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| RECORDING REQUESTED BY  AND WHEN RECORDED RETURN TO:  City of Menlo Park  Attn: City Clerk  701 Laurel St.  Menlo Park, CA 94025  The undersigned declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and Documentary Transfer Tax (Rev. & Tax. Code §11922). |  |

(Space above this line reserved for Recorder's use only)

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| Stormwater treatment construction and maintenance agreement at ADDRESS |
| This Stormwater Treatment Construction and Maintenance Agreement (“Agreement”) is dated this \_\_\_ day of \_\_\_\_\_\_, **YEAR**, and is by and between the City of Menlo Park, a political subdivision of the State of California, hereinafter referred to as "City", and **NAME / DESCRIPTION**, (“Owner”) as the owner of the real property commonly known as **ADDRESS**, and legally described on Exhibit A attached hereto (the “Property”), who enter into this Agreement with reference to the following recitals: |
| Recitals |
| WHEREAS, On October 14, 2009 the Regional Water Quality Board, San Francisco Bay Region, adopted R2-2009-0074, a new Municipal Regional Stormwater NPDES Permit; and  WHEREAS, Provision C.3.e.ii of this NPDES Permit, and as it may be amended or reissued from time to time, requires the permittee public agencies to provide minimum verification and access assurances that all treatment measures shall be adequately operated and maintained by entities responsible for the stormwater treatment measures; and  WHEREAS, the City is the permitting public agency with jurisdiction over the Property; and  WHEREAS, Owner, is the owner of the real property commonly known as ADDRESS, and more particularly described in the attached legal description (Exhibit A)  WHEREAS, attached hereto as Exhibit B; is a legible reduced-scale copy of the Site Plan, which has been approved by and is on file with the City of Menlo Park Engineering Division, showing the stormwater treatment measure(s) that Owner has agreed to construct on the Property in connection with the development of the PROJECT ; and  WHEREAS, the Owner recognizes that the stormwater treatment measure(s) shown on Exhibit B (the “Stormwater Management Plan”), must be installed and maintained as indicated in this Agreement and as required by the NPDES permit; and  WHEREAS, the Owner acknowledges that the stormwater treatment measure(s) shall be owned, maintained, and repaired by the Owner to ensure their proper functioning for the health, safety, and welfare of the citizens of the City; and  WHEREAS, it is the purpose of this Agreement to memorialize in writing the Owner’s agreement for installation, use, maintenance, and repair of the stormwater treatment measures.  THEREFORE, the Owner hereby covenants and agrees as follows: |
| Conditions of agreement |
| 1. Construction of Treatment Measures:   The on-site stormwater treatment measures shown on Exhibit B shall be constructed by the 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.   1. Operation & Maintenance Responsibility:   This Agreement shall serve as the signed statement by the Owner accepting responsibility for Operation and Maintenance of stormwater treatment measures as set forth in this Agreement until the responsibility is legally transferred to another person or entity.  Before the Property is legally transferred to another person or entity, the Owner shall provide, to the City, at least one of the following:   * 1. A signed statement to the public entity assuming post-construction responsibility for treatment measure maintenance and that the treatment measures 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 covenants, conditions and restrictions (CCRs) for residential properties assigning O&M responsibilities to the homeowners association for O&M of the treatment measures; or   4. Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of treatment measures.  1. Maintenance of Treatment Measures:   The Owner shall not destroy or remove the stormwater treatment measures from the Property nor modify the stormwater treatment system in a manner that reduces its effectiveness, and shall, at Owner’s sole expense, adequately maintain the stormwater treatment measures in good working order acceptable to the City and in accordance with the maintenance plan agreed hereto and attached as Exhibit C.  This includes all pipes, channels, or other conveyances built to convey stormwater to the stormwater measures, as well as 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.   1. Sediment Management:   Sediment accumulation resulting from the normal operation of the stormwater treatment measures will be managed appropriately by the Owner.  The 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.   1. Annual Inspection and Report:   The Owner shall, on an annual basis, conduct a minimum of one inspection of the stormwater treatment measures before the wet season.  This inspection shall occur between August 1 and October 1 of each year.  More frequent inspections may be required by the maintenance plan (Exhibit C).  The Owner shall pay all costs and expenses of the inspections.  The results of inspections shall be recorded on the Treatment Measure Operation and Maintenance Inspection Report (annual report), attached to this Agreement as Exhibit D and the Treatment Measure Checklist (annual report attachment), attached to this Agreement as Exhibit E.  One Checklist shall be completed for each treatment measure.  The annual report shall be made under penalty of perjury and shall be submitted to the City in order to verify that inspection and maintenance of the applicable stormwater treatment measures have been conducted pursuant to this Agreement.  