

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City Clerk
City of Concord
1950 Parkside Drive MS/01
Concord, CA 94519

(Space Above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

APN(s): _____

**STORMWATER TREATMENT SYSTEMS
OPERATION AND MAINTENANCE AGREEMENT**

Project:

THIS STORMWATER TREATMENT SYSTEMS OPERATION AND MAINTENANCE AGREEMENT ("**Agreement**") is made and entered into _____, 20____ ("**Effective Date**"), by and between the City of Concord ("**City**") and _____, a _____ ("**Property Owner**").

RECITALS

- A. Property Owner is the owner of real property commonly known as _____, Concord, CA, 945_____, identified on the subdivision Map entitled "_____" filed for record in Contra Costa County, California on _____, 20_____, in Book _____ of Maps at pages _____, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey ("**Property**"), as more particularly described in the attached Exhibit A.
- B. A homeowners association shall be formed and shall be responsible, in perpetuity, for the maintenance, repair, and replacement of, among other things, the access easements, bioretention/infiltration planters, and all permanent stormwater management facilities included in the City-approved Stormwater Treatment Systems Improvement Plans (defined below) and O&M Manual (defined below), consistent with the City's Condition of Approval No. _____ ("**COA**"), attached hereto as Exhibit B.
- C. Property Owner is the "Declarant" under those certain conditions, covenants and restrictions for the Property entitled _____ ("**CC&Rs**"), which were recorded on _____, 20_____, as Instrument No. _____ in the official records of the Contra Costa County Recorder, California.
- D. City owns certain streets, storm drains, and other real property interests in the City of Concord, California, including in the vicinity of the Property.
- E. City is subject to the Contra Costa Countywide NPDES Municipal Stormwater Permit No. CAS0029912 issued by Order No. 99-58 on July 21, 1999, amended by Order No. R2-2003-0022 on February 9, 2003, amended by Order Nos. R2-2004-059 and R2-2004-0061 on July 21, 2004, and amended by Order No. R2-2006-0050 on July 12, 2006; NPDES Permit No. CAS612008 issued by Order No. R2-2009-0074 on October 14, 2009 and amended by Order No. R2-2011-0083 on November 28, 2011; NPDES Permit No. CAS612008 issued by Order No. R2-2015-0049 on _____

November 19, 2015, and any amendments thereto or re-issuances thereof (“NPDES Permit”), and any amendments thereto or re-issuances thereof (“NPDES Permit”).

F. Provision C.3. of the NPDES Permit requires the permittee public agencies to provide minimum verification and access assurances that all stormwater treatment systems be adequately operated and maintained by persons and entities responsible therefor. The stormwater treatment systems that must be installed, constructed, and maintained on or about the Property (“**Stormwater Treatment Systems**”) are more particularly described on the legible reduced-scale copy of the improvement plans attached hereto as Exhibit C (“**Improvement Plans**”); full-scale plans and any amendments thereto are on file with City’s Engineering Division). The defined term “**Stormwater Treatment Systems**” includes all pipes, channels or other conveyances built to convey stormwater to the Stormwater Treatment Systems, as well as all structures, improvements, basins, bioretention facilities, special soil, and vegetation provided to control the quantity and quality of the stormwater, all as set forth in the Plans.

G. City is the permittee public agency with jurisdiction over the Property.

H. The NPDES Permit, City’s Stormwater Management and Discharge Control Ordinance (Concord Municipal Code Chapter 16.05 and any amendments thereto), stormwater related guidelines, criteria and other written directions, and any amendments thereto (collectively, “**Stormwater Regulations**”), development conditions of approval, and the health, safety and welfare of the citizens of Concord, require that the Stormwater Treatment Systems be properly constructed, and adequately operated, and maintained on the Property by the Property Owner.

I. City has approved the _____ prepared by _____ dated _____ (“**O&M Manual**,” attached hereto as Exhibit D). The O&M Manual includes a detailed description of and schedule for long-term maintenance activities of the Stormwater Treatment Systems. The O&M Manual may be subsequently modified from time to time, subject to City’s prior written approval.

