

**STORMWATER TREATMENT MEASURES  
MAINTENANCE AGREEMENT**

**RECITALS**

This Stormwater Treatment Measures Maintenance Agreement (“Agreement”) is entered into on \_\_\_\_\_ by and between the City of Fairfield (“City”) and \_\_\_\_\_, owner of real property described in this Agreement.

**WHEREAS**, On October 14, 2009, the Regional Water Quality Control Board, San Francisco Bay Region, adopted Order R2-2009-0074, CAS612008 issuing the Municipal Regional Stormwater NPDES (National Pollutant Discharge Elimination System) permit to the San Francisco Bay Region, including the Cities of Fairfield and Suisun City which have joined together to form the Fairfield-Suisun Urban Runoff Management Program; and

**WHEREAS**, Provision C.3. of this NPDES permit, and as it may be amended or reissued, 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 APN(s): \_\_\_\_\_ (the “Property”), and more particularly described in the attached legible reduced-scale copy of the Site Plan or comparable document (**Exhibit 1**) is subject to the installation of storm water treatment measures; and

**WHEREAS**, the City is the permittee public agency with jurisdiction over the Property.

**WHEREAS**, the Property Owner, its successors and assigns, including any homeowners association, recognizes that the storm water treatment measure(s) more particularly described and shown on **Exhibit 1**, of which full-scale plans and any amendments thereto are on file with the Planning Department of the City of Fairfield, must be installed and maintained as indicated in this Agreement and as required by the NPDES permit.

**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) detailed in the Site Plan or comparable document be constructed and 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 or comparable document, be constructed and maintained by the Property Owner, its successors and assigns.

**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, its successors and assigns hereby covenant and agree with the City as follows:

**SECTION 1: CONSTRUCTION OF TREATMENT MEASURES**

The on-site stormwater treatment measure(s) shown on the Site Plan or comparable document shall be constructed by the Property Owner, its successors and assigns 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 & MAINTENANCE RESPONSIBILITY**

This agreement shall serve as the signed statement by the Property Owner, its successors and assigns accepting responsibility for operation and maintenance of stormwater treatment measures as set forth in this Agreement until the responsibility is legally transferred to another entity. Before the Property is legally transferred to another entity, the Property Owner, its successors and assigns shall provide to the City at least one of the following:

- 1) A signed statement from 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 conditions, covenants and restrictions (CCRs) for residential properties assigning O&M responsibilities to the home owners 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.

Upon transfer to a subsequent property owner, the transferee accepts the responsibility for operation and maintenance and all related matters provided by this agreement.

**SECTION 3: MAINTENANCE OF TREATMENT MEASURES**

The Property Owner, its successors and assigns 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 its sole expense, adequately 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 2**. This includes all pipes, channels or other conveyances built 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 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, its successors and assigns. The Property Owner, its successors and assigns 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.

#### **SECTION 5: ANNUAL INSPECTION AND REPORT**

The Property Owner, its successors and assigns shall, on an annual basis, complete the Treatment Measure Operation and Maintenance Inspection Report (annual report), attached to this agreement as **Exhibit 3**. The annual report shall include all completed Inspection and Maintenance Checklists for the reporting period and shall be submitted to the District 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<sup>st</sup> of each year, under penalty of perjury, to the Department of Public Works, 1000 Webster Street, Fairfield, CA 94533. The Property Owner, its successors and assigns shall provide a record of the volume of all accumulated sediment removed from the treatment measure(s) in the annual report. The Property Owner, its successors and assigns shall conduct a minimum of one annual inspection of the stormwater treatment measure(s) before the wet season. This inspection shall occur between August 1<sup>st</sup> and October 1<sup>st</sup> each year. More frequent inspections may be required by the maintenance plan (Exhibit 2). The results of inspections shall be recorded on the Inspection and Maintenance Checklist(s) attached as Exhibit 3.

#### **SECTION 6: NECESSARY CHANGES AND MODIFICATIONS**

At its sole expense, the Property Owner, its successors and assigns shall make changes or modifications to the stormwater treatment measure(s) and/or the long-term maintenance plan (Exhibit 2) 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.