The Owner shall provide in the annual report a record of the volume of all accumulated sediment removed as a result of the treatment measures.  The reporting period shall be the calendar year and the annual report shall be submitted no later than January 10 of the following year.  It shall be delivered to the Stormwater Coordinator, Engineering Division, City of Menlo Park, 701 Laurel St., Menlo Park, CA 94025 or another member of the City staff as directed by the City.   1. Necessary Changes and Modifications:   If the City determines that changes or modifications to the stormwater treatment measures and/or the maintenance plan Exhibit C are reasonably necessary to ensure that the treatment measures are adequately maintained and continue to function as originally designed and approved by the City, the City shall notify the Owner in writing of such determination and of the changes / modification the City believes to be necessary.  The Owner may, at its sole expense, make the recommended changes and modifications.  Alternatively, the Owner may, also at its sole expense, have an independent stormwater consultant (approved by the City) review the recommended changes and modifications and make only those changes and modifications recommended by the consultant.  If the Owner desires to modify the stormwater treatment measures, the Owner must submit a building permit application, complete with plans, to the City for approval.   1. Access to the Property:   The Owner hereby grants permission to the City of Menlo Park, the San Francisco Bay Regional Water Quality Control Board, the San Mateo County Mosquito Abatement District, the San Manteo County Flood Control District, and their authorized agents and employees to enter upon the Property at reasonable times, upon reasonable prior notice, and in a reasonable manner to inspect, assess, or observe the stormwater treatment measure(s) in order to ensure that treatment measures 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 whenever there is a reasonable basis to believe that a violation of this Agreement, the City’s stormwater management ordinance, guidelines, criteria, other written direction, or the NPDES Municipal Stormwater Permit and any amendments or reissuances of it 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 this Agreement, the ordinance, guideline, criteria, permit or other written direction.  The agency shall provide reasonable (as may be appropriate for the particular circumstances) notice to the Owner before entering the property and shall minimize interference with the Owner’s use of the Property and stormwater treatment measures.  Such notice will not be necessary if emergency conditions require immediate remedial action.  If it is determined during inspection by an agency listed above, that the Owner has breached any maintenance obligation, the cost of which is in excess of one thousand dollars ($1,000.00), the Property Owner agrees to reimburse that agency for the cost and expenses of said inspection.   1. Failure to Maintain Treatment Measures:   The Owner recognizes that use, modification, and proper maintenance of the stormwater treatment measures is for the benefit of all citizens of the City and that the City is an intended third party beneficiary of this Agreement and may, upon notice of hearing, as set forth below, exercise powers of enforcement of this Agreement.  If the Owner determines during inspection that the treatment measures requires repair or replacement, the Owner shall make reasonable efforts with ensure that such work shall be performed within sixty (60) days or such later time as may be approved by the City if such work cannot reasonably be completed within sixty (60) days.  In the event the Owner fails to maintain the stormwater treatment measures as required by Exhibit C, the City shall by mail or personal delivery give written notice of the breach of any maintenance obligation to the Owner with a demand that such breach be remedied.  If such breach is not remedied within sixty (60) days of the mailing or delivery of such notice, the City shall have standing and the right (but not the obligation) to bring a court action against Owner to enforce such provision.  The notice may also contain a date for a hearing on the matter before a City employee designated by the City (which hearing shall be held no sooner than fifteen (15) days after mailing of such notice), and if after such hearing the City determines that there has been inadequate maintenance, the City shall have the right (but not the obligation) to undertake the maintenance of the treatment measures.  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 measures and in no event shall this Agreement be construed to impose any such obligation on the City.   1. 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 treatment measures to 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 Owner shall be liable and responsible to immediately reimburse the City for all funds reasonably expended or shall forfeit any required bond for the cost incurred by the City hereunder.  If these costs are not paid within the prescribed time period, the City may assess the Owner the cost of the work, both direct and indirect and applicable penalties.  Such assessment shall constitute a lien against the Property included in this Agreement and may be enforced against the Property, the Owner, and any successor owner 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 Owner’s failure to maintain the treatment measures.  