WHEN RECORDED MAIL TO:

City Clerk, City of Monterey City Hall Monterey, CA 93940

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WATER QUALITY MANAGEMENT PLAN AND STORMWATER BMP MAINTENANCE AND RIGHT OF ENTRY AGREEMENT CITY OF MONTEREY

## SAIMPLE

## WATER QUALITY MANAGEMENT PLAN AND STORMWATER BMP MAINTENANCE AND RIGHT OF ENTRY AGREEMENT

THIS WATER QUALITY MANAGEMENT PLAN AND STORMWATER
BMP MAINTENANCE AND RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into in the City of Monterey, California, this \_\_\_\_\_\_day of \_\_\_\_\_\_, YEAR by and between OFFICIAL OWNER NAME, hereinafter referred to as "Owner" and the City of Monterey ("City"), a municipal corporation. This Agreement applies to property located at PROJECT ADDRESS, APN No. XXX-XXX-XXX in the County of Monterey, State of California. The Agreement is subject to the following recitals:

## **RECITALS**

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

WHEREAS, The APPLICABLE DISCRETIONARY BODY of the City of Monterey approved granting of Planning Permit No. XX-XXX for PERMIT TYPE and PROJECT DESCRIPTION for the subject property;

WHEREAS, at the time of initial approval of said Planning Permit No. XX-XXX the City required the project to employ post-construction Best Management Practices, hereinafter referred to as "BMPs," in accordance with the City's approved National Pollutant Discharge Elimination System (NPDES) Storm Water permit to minimize pollutants in urban runoff;

WHEREAS, the Owner has chosen to install and/or implement BMPs as shown on the NAME OF PLAN SHEETS AND DATE, and the STORM WATER MANAGEMENT PLAN for PROJECT ADDRESS Dated MONTH YEAR on file with the City, hereinafter referred to as "Plans", to minimize pollutants in urban runoff and to minimize other adverse impacts of urban runoff;

**WHEREAS**, the Plans have been certified by the Owner and reviewed and approved by the City;

**WHEREAS,** the BMPs, with installation and implementation on private property and draining only private property, are part of 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, (DESCRIBE MAINTENANCE NEEDS HERE; EXAMPLE: filter material replacement and sediment removal), is required to assure peak performance of all BMPs in the Plans 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**, in consideration of the foregoing premises, the mutual stipulations and agreements contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. **Responsibility for Operation and Maintenance of BMPs:** Owner shall diligently maintain all BMPs in a manner that maintains the original treatment requirements at all

times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of any material(s) from the BMPs 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.

- 2. **Owner consents and agrees** to inspect and maintain annually, prior to October 15 of each year, the Structural or Treatment Control BMPs.
- Owner consents and agrees to forward a letter providing proof of inspection and maintenance to the City Engineer of the City of Monterey prior to October 15 of each year.
- 4. Right of Access: Owner hereby provides the City or City's designee complete access, of any duration, to the BMPs and their immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by City's CHIEF of PLANNING, ENGINEERING, and ENVIRONMENTAL COMPLIANCE ("Chief"), with no advance notice, for the purpose of inspection, sampling, testing of the BMPs, and in case of emergency, to undertake, in the City's sole discretion, necessary repairs or other preventative measures at Owner's expense as provided in paragraph 5 below. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.
- 5. **Penalty:** In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement or if the BMP's do not perform in a manner that maintains the original treatment requirements at all times, then the Owner shall be subject to monetary fines per day or per occurrence in accordance with Chapter 31.5, "Storm Water Management", of the City Code of the City of Monterey and City of Monterey Resolution No. 09-122 C.S.
- 6. **Recording:** This Agreement shall be recorded in the Office of the Recorder of Monterey 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.
- 7. **Attorney's Fees:** In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, 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.
- 8. **Covenant:** 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.
- 9. Binding on Successors: 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. Such notice shall includes printed educational materials to highlight the existence of the BMPs and to provide information on what storm water management facilities are present, signs that maintenance is needed, and how the necessary maintenance can be performed. The transfer of this information shall also be required with any subsequent sale 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.

- 10. Indemnity and Insurance: The Owner, its heirs, successors, executors, administrators and assigns agree to defend, indemnify and holds harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City and which are in any way connected with the construction, operation, presence, existence or maintenance of the BMP by the Owner, or from any personal injury or property damage that may result from the City or other public entities entering the Property under Section 4 of this Agreement. The Owner shall maintain liability insurance specifically covering the BMP and City. The City shall specify amount of coverage and require proof of insurance to be provided to City on a regular basis as determined by the City.
- 11. **Time of the Essence**: Time is of the essence in the performance of this Agreement.
- 12. **Notice:** 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.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first
OITY:  OWNER:  By:  Name:  Title:
APPROVED AS TO FORM:
City Attorney