J. This Agreement memorializes Property Owner’s maintenance, operations, and inspection obligations with respect to the Stormwater Treatment Systems.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. Construction. The Stormwater Treatment Systems shall be constructed by the undersigned Property Owner in strict accordance with the approved plans and specifications identified for the Property and any other requirements thereto which have been approved by City in conformance with Stormwater Regulations. Among other things, the Stormwater Treatment Systems shall accept, treat, and convey public and private stormwater runoff. Property Owner will make available copies of the City-approved Improvement Plans, O&M Manual, and any amendments thereto (collectively, “**Plans**”) at the Property and with the facility or property manager (if any). Property Owner (as that term is defined in **Section 12**) must maintain the Stormwater Treatment Systems in good working condition acceptable to City for the life of the Property in compliance with the Stormwater Regulations and the Plans.

2. **Inspection and Annual Report.** The undersigned Property Owner is required to form the homeowners association (“**Association**”) and record the CC&Rs against the entire Property; such formation is further described in the CC&Rs (“**Formation**”). Upon Formation, Property Owner shall provide the Association with a copy of this Agreement and the then-current Plans, and shall promptly notify City in writing of the name of the Association, the Association’s manager (if any), and the Association address to be used for notices hereunder (see **Section 13** below). Before Formation, the undersigned Property Owner shall fully bear all responsibilities under this Agreement. After Formation, references in this Agreement to “**Property Owner**” shall mean the Association. Property Owner shall have a qualified inspector conduct a minimum of one (1) annual inspection of the Stormwater Treatment Systems before the wet season, between August 1st and October 1st each year. City shall notify Property Owner if more frequent inspections are required. The results of each inspection shall be recorded on an “**Inspection and Maintenance Checklist**” (form attached as Exhibit E). Attached as Exhibit F is a form Annual Operation and Maintenance Inspection Report (“**Annual Report**”), which Property Owner shall complete annually in order to verify that inspection and maintenance of the Stormwater Treatment Systems have been conducted pursuant to this Agreement. The Annual Report shall include all completed Inspection and Maintenance Checklists for the reporting period and a record of the volume of all accumulated sediment removed as a result of the Stormwater Treatment Systems. The Annual Report shall be submitted no later than December 31 of each year, under penalty of perjury, to the City at the address in **Section 13**, below, or to another member of City staff if and as directed by City in writing.

3. **Responsibility.** Notwithstanding anything herein or in the CC&Rs to the contrary, regardless of whether Association delegates the O&M of any components of the Stormwater Treatment Systems to the extent allowed by law, as of Formation, the Association shall bear primary responsibility for the O&M (defined below) of any and all Stormwater Treatment Systems and associated inspection and reporting, provided that such Association obligations are not intended and shall not be construed to diminish any Property Owner’s obligations hereunder or under the CC&Rs. This Agreement shall serve as the signed statement by the undersigned Property Owner for itself and on behalf of the Association, accepting responsibility for operation and maintenance of the Stormwater Treatment Systems as set forth in this Agreement until the responsibility is legally transferred to another person or entity. Before all or any responsibilities under this Agreement are transferred to another person or entity, and before all or any portion of the Property is legally transferred to another person or entity, Property Owner shall provide to City one or more of the following (as determined by City):

a. Written conditions in the sales or lease agreement requiring the buyer or lessee to assume responsibility for 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/or

b. In the case of a transfer to any Association, Property Owner must provide City with written text in the CC&Rs assigning O&M responsibilities to the Association; and/or

c. Any other legally enforceable agreement or mechanism that assigns responsibility for the O&M.

Any and all such text, conditions, and agreements shall be subject to the approval of the

City Engineer and the City Attorney. Other provisions regarding Property transfer are set forth in **Section 12** below.

