

STORMWATER TREATMENT MEASURES
MAINTENANCE AGREEMENT

Address: _____

Burlingame, CA 94010

APN: _____

RECITALS

This Stormwater Treatment Measures Maintenance Agreement (“Agreement”) is entered into this _____ by and between the City of Burlingame (“City”) and _____ (“Property Owner”), the owner of real property described in Exhibit A to this Agreement.

WHEREAS, on October 14, 2009 and revision in November 28, 2011, the Regional Water Quality Control Board, San Francisco Bay Region, adopted Order R2-2009-0074, amending the San Mateo Countywide NPDES Municipal Stormwater Permit (Order 99-059, CAS0029921) (“NPDES Permit”); and

WHEREAS, provision C.3.e.ii of this NPDES Permit 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 Property Owner is the owner of real property commonly known as _____ (the “Property”), and more particularly described in the legal description attached as Exhibit A to this Agreement, and incorporated herein by reference; and

WHEREAS, attached hereto as Exhibit B and incorporated by reference into the Agreement, is a legible reduced-scale copy of the Stormwater Management Plan or comparable document showing the stormwater treatment measures that the Property Owner has stated will be located and/or constructed on the Property; and

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

WHEREAS, the Property Owner recognizes that the stormwater treatment measure(s) more particularly described and shown on Exhibit B, of which full-scale plans and any amendments thereto are on file with the City and incorporated by reference into the Agreement, must be installed and permanently maintained as indicated in this Agreement and as required by the NPDES Permit; and

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) described in the Stormwater Management Plan in Exhibit B be constructed and permanently 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), as shown on the approved Site Plan, 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

Property Owner agrees to construct the on-site stormwater treatment measure(s) shown on the Site Plan 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 AND MAINTENANCE RESPONSIBILITY

This Agreement shall serve as the signed statement and agreement by the Property Owner accepting responsibility for the permanent operation and maintenance of stormwater treatment measures as set forth in this Agreement, and the documents incorporated by reference into the Agreement, and as required by the NPDES Permit until the responsibility is legally transferred to another person or entity. Before the Property is legally transferred to another person or entity, the Property Owner shall provide to the City at least one of the following:

1. A signed statement from a public entity assuming permanent 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 permanent 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 and which shall run with the land; or
3. Written text in project conditions, covenants and restrictions (“CCRs”) for residential properties permanently assigning O&M responsibilities to the homeowners association for O&M of the treatment measures, such responsibilities to run with the land; or
4. Any other legally enforceable agreement or mechanism acceptable to the City that assigns responsibility for the maintenance of treatment measures.

SECTION 3: MAINTENANCE OF TREATMENT MEASURES

The Property Owner shall not destroy or remove the stormwater treatment measures from the Property nor modify the stormwater treatment system in a manner that lessens its effectiveness, and shall, at Property Owner's sole expense, adequately repair and maintain the stormwater treatment measure(s) in good working order acceptable to the City and in accordance with the Maintenance Plan agreed hereto and attached as Exhibit C ("Maintenance Plan"), and incorporated by reference into this Agreement. This includes all pipes, channels or other conveyances built by Property Owner to convey stormwater to the treatment measure(s), 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 into perpetuity 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) will be managed appropriately by the Property Owner in accordance with the Maintenance Plan and applicable federal, state, and City laws, regulations and guidelines, as these may be amended from time to time. The Property Owner will provide for the timely removal and disposal of accumulated sediments. Disposal of accumulated sediments shall not occur on the Property, unless specifically 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 an Operation and Maintenance Inspection Report ("Annual Report") using a form available from the City, see Exhibit D for an example. The Annual Report shall include a completed Operation and Maintenance Inspection Report for each stormwater treatment measure and shall be submitted to the City in order to verify that inspection and maintenance of the applicable stormwater treatment measure(s) have been conducted pursuant to this Agreement. **The Annual Report shall be submitted no later than December 31 of each year**, signed under penalty of perjury, to the City of Burlingame. The Property Owner shall provide in the Annual Report a record of the volume of all accumulated sediment removed as a result of the treatment measure(s). The Property Owner shall conduct a minimum of one annual inspection of the stormwater treatment measure(s) 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 in Exhibit C. The results of inspections shall be included on the Operation and Maintenance Inspection Report(s) available from the City and submitted to the City as part of the Annual Report. The Property Owner shall pay the required fees to cover

City staff time spent performing necessary compliance monitoring activities, such as annual report reviews and necessary inspections.

SECTION 6: NECESSARY CHANGES AND MODIFICATIONS

At its sole expense, the Property Owner shall make all changes, repairs or modifications to the stormwater treatment measure(s) and/or the Maintenance Plan shown in Exhibit C as may be determined as reasonably necessary by the City to ensure that treatment measures are properly maintained and continue to operate as originally designed and approved, provided however, Property Owner shall be responsible for repairs or modifications that are not part of the approved Maintenance Plan only after receipt of notice from the City with regards to such repair and maintenance and after the opportunity to meet and confer with the City with regards to such repairs or modifications.

