

RECORDING REQUESTED BY:  
City and County of San Francisco  
WHEN RECORDED RETURN TO:

San Francisco Public Utilities Commission  
Wastewater Enterprise, PRCD  
525 Golden Gate Avenue, 11<sup>th</sup> Floor  
San Francisco, CA 94102  
Attn: Stormwater Project Review

APN (Block/Lot No.): \_\_\_\_\_

Free Recordation --Government Code § 27383

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

**PERMANENT POST-CONSTRUCTION STORMWATER CONTROLS  
MAINTENANCE AGREEMENT**

This Permanent Post-Construction Stormwater Controls Maintenance Agreement (this "Agreement") is entered into this \_\_\_\_\_ (the "Effective Date") by and between the City and County of San Francisco (the "City"), acting by and through its Public Utilities Commission (the "SFPUC") and

\_\_\_\_\_,  
a \_\_\_\_\_,  
(the "Property Owner"), the owner of certain real property with Assessor's Parcel Number (APN) \_\_\_\_\_, commonly known as \_\_\_\_\_  
(the "Property"), described in the Legal Description (Exhibit A to this Agreement), on which the Property Owner intends to develop \_\_\_\_\_ (the "Project").

**RECITALS**

**A.** In order for the City to enhance compliance with its National Pollutant Discharge Elimination System (NPDES) permits, the City has adopted and enforces regulations requiring property owners and developers of certain development projects to install and maintain permanent stormwater quantity and/or quality protection measures in accordance with specific design criteria.

**B.** The City has amended its Public Works Code to establish stormwater management requirements (see Article 4.2, Sections 147-147.6), which will be implemented in accordance with the *San Francisco Stormwater Management Requirements and Design Guidelines* ("SMR"), adopted by the SFPUC. Every project subject to the codes and regulations must submit a Stormwater Control Plan (a "SCP") to the SFPUC for approval. The Project is subject to these requirements.

**C.** The City's Public Works Code and SMR require that the Property Owner install Stormwater Controls (as defined below), in accordance with the SFPUC-approved Final SCP, in order to reduce the water quantity and/or quality impacts of stormwater runoff from the Property for the life of the Project.

**D.** Stormwater Controls are planted or structural facilities, measures, or programs intended to reduce pollution in stormwater runoff and maximize the performance of the collection system by managing the quantity and/or improving the quality of stormwater runoff in accordance with the SMR and applicable state and federal regulatory requirements.

## **AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Property Owner and the City hereby agree as follows:

### **SECTION 1: CONSTRUCTION & MAINTENANCE OF STORMWATER CONTROLS**

The Property Owner covenants and agrees to:

- 1) Install the Stormwater Controls identified in and in strict accordance with the SFPUC-approved Final SCP (together with any amendments later approved by the SFPUC); and
- 2) Maintain the Stormwater Controls so that they continue to function in good working order in accordance with the criteria indicated in the BMP Maintenance Schedule from the SFPUC-approved Final SCP, as described in Exhibit C to this Agreement, and as required by the City's ordinances and regulations.

### **SECTION 2: MAINTENANCE RESPONSIBILITY**

The Property Owner shall not demolish, modify or remove the Stormwater Controls shown in the Stormwater Management Plan, included as Exhibit B to this Agreement, in a manner that lessens their effectiveness. *Prior written consent from the SFPUC is required for any material change to the Stormwater Controls.* The Property Owner shall, at no cost to the City, maintain the Stormwater Controls and related appurtenances in good and working order so that these Stormwater Controls continue to function as originally designed and approved, in accordance with the BMP Maintenance Schedule of the SFPUC-approved Final SCP and included as Exhibit C to this Agreement. Maintenance responsibilities shall include the Stormwater Controls and all appurtenances of the Stormwater Controls such as pipes, channels, or other structures built to convey stormwater to the Stormwater Control, and collection structures and piping built to convey stormwater to the sewer lateral up until the point of public ownership. The BMP Maintenance Schedule included as Exhibit C to this Agreement includes a summary of and schedule for long-term maintenance activities.

### **SECTION 3: SELF-INSPECTION AND REPORTING**

The Property Owner shall conduct a one or more annual inspection(s) of the Stormwater Controls in accordance with the SMR, the BMP Maintenance Schedule that is included as Exhibit C to this Agreement, and the BMP Inspection Schedule of the SFPUC-approved Final SCP that is included as Exhibit D to this Agreement. The Property Owner shall submit the inspection and maintenance forms to the City in accordance with the SMR, verified under penalty of perjury, to the SFPUC General Manager or another member of the City staff directed in writing by the City.