4. Maintenance. No Property Owner shall destroy or remove (or allow destruction or removal of) the Stormwater Treatment Systems from the Property or modify (or allow modification of) them in a manner that lessens their effectiveness. Property Owner, at its sole cost expense, shall operate, maintain, repair, and replace, to the City's reasonable satisfaction, the Stormwater Treatment Systems in good working order so that they continue to operate as intended, designed and approved in accordance with the Plans and the Stormwater Regulations ("O&M"). This includes all pipes, channels or other conveyances built to convey stormwater to the Stormwater Treatment Systems, as well as all structures, improvements, basins, bioretention facilities, special soil, and vegetation provided to control the quantity and quality of the stormwater, all as set forth in the Plans.
5. Sediment Management. Sediment accumulation resulting from the normal operation of the Stormwater Treatment Systems will be managed appropriately by Property Owner. Property Owner will provide for the removal and disposal of accumulated sediments, trash, and debris. Disposal of accumulated sediments shall not occur on the Property unless provided for in the O&M Manual. Any disposal or removal of accumulated sediments, trash, or debris shall be in compliance with all federal, state and local law and regulations and any amendments thereto.
6. Necessary Changes and Modifications. In order to ensure that the Stormwater Treatment Systems are adequately maintained and continue to operate as intended, designed and approved, Property Owner, at its sole cost and expense, shall make changes or modifications to the Stormwater Treatment Systems and/or O&M Manual as City determines reasonably necessary.
7. Access to the Property. Property Owner hereby grants permission to the Central Contra Costa Sanitary District, County Environmental Health Department, the San Francisco Bay Regional Water Quality Control Board, the Contra Costa County Mosquito and Vector Control District, the City, and each of their respective officers, officials, volunteers, agents, employees successors, and assigns (each, an "**Inspecting Entity**" and collectively "**Inspecting Entities**") to enter upon the Property at reasonable times and in a reasonable manner to inspect, assess, or observe the Stormwater Treatment Systems and the Property in order to ensure that the Stormwater Treatment Systems are being adequately 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 (a) inspect and copy records related to stormwater compliance, and to collect samples and take measurements, and (b) enter upon the Property whenever there is a reasonable basis to believe that a violation of this Agreement or Stormwater Regulations, is occurring, has occurred, or threatens to occur. Each Inspecting Entity also has a right to enter the Property when necessary for abatement of a public nuisance or correction of a violation of any Stormwater Regulations. The applicable Inspecting Entity/ies shall endeavor to provide forty-eight (48) hours advance notice to Property Owner, provided, however, that advance notice will not be necessary if emergency conditions require immediate remedial action.
8. Failure to Install, Operate, and/or Maintain. In the event Property Owner fails to install, operate and/or maintain the Stormwater Treatment Systems in good working order acceptable to City and in accordance with this Agreement, the Plans and the Stormwater Regulations, City, and

its authorized agents and employees may (but are not obligated to) enter the Property and take whatever steps it deems necessary and appropriate to return the Stormwater Treatment Systems to good working order. Such work shall be at Property Owner's sole cost and expense as set forth in **Section 9**, below. City will provide reasonable (as may be appropriate for the particular circumstances) advance notice to Property Owner; provided, however that advance notice will not be necessary if emergency conditions require immediate remedial action. This provision shall not be construed to allow City to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that City is under no obligation to maintain or repair the Stormwater Treatment Systems and in no event shall this Agreement be construed to impose any such obligation on City. City may require Property Owner to provide a performance bond, security, or other financial assurance providing for the maintenance of the Stormwater Treatment Systems.

9. Reimbursement and Payment of Costs. In the event City performs work of any nature (direct or indirect), including work under **Section 8**, above, any inspections/re-inspections, or other actions City deems necessary or appropriate to return the Stormwater Treatment Systems to good working order, or incurs any direct or indirect costs or expends any funds in or related thereto (including the performance of said work for labor, use of equipment, supplies, materials, and the like); or any penalties, fees, fines, and other monetary and non-monetary penalties, reparations, or mitigations arising out of or related to Property Owner's failure to inspect and maintain and submit reports for the Stormwater Treatment Systems, are imposed on or assessed against City (the foregoing are collectively referred to herein as "**Costs**"), Property Owner shall reimburse City for such Costs within thirty (30) days of receipt of City's written demand, and/or shall forfeit any required bond upon demand. If the Costs are not paid within the prescribed time period, City may assess Property Owner for the Costs and applicable penalties. Said assessment shall be a lien against the Property or may be placed on the property tax bill and collected at the same time and in the same manner as ordinary municipal taxes are collected as provided in Government Code § 38773.5. The actions described in this **Section 9** are in addition to, and not in lieu of, any and all legal remedies as provided in the CC&Rs, by law or equity, or otherwise available to City as a result of failure to maintain the Stormwater Treatment Systems.