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 Board); the San Mateo County Mosquito Abatement District (Mosquito Abatement District); and their respective 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) 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 Permit (and any amendments or re-issuances of this permit) is occurring, has occurred or threatens to occur. The above-listed agencies shall also have a right to enter the Property when necessary for abatement of a public nuisance or correction of a violation of the ordinance, guidelines, criteria or other written direction. The City, Regional Board, or the Mosquito Abatement District shall provide reasonable (as may be appropriate for the particular circumstances) notice to the Property Owner before entering the Property and shall not interfere with the Property Owner's tenants, guest, licensees and invitees during any such entry.

SECTION 8: FAILURE TO MAINTAIN TREATMENT MEASURES

In the event the Property Owner fails to maintain the stormwater treatment measure(s) as shown on the approved Site Plan in good working order acceptable to the City and in accordance with the Maintenance Plan, 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) to good working order, provided, however, City shall not be authorized to remove any structures or improvements on the Property or in any way interfere with Property Owner's use of the Property. Such notice will not be necessary if emergency conditions require immediate remedial action. For purposes of this section, the existence and/or

declaration of an emergency condition is at the sole discretion of the City. 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 in no event shall this Agreement be construed to impose any such obligation on the City.

SECTION 9: FAILURE TO FILE ANNUAL REPORT

In the event the Property Owner fails to file the Annual Report required under this Agreement in a form acceptable to the City, 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 inspect the Property. Such notice will not be necessary if emergency conditions require immediate remedial action. It is expressly understood and agreed that the City is under no obligation to inspect, maintain or repair the treatment measure(s) and in no event shall this Agreement be construed to impose any such obligation on the City.

SECTION 10: REIMBURSEMENT OF COUNTY EXPENDITURES

In the event the City, pursuant to this Agreement, performs work of any nature (direct or indirect), including any inspections, re-inspections or any actions it deems necessary or appropriate as indicated in Sections 8 or 9 above, 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, 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 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 report or to maintain the treatment measure(s).

SECTION 11: 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, inspection or maintenance of the treatment measure(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 12: NO ADDITIONAL LIABILITY

It is the intent of this Agreement to insure the proper maintenance of the treatment measure(s) by the Property Owner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability not otherwise provided by law of any party for damage alleged to result from or caused by stormwater runoff.

SECTION 13: 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) pursuant to the City's ordinances, guidelines, criteria or written direction. For purposes of this section, a documented history shall include any documented failure to maintain the stormwater treatment measures by the Property Owner, including the issuance of one (1) Notice to Cure.

SECTION 14: TRANSFER OF PROPERTY

This Agreement shall run with the title to the land and any portion thereof. The Property 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 owners of the Property or any portion thereof.

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 in the County Recorder's Office of the County of San Mateo, California, within ten (10) working days after the execution date of this Agreement at the Property Owner's expense. The City reserves the option to record this Agreement and shall be entitled to collect any expenses related to recordation if it does so. The Property Owner shall provide City with a copy of the recorded document.

SECTION 17: 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 Property Owner shall execute a release of this Maintenance Agreement, which the Property Owner shall record in the County Recorder's Office at the Property Owner's expense. The City reserves the option to record such release of this Maintenance Agreement. The stormwater treatment measure(s) 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 of execution as stated at the beginning of this Agreement. This Agreement shall not be modified except by written instrument executed by the County 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: GOVERNING LAW

This Agreement shall be governed by the laws of the State of California.

SECTION 20. 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 waiver of same.

SECTION 21: 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.

SECTION 22: NOTICE

All notices or other communications shall be deemed given when: (a) personally delivered or (b) mailed by postage to the parties at the addresses set forth below:

City:	Property Owner:
City of Burlingame	Owner Name: _____
Public Works	Attention: _____
Engineering	Mailing Address: _____
501 Primrose Road	City, State, & Zip Code: _____
Burlingame, CA 94010	Email Address: _____
	Phone Number: _____

SECTION 23: EXHIBITS

The following exhibits are attached hereto and fully incorporated by reference herein:

- Exhibit A: Legal Description of Property
- Exhibit B: Stormwater Management Plan
- Exhibit C: Maintenance Plan
- Exhibit D: Operation and Maintenance Inspection Report

IN WITNESS WHEREOF, the parties hereby execute this Agreement as follows:

Signature for the City

Date

Print Name

Title

ATTEST:

Property Owner Signature

Date

Print Name

ACKNOWLEDGEMENT:

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B: STORMWATER MANAGEMENT PLAN

Date of City-Approved Drawing: _____

EXHIBIT C: MAINTENANCE PLAN

**Template maintenance plans are available at
www.burlingame.org/stormwaterdevelopment**

**Bioretention Area¹ Maintenance Plan for
 <Insert Project Name>**

<Insert Date>



Bioretention areas function as soil and plant-based filtration devices that remove pollutants through a variety of physical, biological, and chemical treatment processes. These facilities normally consist of a ponding area, mulch layer, vegetation and biotreatment soil mix.

Project Address: _____

Assessor's Parcel No.: _____

Property Owner: _____

Phone No.: _____

Designated Contact: _____

Phone No.: _____

Mailing Address: _____

The property contains <insert number> bioretention area(s), located as described below and as shown in the attached site plan².