### **SECTION 4: CITY INSPECTION**

The Property Owner hereby grants permission to the City (including its authorized agents and employees) to enter on the Property at reasonable times and in a reasonable manner to inspect, assess or observe the Stormwater Controls in order to ensure that the Stormwater Controls are being maintained in accordance with this Agreement; provided that such entry shall occur: (i) when the City has a reasonable basis to believe that a violation of this Agreement or any applicable laws or regulations is occurring, has recently occurred or threatens to occur; (ii) for the initial post-construction inspection; or (iii) for the tri-annual City inspections. For any entry under this Section 4, the City shall provide at least three (3) business days advance written notice to the Property Owner before entering on the Property; provided, however, that in the event of an

emergency, as reasonably determined by the SFPUC, the City has the right to immediate access without notice but shall provide notice as soon as reasonably possible under the circumstances.

#### **SECTION 5: FAILURE TO MAINTAIN CONTROLS**

In the event the Property Owner fails to maintain the Stormwater Controls as required by this Agreement, and such failure continues for a period of thirty (30) days following written notice thereof from the City to the Property Owner, then the City may take such actions and seek such remedies as set forth in applicable laws and the SMR, including without limitation: (i) assess fines against the Property Owner; (ii) upon not less than three (3) business days' advance written notice to Property Owner, enter on the Property and take such reasonable steps that City deems necessary and appropriate to return the Stormwater Controls to the condition required under this Agreement, at Property Owner's cost; provided that such advance notice shall not be required in the event of an emergency as set forth in Section 4. The Property Owner understands and agrees that the City has the right, but not the obligation, to perform any maintenance or repair as set forth above, and nothing in this Agreement shall be construed to impose any such maintenance or repair obligation on the City.

#### **SECTION 6: REIMBURSEMENT OF CITY EXPENDITURES**

In the event the City, pursuant to the Agreement, performs work of any nature (direct or indirect), not including the post-construction inspection and the tri-annual City inspections but including any re-inspections or any actions the City reasonably deems necessary or appropriate to maintain or repair the Stormwater Controls to the condition required under this Agreement, or expends any funds in the performance of such work, including for labor (using City employees or otherwise), use of equipment, supplies, materials, and the like, the Property Owner shall reimburse the City for the actual, reasonable cost of such work and expenditures no later than thirty (30) days after the Property Owner's receipt of an invoice for such work and expenditures. If such costs are not paid within this thirty (30) day period, the City may assess applicable penalties as set forth in the SMR and place a lien against the Property and add the amounts due and owing under the applicable property tax bill to be collected as ordinary taxes by the City. The actions described in this Section 6 are in addition to and not in lieu of any and all legal remedies as provided by law that are available to the City as a result of the Property Owner's failure to maintain the Stormwater Controls in accordance with this Agreement. Notwithstanding any other provisions in this section, the Property Owner shall have a right to contest the costs and expenses of the City if and to the extent such costs and expenses exceed the amounts permitted under this section.

#### **SECTION 7: INDEMNIFICATION**

The Property Owner shall indemnify, reimburse, hold harmless and defend the City and its authorized agents, officers, officials and employees (the "City Indemnitees") from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including reasonable attorneys' fees (collectively, "Losses"), claimed or that might arise or be asserted against the City that are alleged or proven to result or arise from the Property Owner's failure to comply with the terms of this Agreement, except to the extent that such Losses are caused, contributed to or exacerbated by any of the City Indemnitees. In the event any such claim is asserted against the City Indemnitees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim. At its sole discretion, the City shall have the right to participate in the defense of any suit based on such claim.

## **SECTION 8: NO ADDITIONAL LIABILITY**

It is the parties' intent by entering into this Agreement to ensure the proper maintenance of the Stormwater Controls by the Property 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 for damage alleged to result from or caused by stormwater runoff.

## **SECTION 9: AGREEMENT RUNS WITH THE LAND; TRANSFER OF PROPERTY**

The covenants and agreements of the Property Owner and the City contained in this Agreement shall be covenants running with the land pursuant to California Civil Code Section 1460 et seq., shall bind every person having any interest in the Property and the Stormwater Controls, and shall be binding upon and inure to the benefit and burden of the Property Owner and the City and their respective heirs, successors and assigns. Any reference to the Property Owner in this Agreement shall include successor owners of all or any part of the Property, and all rights and obligations of the Property Owner shall accrue to and be imposed upon any and all successor owners of the Property. Any reference to City herein shall include successor owners of all or any part of the City's stormwater system, and all rights and obligations of the City shall accrue to and be imposed upon any and all successor owners of such stormwater system.