10. Indemnification. Property Owner shall indemnify, hold harmless, and defend each of the Inspecting Entities from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, judgments, costs, payments, and fees (including attorney fees), personal injury, death, or property damage, claimed or which might arise or be asserted against any Inspecting Entity that are alleged or proven to result or arise from the (a) entry onto the Property by any Inspecting Entity under this Agreement, or (b) the Stormwater Treatment Systems (including construction, presence, existence, non-existence, operation, non-operation, repair, disrepair, maintenance, lack of maintenance, inspection, or failure to inspect, whether by Property Owner, any Inspecting Entity, or any third party). Each of the foregoing is referred to herein as a "**Claim.**" In the event a Claim is asserted against City, City will promptly notify Property Owner and Property Owner shall defend at its own expense any suit based on such Claim. If any Claim against any Inspecting Entity shall be allowed, Property Owner shall pay for all costs and expenses in connection herewith. Property Owner's indemnification obligation as to a particular Inspecting Entity shall not apply to any Claim arising from the sole or active negligence or willful misconduct of the Inspecting Entity against whom that Claim is asserted.

11. No Additional Liability. It is the intent of this Agreement to insure the O&M by Property Owner; provided, however, that this Agreement shall not be deemed to create any additional liability not otherwise provided by law for damage alleged to result from or caused by stormwater runoff.

12. Scope of Responsibility; Transfer of Property.

a. This Agreement runs with the land and any portion thereof, and applies to and shall bind and be obligatory on the Declarant, the Association, and all present and subsequent owners of the Property or any portion thereof, including their respective successor and assignee owner(s). Each such person or entity is a "Property Owner" responsible in perpetuity with respect to the extent of his, her or its ownership of the Property or any portion thereof, provided, however, that after Formation, the Association shall be considered the "Property Owner" with respect to the entire Property for purposes of the obligations under this Agreement. To the extent allowed by law and consistent with the COA, it is the parties' intent that the Association be primarily liable for any and all acts or omissions, including those of any owner of the Property or a portion thereof (such as an individual lot), under this Agreement for the O&M. The Association shall have such remedies against the potentially responsible parties as are described in the CC&Rs.

b. The Formation and continued existence of an Association is a condition to City approval. Notwithstanding the foregoing, if the Association is dissolved or otherwise terminates its operations for any reason, the owners of the Property or any portion thereof (e.g., a lot) automatically shall assume all of the rights and duties of the Property Owner under this Agreement. In this event, each such Property Owner shall bear primary responsibility for the O&M of any and all Stormwater Treatment Systems and associated inspection and reporting with respect to the owner's Property. Upon transfer of the Property or any portion thereof, the transferor Property Owner(s) shall provide the transferee Property Owner(s) with a copy this Agreement, the then-current Plans, and an Inspection and Maintenance Checklist that is complete and current as of the transfer date, and shall promptly notify City in writing of the transfer and name(s) of the transferee Property Owner(s) and the address(es) to be used for notices hereunder (see **Section 13**). Upon such transfer, the transferee Property Owner(s) shall be responsible for complying with the terms and conditions of this Agreement, and the transferor of Property Owner(s) shall bear no future responsibility for inspection or reporting under this Agreement, provided, however, that no transfer of the Property or any portion thereof is intended or shall be construed to release any transferor or transferee Property Owner from any obligations or liabilities with respect to the Stormwater Treatment Systems (including O&M) that accrued or arose out of acts or omissions during its/their period of ownership. Nothing in this Agreement is intended or shall be construed to allow any responsibilities under this Agreement to be transferred separate and apart from the Property or any portion(s) thereof.

13. Notices. Except as otherwise stated, all notices given under this Agreement must be in writing. Such notices shall be addressed to City and to the then-current Property Owner at the address indicated below. Concord Municipal Code Sections 1.05.090 through 1.05.170, inclusive, and any amendments thereto, shall apply to notices under this Agreement.

City:

City of Concord
Attention: City Engineer
1950 Parkside Drive, MS/40
Concord, CA 94519
Telephone: (925) 671-3470

Property Owner (before Formation):

Comment [SMB1]: Insert original owner/Declarant name and contact information.