- **Bioretention Area No. 1** is located at <describe location>.
- <Add descriptions of other bioretention areas, if applicable.>

I. Routine Maintenance Activities

The principal maintenance objective is to prevent sediment buildup and clogging, which reduces pollutant removal efficiency and may lead to bioretention area failure. Routine maintenance activities, and the frequency at which they will be conducted, are shown in Table 1.

Table 1 Routine Maintenance Activities for Bioretention Areas		
No.	Maintenance Task	Frequency of Task
1	Remove obstructions, debris and trash from bioretention area and dispose of properly.	Monthly, or as needed after storm events
2	Inspect bioretention area to ensure that it drains between storms and within five days after rainfall. If ponded water does not drain within five days, check if drains are clogged or consider removing the surface biotreatment soil and replacing with the approved soil mix and replant	Monthly, or as needed after storm events

¹ Bioretention areas include linear treatment measures designed to filter water through biotreatment soils. A bioretention area that has no waterproof liner beneath it and has a raised underdrain in the underlying rock layer to promote infiltration, as shown in Section 6.1 of the C.3 Technical Guidance, may also be called a "bioinfiltration area".

² Attached site plan must match the site plan exhibit to Maintenance Agreement.

3	Inspect inlets for channels, soil exposure or other evidence of erosion. Clear obstructions and remove sediment.	Monthly, or as needed after storm events
4	Remove and replace all dead and diseased vegetation.	Twice a year
5	Maintain vegetation and the irrigation system. Prune and weed to keep bioretention area neat and orderly in appearance.	Before wet season begins, or as needed
6	Inspect and, if needed, add mulch before the wet season begins. It is recommended that composted arbor mulch be applied once a year to maintain a 3" depth of mulch over all bare soil areas except within six inches of tree trunks.	Before wet season begins, or as needed
7	Inspect bioretention area using the attached inspection checklist.	Monthly, or after large storm events, and after removal of accumulated debris or material

II. Prohibitions

Do not use pesticides or other chemical applications to treat diseased plants, control weeds or removed unwanted growth. Employ non-chemical controls (biological, physical and cultural controls) to treat a pest problem. Prune plants properly and at the appropriate time of year. Provide adequate irrigation for landscape plants. Do not over water.

III. Mosquito Abatement

Standing water should not remain in the treatment measures for more than five days, to prevent mosquito generation. Should any mosquito issues arise, contact the San Mateo County Mosquito Abatement District (SMCMAD), as needed for assistance. Mosquito larvicides should be applied only when absolutely necessary, as indicated by the SMCMAD, and then only by a licensed professional or contractor. Contact information for SMCMAD is provided below.

San Mateo County Mosquito Abatement District
 1351 Rollins Road
 Burlingame, CA 94010
 PH:(650) 344-8592
 FAX: (650) 344-3843
[Email: info@smcmad.org](mailto:info@smcmad.org)

IV. Inspections

The attached Bioretention Area Inspection and Maintenance Checklist should be used to conduct inspections monthly (or as needed), identify needed maintenance, and record maintenance that is conducted.

EXHIBIT D: OPERATION AND MAINTENANCE INSPECTION REPORT

**Template operation maintenance inspection reports are
available at www.burlingame.org/stormwaterdevelopment**

**Bioretention Area
Operation and Maintenance Inspection Report**

Property Address: _____

Property Owner: _____

Treatment Measure No.: _____

Date of Inspection: _____

Type of Inspection: Monthly

Pre-Wet Season

After heavy runoff

End of Wet Season

Other: _____

Inspector(s): _____

Defect	Conditions When Maintenance Is Needed	Maintenance Needed? (Y/N)	Comments (Describe maintenance completed and if needed maintenance was not conducted, note when it will be done)	Results Expected When Maintenance Is Performed
1. Standing Water	When water stands in the bioretention area between storms and does not drain within five days after rainfall.			There should be no areas of standing water once inflow has ceased. Any of the following may apply: sediment or trash blockages removed, improved grade from head to foot of bioretention area, or added underdrains.
2. Trash and Debris Accumulation	Trash and debris accumulated in the bioretention area.			Trash and debris removed from bioretention area and disposed of properly.
3. Sediment	Evidence of sedimentation in bioretention area.			Material removed so that there is no clogging or blockage. Material is disposed of properly.
4. Erosion	Channels have formed around inlets, there are areas of bare soil, and/or other evidence of erosion.			Obstructions and sediment removed so that water flows freely and disperses over a wide area. Obstructions and sediment are disposed of properly.
5. Vegetation	Vegetation is dead, diseased and/or overgrown.			Vegetation is healthy and attractive in appearance.
6. Mulch	Mulch is missing or patchy in appearance. Areas of bare earth are exposed, or mulch layer is less than 3 inches in depth.			All bare earth is covered, except mulch is kept 6 inches away from trunks of trees and shrubs. Mulch is even in appearance, at a depth of 3 inches.
7. Miscellaneous	Any condition not covered above that needs attention in order for the bioretention area to function as designed.			Meet the design specifications.