Without limiting the foregoing, the Property Owner further agrees whenever the Property is sold, conveyed or otherwise transferred to a person or entity (each, a "Transferee"), it shall notify the Transferee of this Agreement, and provide to the Transferee, not later than ten (10) business days before the date of transfer, a copy of this Agreement with Exhibits A, B, C, and D, the SCP, the BMP Maintenance Schedule that is included as Exhibit C to this Agreement and any material correspondence between the City and the Property Owner relating to the Stormwater Controls during the preceding two (2) years including but not limited to any notice of default (collectively, "Stormwater Documents"), provided failure of the Property Owner to deliver the Stormwater Documents as set forth above shall not be a defense in any action by the City for enforcement of the terms of this Agreement against any Transferee.

In the event the Property Owner wishes to release any portion of the Property from the terms of this Agreement, in connection with a subdivision or otherwise, then Property Owner shall notify the SFPUC of the proposed release and related transaction, including such terms as are necessary to ensure that the Property Owner's obligations under this Agreement will be satisfied with respect to the entire Property. Any such release will be subject to the review and written approval of the SFPUC General Manager, or his or her designee, and shall be recorded against the portion of the Property that is released.

## **SECTION 10: SEVERABILITY**

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

## **SECTION 11: RELEASE OF AGREEMENT**

If requested by the Property Owner, the City will consider whether all or any portion of the Stormwater Controls is no longer required. If the SFPUC General Manager, or his or her designee, determines that such Stormwater Controls are no longer required, the City shall execute a release or amendment of this Agreement, as applicable, in recordable form. Upon the parties' agreement to the form of release or amendment, such release or amendment shall be recorded by the Property Owner or the City in the Official Records of the City and County of San Francisco.

## **SECTION 12: NOTICES**

Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City or SFPUC:

San Francisco Public Utilities Commission  
Wastewater Enterprise, PRCD  
525 Golden Gate Avenue, 11<sup>th</sup> Floor  
San Francisco, CA 94102  
Attn: Stormwater Project Review

Property Owner:

The address set forth in the City's tax rolls for the Property

The foregoing addresses may be changed by written notice. Notices herein shall be deemed given two (2) days after the date when they shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

## **SECTION 13: MISCELLANEOUS**

(a) This Agreement may be amended or modified only in writing signed by the City and the Property Owner. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or permitted hereunder may be made by the General Manager, or his or her designee, of the SFPUC. (d) This instrument (including the attached Exhibits and the documents referenced herein) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) This Agreement shall be governed by and construed in accordance with California law and, to the extent applicable, federal law. (f) If the Property Owner consists of more than one person or entity, then the obligations of each person shall be joint and several.

## **SECTION 14: INTERPRETATION**

Where the context requires in this Agreement, the singular shall be construed as the plural, and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. Unless otherwise specified, whenever in this Agreement, including its Exhibits, reference is made to any Recital, Article, Section, Exhibit, or any defined term, the reference shall be deemed to refer to the Recital, Article, Section, Exhibit or defined term of this Agreement. Any reference to a

Recital, an Article or a Section includes all subsections and subparagraphs of that Recital, Article or Section. Section and other headings are for the purpose of convenience of reference only and are not intended to, nor shall they, modify or be used to interpret the provisions of this Agreement. References in this Agreement to days shall be to calendar days, unless otherwise specified. If the last day of any period to give or reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a Business Day, then the last day for giving or replying to such notice, meeting such deadline or undertaking any such other action shall be the next succeeding Business Day. As used in this Agreement, "Business Day" shall mean any day of the week other than a Saturday or Sunday on which offices of the City are open to the public for carrying on substantially all City functions. The use in this Agreement of the words "including", "such as" or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, unless language of limitation, such as "and limited to" or words of similar import are used with reference thereto. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail. Any reference to this Agreement includes any modification made in accordance with the terms hereof.

IN WITNESS WHEREOF, the City and the Property Owner have each caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

**CITY:**

City and County of San Francisco, acting  
by and through its Public Utilities Commission

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PROPERTY OWNER:**

\_\_\_\_\_,  
\_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibits:**

- A Property Legal Description or Assessor's Block Map
- B Stormwater Management Plan (8.5" x 11" format)
- C BMP Maintenance Schedule
- D BMP Inspection Schedule