Telephone:
Facsimile:

Property Owner (after Formation):

Comment [SMB2]: Insert Association name and contact information.

Telephone:
Facsimile:

14. Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any action at law or in equity brought by any of the parties for the purpose of enforcing a right or rights provided for by this Agreement shall be held exclusively in a state court in Contra Costa County, California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county. Property Owner shall comply with all applicable federal, state, and local laws, rules, and regulations, and any amendments thereto, and shall obtain all applicable licenses and permits.

15. Interpretation. Headings are for convenience only. The recitals and any exhibits attached to this Agreement are incorporated by reference as though fully restated herein. The words “include” and “including” shall be interpreted as though followed by the words “without limitation.” This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted. Waiver by either party of any breach of any term, covenant, or condition contained in this Agreement, or any default in their performance of any obligations under this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same. To the extent there is any conflict between this Agreement and the CC&Rs, this Agreement shall control.

16. 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 party 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.

17. Covenant Running with the Land. This Agreement shall be recorded by City in the Contra Costa County Recorder’s Office at Property Owner’s expense. The covenants and agreements contained herein shall be deemed to be covenants running with the Property or any portion thereof

for the benefit of City, as well as affected streets, storm drains, waterways, bodies of water, each and every part thereof, and the successors and assigns in ownership of all or any part of the foregoing. Property Owner agrees for itself and its successors and assigns, that in the event a court of competent jurisdiction determines that the covenants in this Agreement do not run with the Property such covenants shall be recorded as equitable servitudes against the Property and the project in favor of City.

18. Legal Advice; Authority. Property Owner represents and warrants to City that: (a) Property Owner has carefully read this Agreement, and in signing this Agreement, does so with full knowledge of any right which Property Owner may have; (b) Property Owner has received independent legal advice from its legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and (c) Property Owner has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of City or any City Party except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. Each individual or entity executing this Agreement on behalf of Property Owner represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of Property Owner and that such execution is binding upon Property Owner.

19. Effective Date and Modification. This Agreement is effective as of the Effective Date. This Agreement shall not be modified except by written instrument executed by City and the Association, or the then-current Property Owner(s) if the Association has ceased to exist. Modifications shall be effective upon the date of execution and shall be recorded against the Property.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PROPERTY OWNER:

a _____
By: _____
[signature must be notarized]

Name: _____
Its: _____

By: _____
[signature must be notarized]

Name: _____
Its: _____

CITY:

CITY OF CONCORD, a California municipal corporation

By: _____
Valerie J. Barone, City Manager
[signature must be notarized]

ATTEST:

By: _____
Joelle Fockler, CMC, City Clerk

APPROVED AS TO FORM:

By: _____
Susanne Brown, City Attorney

Exhibit List

- Exhibit A – Legal Description of Property
- Exhibit B – COA
- Exhibit C – Improvement Plans
- Exhibit D – O&M Manual
- Exhibit E – [Form] Inspection and Maintenance Checklist
- Exhibit F – [Form] Annual Report

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City Clerk
City of Concord
1950 Parkside Drive MS/01
Concord, CA 94519

(Space Above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

APN(s):

**STORMWATER TREATMENT SYSTEMS
OPERATION AND MAINTENANCE AGREEMENT**
Project:

THIS STORMWATER TREATMENT SYSTEMS OPERATION AND MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into _____, 20____ (“**Effective Date**”), by and between the City of Concord (“**City**”) and _____, a _____ (“**Property Owner**”).

RECITALS

- A. Property Owner is the owner of real property commonly known as _____, Concord, CA, 945____, identified on the subdivision Map entitled “_____” filed for record in Contra Costa County, California on _____, _____, in Book _____ of Maps at pages _____, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey (“**Property**”), as more particularly described in the attached Exhibit A.
- B. Property Owner shall be responsible, in perpetuity, for the maintenance, repair, and replacement of, among other things, the access easements, bioretention/infiltration planters, and all permanent stormwater management facilities included in the City-approved Stormwater Treatment Systems Improvement Plans (defined below) and O&M Manual (defined below), consistent with the City’s Condition of Approval No. _____ (“**COA**”), attached hereto as Exhibit B.
- C. City owns certain streets, storm drains, and other real property interests in the City of Concord, California, including in the vicinity of the Property.
- D. City is subject to the Contra Costa Countywide NPDES Municipal Stormwater Permit No. CAS00299012 issued by Order No. 99-58 on July 21, 1999, amended by Order No. R2-2003-0022 on February 9, 2003, amended by Order Nos. R2-2004-059 and R2-2004-0061 on July 21, 2004, and amended by Order No. R2-2006-0050 on July 12, 2006; NPDES Permit No. CAS612008 issued by Order No. R2-2009-0074 on October 14, 2009 and amended by Order No. R2-2011-0083 on November 28, 2011; NPDES Permit No. CAS612008 issued by Order No. R2-2015-0049 on November 19, 2015, and any amendments thereto or reissuances thereof (“**NPDES Permit**”).

