, and each successor-in-interest of OWNER thereof. Each and all of the limitations, easements, obligations, covenants, conditions and restrictions contained herein shall be deemed to be, and shall be construed as, equitable servitudes, enforceable by COUNTY or any other authorized regulatory agency and by any of OWNERS of any of the PROPERTY subject to this AGREEMENT against any other OWNER, tenant or occupant of the PROPERTY, or any portion thereof. All of the PROPERTY shall be subject to this AGREEMENT.

2. Responsibility for Installation, Operation and Maintenance: At its sole expense, OWNER, its successors and assigns, shall construct, operate and perpetually maintain the FACILITIES in strict accordance with the Storm Water Management Plan, and any amendments thereto that have BEEN approved in writing by COUNTY.

3. Facility Modifications: At their sole expense, OWNER, its successors and assigns, shall make such changes or modifications to the FACILITIES as may be determined to be reasonably necessary by COUNTY to ensure that the FACILITIES are properly maintained and continue to operate as originally designed and approved and in compliance with COUNTY, State, and Federal laws. Any changes or modifications may be made only with prior written authorization by COUNTY.

4. Facility Inspections by COUNTY: During normal business hours and with reasonable notice, COUNTY, its agents, employees and contractors, shall have the right of ingress and egress to the FACILITIES and the right to inspect the FACILITIES in order to ensure that the FACILITIES are being properly maintained, are continuing to perform in an adequate manner and are in compliance with the ORDINANCE, the Storm Water Management Plan and any amendments thereto approved by COUNTY, and State and Federal laws.

5. Failure to Perform Required Facility Repairs or Modifications: Should either OWNER or its successors and assigns fail to correct any defects in the FACILITIES in accordance with the approved design standards and/or the Storm Water Management Plan and in accordance with the law and applicable regulations and the ORDINANCE, the COUNTY with 30 days written notice, shall have the right to enter the PROPERTY to perform remedial work. OWNER shall promptly reimburse COUNTY for all costs incurred in such work. In addition, COUNTY may pursue such other remedies as provided by law, including, but not limited to, criminal, civil and administrative remedies as set forth in Division B11 ½ of the ORDINANCE.

6. Indemnity: OWNER, its successors and assigns, shall defend, indemnify and hold COUNTY harmless from and against any and all claims, liabilities, actions, causes of action and damages for personal injury, including death, and property damage, including without limitation, reasonable attorneys' fees, arbitration fees or costs and court costs, arising out of or related to OWNER's, its successors' and/or assigns' construction, operation or maintenance of the FACILITIES, except to the extent that such claims, liabilities, actions, causes of action and damages are directly caused by COUNTY's negligence or willful misconduct or the negligence or willful misconduct of any of COUNTY's employees, agents, representatives, contractors, vendors or consultants.

7. Obligations and Responsibilities of OWNER: Initially, OWNER is solely responsible for the performance of the obligations required hereunder, and to the extent permitted under applicable law, for the payment of any and all fees, fines and penalties associated with such performance or failure to perform under this AGREEMENT. Notwithstanding any provisions of this AGREEMENT to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the PROPERTY or any portion thereof (the "Transfer") to a third party (the "Transferee"), OWNER shall be released of all of its obligations and responsibilities under this AGREEMENT accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the PROPERTY included in such Transfer, and the Transferee shall automatically assume such obligations and responsibilities.

8. PROPERTY Transfer: Nothing herein shall be construed to prohibit a PROPERTY transfer by OWNER to subsequent owners and assigns.

9. Attorneys' Fees: In the event that any party institutes legal action or arbitration against the other to interpret or enforce this AGREEMENT, or to obtain damages for any alleged breach hereof, the prevailing party in such action or arbitration shall be entitled to reasonable attorneys' and arbitrator's fees in addition to all other recoverable costs, expenses and damages.

10. Further Documents: The parties covenant and agree that they shall execute such further documents and instructions as shall be necessary to fully effectuate the terms and provisions of this AGREEMENT and Division B 11 1/2 of the COUNTY Code.

11. Severability: In the event any part or provision of this AGREEMENT shall be determined to be invalid or unenforceable under the laws of the State of California, the remaining portions of this AGREEMENT that can be separated from the invalid, unenforceable provisions shall, nevertheless, continue in full force and effect.

12. No Waiver: The waiver of any covenant contained herein shall not be deemed to be a continuing waiver of the same or any other covenant contained herein.

13. Amendment: This AGREEMENT may be amended in whole or in part only by mutual written agreement. Any such amendment shall be recorded in Santa Clara County, California. In the event any conflict arises between the provisions of any such amendment and any of the provisions of any earlier document or documents, the most recently duly executed and recorded amendment shall be controlling.

14. In the event COUNTY shall determine at its sole discretion at any future time that the FACILITIES are no longer required, then at the written request of OWNER, its successors and/or assigns, COUNTY shall execute a release of this AGREEMENT, which OWNER, its successors and/or assigns, shall record in the County Clerk's Office at its/their expense.

Executed on the dates stated below.

APPROVED AS TO FORM AND LEGALITY:

"COUNTY":
COUNTY OF SANTA CLARA

Deputy County Counsel

By: _____
Kirk Girard

Title: Director of Planning and Development

APPROVED BY COUNTY EXECUTIVE

Date: _____

"OWNER":

By: _____

Name: _____

Title: _____

Date: _____

Attachments:
Notary Acknowledgement - OWNER
General Acknowledgement (for County)
Exhibit A – Legal Description
Exhibit B – Stormwater Management Plan
Exhibit C – Maintenance Plan

(Notary acknowledgment to be attached)