

RECORDING REQUESTED BY:

City of Modesto

WHEN RECORDED, PLEASE RETURN TO

City of Modesto
City Clerk
1010 Tenth Street
P.O. Box 642
Modesto, CA 95353

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STORMWATER TREATMENT DEVICE
ACCESS AND MAINTENANCE AGREEMENT**

OWNER: _____

PROPERTY ADDRESS: _____

APN: _____

THIS AGREEMENT is made and entered into in Modesto, California, this _____ day of _____, by and between _____, hereinafter referred to as "Owner" and the CITY OF MODESTO, a municipal corporation, located in the County of Stanislaus, State of California hereinafter referred to as "CITY";

WHEREAS, the Owner owns real property ("Property") in the City of Modesto, County of Stanislaus, State of California, more specifically described in Exhibit "A" and depicted in Exhibit "B", each of which exhibits is attached hereto and incorporated herein by this reference;

WHEREAS, at the time of initial approval of development project known as _____ within the Property described herein, the City of Modesto Planning Commission Conditions of Approval No. _____ of the Notice of Decision and Findings of Fact required the project to employ on-site control measures to minimize pollutants in urban runoff;

WHEREAS, the Owner has chosen to install a _____, hereinafter referred to as "Device", as the on-site control measure to minimize pollutants in urban runoff;

WHEREAS, said Device has been installed in accordance with plans and specifications accepted by the City;

WHEREAS, said Device, with installation on private property and draining only private property, is a private facility with all maintenance or replacement, therefore, the sole responsibility of the Owner in accordance with the terms of this Agreement;

WHEREAS, the Owner is aware that periodic and continuous maintenance, including, but not necessarily limited to, filter material replacement and sediment removal, is required to assure peak performance of Device and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs;

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner hereby provides the City or City's designee complete access, of any duration, to the Device and its immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by City's Director of Operations & Maintenance no advance notice, for the purpose of inspection, sampling, testing of the Device, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner's expense as provided in paragraph 3 below. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.
2. Owner shall use its best efforts diligently to maintain the Device in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of material(s) from the Device and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination.
3. In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) days of being given written notice by the City, the City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense to the Owner or Owner's successors or assigns, including administrative costs, attorneys fees and interest thereon at the maximum rate authorized by the Civil Code from the date of the notice of expense until paid in full.
4. The City may require the owner to post security in form and for a time period satisfactory to the City of guarantee the performance of the obligations state herein. Should the Owner fail to perform the obligations under the Agreement, the City may, in the case of a cash bond, act for the Owner using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of the Agreement. As an additional remedy, the Director may withdraw any previous stormwater related approval with respect to the property on which a Device has been installed until such time as Owner repays to City it's reasonable cost incurred in accordance with paragraph 3 above.
5. This agreement shall be recorded in the Office of the Recorder of Stanislaus County, California at the expense of the Owner and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.
6. In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, then the Owner and its successors or assigns agree(s) to pay all costs incurred

by the City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.

7. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.
8. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to the City at the same time such notice is provided to the successor.
9. Time is of the essence in the performance of this Agreement.
10. Any notice to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

IF TO CITY:
Operations and Maintenance
City of Modesto
P.O. Box 642
Modesto, CA 95353

IF TO OWNER:

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

CITY OF MODESTO, a Municipal Corporation

By: _____
Greg Nyhoff, City Manager

ATTEST:

By: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

OWNER:

By: _____
(Signature)

(Print Name)

By: _____
(Signature)

(Print Name)

Approved as to form:
SUSANA ALCALA WOOD, City Attorney

By: _____
Roland R. Stevens,
Assistant City Attorney

Approved as to sufficiency:

By: _____
Dhyan L. Gilton,
Enviornmental Compliance Inspector II

EXHIBIT A
(Legal Description)

EXHIBIT B
(Map/Illustration)