- E. Provision C.3. of the NPDES Permit requires the permittee public agencies to provide minimum verification and access assurances that all stormwater treatment systems be adequately operated and maintained by persons and entities responsible therefore. The stormwater treatment systems that must be installed, constructed, and maintained on or about the Property (“**Stormwater Treatment Systems**”) are more particularly described on the legible reduced-scale copy of the improvement plans attached hereto as Exhibit C (“**Improvement Plans**”; full-scale plans and any amendments thereto are on file with City’s Engineering Division). The defined term “**Stormwater Treatment Systems**” includes all pipes, channels or other conveyances built to convey stormwater to the Stormwater Treatment Systems, as well as all structures, improvements, basins, bioretention facilities, special soil, and vegetation provided to control the quantity and quality of the stormwater, all as set forth in the Plans.
- F. City is the permittee public agency with jurisdiction over the Property.
- G. The NPDES Permit, City’s Stormwater Management and Discharge Control Ordinance (Concord Municipal Code Chapter 16.05 and any amendments thereto), stormwater related guidelines, criteria and other written directions, and any amendments thereto (collectively, “**Stormwater Regulations**”), development conditions of approval, and the health, safety and welfare of the citizens of Concord, require that the Stormwater Treatment Systems be properly constructed, and adequately operated, and maintained on the Property by the Property Owner.
- H. City has approved the _____ prepared by _____ dated _____ (“**O&M Manual**,” attached hereto as Exhibit D). The O&M Manual includes a detailed description of and schedule for long-term maintenance activities of the Stormwater Treatment Systems. The O&M Manual may be subsequently modified from time to time, subject to City’s prior written approval.
- I. This Agreement memorializes Property Owner’s maintenance, operations, and inspection obligations with respect to the Stormwater Treatment Systems.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. Construction. The Stormwater Treatment Systems shall be constructed by the undersigned Property Owner in strict accordance with the approved plans and specifications identified for the Property and any other requirements thereto which have been approved by City in conformance with Stormwater Regulations. Among other things, the Stormwater Treatment Systems shall accept, treat, and convey public and private stormwater runoff. Property Owner will make available copies of the City-approved Improvement Plans, O&M Manual, and any amendments thereto (collectively, “**Plans**”) at the Property and with the facility or property manager (if any). Property Owner must maintain the Stormwater Treatment Systems in good working condition acceptable to City for the life of the Property in compliance with the Stormwater Regulations and the Plans.
2. Inspection and Annual Report. Property Owner shall have a qualified inspector conduct a minimum of one (1) annual inspection of the Stormwater Treatment Systems before the wet

season, between August 1st and October 1st each year. City shall notify Property Owner if more frequent inspections are required. The results of each inspection shall be recorded on an “**Inspection and Maintenance Checklist**” (form attached as Exhibit E). Attached as Exhibit F is a form Annual Operation and Maintenance Inspection Report (“**Annual Report**”), which Property Owner shall complete annually in order to verify that inspection and maintenance of the Stormwater Treatment Systems have been conducted pursuant to this Agreement. The Annual Report shall include all completed Inspection and Maintenance Checklists for the reporting period and a record of the volume of all accumulated sediment removed as a result of the Stormwater Treatment Systems. The Annual Report shall be submitted no later than December 31 of each year, under penalty of perjury, to the City at the address in **Section 13**, below, or to another member of City staff if and as directed by City in writing.