#### **SECTION 7: ACCESS TO THE PROPERTY**

The Property Owner, its successors and assigns hereby grant permission to the City; the District; the San Francisco Bay Regional Water Quality Control Board (RWQCB); the Solano County Mosquito Abatement District (SCMAD); and their 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 when it has a reasonable basis to believe that a violation of this Agreement, the City's stormwater management ordinance, guidelines, criteria, other written direction, or the Fairfield-Suisun Urban Management Program's NPDES municipal stormwater permit (Regional Board Order R2-2009-0074, and any amendments or reissuances of this permit) 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 the ordinance guideline, criteria or other written direction. Whenever possible, the City, RWQCB, or the Mosquito Abatement District shall provide reasonable notice to the Property Owner, its successors and assigns before entering the property.

**SECTION 8: FAILURE TO MAINTAIN TREATMENT MEASURES**

In the event either the Property Owner, its successors and assigns pursuant to Section 2 fails to maintain the stormwater treatment measure(s) as shown on the approved Site Plan or comparable document in good working order acceptable to the City and in accordance with the maintenance plan incorporated in the Agreement, 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. Such notice will not be necessary if emergency conditions require immediate remedial action. 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: REIMBURSEMENT OF CITY EXPENDITURES**

In the event the City, pursuant to the Agreement, performs work of any nature (direct or indirect), including any reinspections or any actions it deems necessary or appropriate to return the treatment measure(s) in 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, either the Property Owner, its successors and assigns pursuant to Section 2 shall reimburse the City, or shall forfeit any required bond 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, its successors and assigns the cost of the work, both direct and indirect, and applicable penalties. Said assessment shall be a lien against the Property, or prorated against the beneficial users 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 Property Owner's or its successors' and assigns' failure to maintain the treatment measure(s).

**SECTION 10: INDEMNIFICATION**

The Property Owner, its successors and assigns shall indemnify, hold harmless and defend the City, the District and their 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 or the District that are alleged or proven to result or arise from the construction, presence, existence or maintenance of the treatment measure(s) by the Property Owner, its successors and assigns, the City or the District. In the event a claim is asserted against the City, the District or its authorized agents, officers, officials or employees, the City shall promptly notify the Property Owner, its successors and assigns and the Property Owner, its successors and assigns shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, the District or their authorized agents, officers, officials or employees shall be allowed, the Property Owner, its successors and assigns 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 or the District.

**SECTION 11: NO ADDITIONAL LIABILITY**

It is the intent of this agreement to insure the proper maintenance of the treatment measure(s) by the Property Owner, its successors and assigns; provided, however, that this Agreement shall not be deemed to create or effect any additional liability not otherwise provided by

law of any party for damage alleged to result from or caused by storm water runoff.

## **SECTION 12: PERFORMANCE FINANCIAL ASSURANCE**

The City may request the Property Owner, its successors and assigns 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.

## **SECTION 13: TRANSFER OF PROPERTY**

**13.1 Agreement Runs with the Land.** This Agreement shall run with the title to the land. The Property Owner hereby subjects the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Property Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Property Owner and City, regardless of any assignment, conveyance or transfer of the Property or any part thereof or interest therein. Any successor-in-interest to the Property Owner including without limitation any purchaser, transferee or lessee of the Property shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, the Property Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

**13.2 Equitable Servitudes.** Property Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and in favor of City.

**13.3 Touches and Concerns.** The Parties hereby declare that it is their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that they restrict the use of the Property. The Parties further declare that it is their understanding that the benefit of such covenants touch and concern the land by guaranteeing the health, safety, and welfare of the citizens of the City. The covenants, conditions and restrictions hereof shall apply uniformly to the Property in order to establish and carry out a common plan for the use, development and improvement of the Property.

## **SECTION 14: 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 15: RECORDATION**

This Agreement shall be recorded by the City, within thirty (30) days after the execution date of this Agreement as stated above among the Official Records of the County Recorder’s Office of the County of Solano, California at the Property Owner’s expense.

**SECTION 16: 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 Inspection and Maintenance Agreement, which the Property Owner, or the City by mutual agreement, shall record in the County Recorder’s Office at the Property Owner’s expense. The stormwater treatment measure(s) shall not be removed from the Property unless such a release is so executed and recorded.

**SECTION 17: 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 City and the Property -Owner at the time of modification. Such modifications shall be effective upon the date of execution and shall be recorded.

**City of Fairfield, a municipal corporation**

\_\_\_\_\_  
Signature for the City

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print name and title

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print Property Owner name and address

(All signatures shall be notarized)