In the event of any dispute involving the City enforcing the terms and provisions of this Agreement, or the City exercising any and all legal remedies, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred.   1. Indemnification:   The Owner shall indemnify, hold harmless, and defend the City and its authorized or subsidiary agencies, their officers, officials, agents, employees, and servants from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, payments, or actions of every name, kind and description, including attorney fees claimed, which might arise or be asserted based on negligence or willful misconduct of the Owner or its respective employees, agents, or contractors, brought for, or on account of, injuries to or death of any person or damage to the Property resulting from the performance of any work required by this Agreement by parties, their officers, agents, employees and servants and/or any damages, penalties, claims or injuries resulting from the presence, existence or maintenance of the treatment measures.  The duty of the Owner to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.  In the event a claim is asserted against the City, its authorized agents, officers, officials, or employees, the City shall promptly notify the Owner and the Owner shall defend at its own expense any suit based on such claim.  If any judgement or claims against the City, its authorized agents, officers, officials, or employees shall be allowed, the 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, payments, or claims of every name, kind, and description including attorney fees claimed which arise due solely to the negligence or willful misconduct of the City.   1. No Additional Liability:   It is the intent of this Agreement to insure the property maintenance of the treatment measures by the 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 or damage alleged to result from or caused by stormwater runoff.   1. Performance Financial Assurance:   The City may request the Owner to provide a performance bond, security, or other appropriate financial assurance providing for the maintenance of the stormwater treatment measures pursuant to the City’s ordinances, guidelines, criteria or written direction.   1. Transfer of Property:   This Agreement shall run in perpetuity as long as the stormwater treatment measures remains in place and is binding upon, and inures to the benefit of, the Owner and their heirs, successors, assigns, executors, administrators, personal and legal representatives.  The Owner further agrees whenever the Property or any portion thereof 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 owner of the Property or any portion thereof.   1. 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 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.   1. Recordation:   The Agreement shall be recorded with the County Recorder within twenty (20) days of the date of execution.  Recordation shall be at the expense of the Owner.  The City reserves the option to record this Agreement.   1. Release of Agreement:   In the event that the City determines that the stormwater treatment measures located on the Property are no longer required, then the City at the request of the Owner, shall execute a release of this Agreement, which the Owner may record in the County Recorder’s Office at the Owner’s expense.  The City reserves the option to record such release of this Agreement.  The stormwater treatment measures shall not be removed from the Property unless such a release is so executed and recorded.   1. 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 or amended without prior written consent of the City Director of Public Works.  Such modifications shall be effective upon the date of execution by the Owner and the City Directory of Public Works shall be recorded.  Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.   1. Governing Law:   This Agreement shall be governed by the laws of the State of California.   1. Waiver:   Waiver by City of any breach of one or more of these terms, covenants or conditions of this Agreement or any default in the performance of any obligations under this Agreement shall not be construed as waiver of any other term, covenant, condition, or obligation; nor shall a waiver of any incident of breach or default constitute a continuing waver of same.   1. Attorney Fees:   In the event of any litigation arising out of, or to enforce the terms and provisions of, this Agreement, the prevailing party shall be entitled to recover its attorney’s fees and costs of suit:   1. Entire Agreement:   This Agreement contains the entire understanding between the parties with respect to the subject matter herein.  There are no representations, agreements, arrangements, or understandings (oral or written) between or among the parties relating to the subject matter of the Agreement which are not fully expressed herein.  This Agreement may not be amended or modified except by a written instrument signed by both parties and recorded in the San Mateo County Recorder’s Office.   1. Notice:   All notices or other communications shall be deeded given when: (a) personally delivered; )b\_ received by overnight courier, or (c) received if mailed by postage prepaid mail to the parties at the addresses set forth below:  City:  City of Menlo Park  701 Laurel St.  Menlo Park, CA 94025  Owner:  **NAME**  **ADDRESS**  **CITY, STATE ZIP**  Attachments:  Exhibit A Legal Description of the Property  Exhibit B Site Plan  Exhibit C Maintenance Plan  Exhibit D Inspection and Maintenance Checklists  Exhibit E Annual Inspection Report  [SIGNATURES APPEAR ON NEXT PAGE] |

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| **Signatures** |
| IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below. |

**OWNER:**

Signature Date

Name

**CITY OF MENLO PARK:**

Nicole H. Nagaya, Public Works Director Date

**APPROVED AS TO FORM:**

Cara Silver, Interim City Attorney Date

**ATTEST:**

Judi A. Herren, City Clerk Date