3. **Responsibility.** This Agreement shall serve as the signed statement by the undersigned Property Owner accepting responsibility for operation and maintenance of the Stormwater Treatment Systems as set forth in this Agreement until the responsibility is legally transferred to another person or entity. Before all or any responsibilities under this Agreement are transferred to another person or entity, and before all or any portion of the Property is legally transferred to another person or entity, Property Owner shall provide to City one or more of the following (as determined by City):
 - a. Written conditions in the sales or lease agreement requiring the buyer or lessee to assume responsibility for 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/or
 - b. In the case of a transfer to any homeowner’s association, Property Owner must provide City with written text in the project conditions, covenants and restrictions (“**CC&Rs**”) assigning O&M responsibilities to such association; and/or
 - c. Any other legally enforceable agreement or mechanism that assigns responsibility for the O&M.

Any and all such text, conditions, and agreements shall be subject to the approval of the City Engineer and the City Attorney. Other provisions regarding Property transfer are set forth in **Section 12** below.

4. **Maintenance.** No Property Owner shall destroy or remove (or allow destruction or removal of) the Stormwater Treatment Systems from the Property or modify (or allow modification of) them in a manner that lessens their effectiveness. Property Owner, at its sole cost expense, shall operate, maintain, repair, and replace, to the City’s reasonable satisfaction, the Stormwater Treatment Systems in good working order so that they continue to operate as intended, designed and approved in accordance with the Plans and the Stormwater Regulations (“**O&M**”). This includes all pipes, channels or other conveyances built to convey stormwater to the Stormwater Treatment Systems, as well as all structures, improvements, basins, bioretention facilities, special soil, and vegetation provided to control the quantity and quality of the stormwater, all as set forth in the Plans.

5. Sediment Management. Sediment accumulation resulting from the normal operation of the Stormwater Treatment Systems will be managed appropriately by Property Owner. Property Owner will provide for the removal and disposal of accumulated sediments, trash, and debris. Disposal of accumulated sediments shall not occur on the Property unless provided for in the O&M Manual. Any disposal or removal of accumulated sediments, trash, or debris shall be in compliance with all federal, state and local law and regulations and any amendments thereto.
6. Necessary Changes and Modifications. In order to ensure that the Stormwater Treatment Systems are adequately maintained and continue to operate as intended, designed and approved, Property Owner, at its sole cost and expense, shall make changes or modifications to the Stormwater Treatment Systems and/or O&M Manual as City determines reasonably necessary.
7. Access to the Property. Property Owner hereby grants permission to the Central Contra Costa Sanitary District, County Environmental Health Department, the San Francisco Bay Regional Water Quality Control Board, the Contra Costa County Mosquito and Vector Control District, the City, and each of their respective officers, officials, volunteers, agents, employees successors, and assigns (each, an “**Inspecting Entity**” and collectively “**Inspecting Entities**”) to enter upon the Property at reasonable times and in a reasonable manner to inspect, assess, or observe the Stormwater Treatment Systems and the Property in order to ensure that the Stormwater Treatment Systems are being adequately 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 (a) inspect and copy records related to stormwater compliance, and to collect samples and take measurements, and (b) enter upon the Property whenever there is a reasonable basis to believe that a violation of this Agreement or Stormwater Regulations, is occurring, has occurred, or threatens to occur. Each Inspecting Entity also has a right to enter the Property when necessary for abatement of a public nuisance or correction of a violation of any Stormwater Regulations. The applicable Inspecting Entity/ies shall endeavor to provide forty-eight (48) hours advance notice to Property Owner, provided, however, that advance notice will not be necessary if emergency conditions require immediate remedial action.
8. Failure to Install, Operate, and/or Maintain. In the event Property Owner fails to install, operate and/or maintain the Stormwater Treatment Systems in good working order acceptable to City and in accordance with this Agreement, the Plans and the Stormwater Regulations, City, and its authorized agents and employees may (but are not obligated to) enter the Property and take whatever steps it deems necessary and appropriate to return the Stormwater Treatment Systems to good working order. Such work shall be at Property Owner’s sole cost and expense as set forth in **Section 9**, below. City will provide reasonable (as may be appropriate for the particular circumstances) advance notice to Property Owner; provided, however that advance notice will not be necessary if emergency conditions require immediate remedial action. This provision shall not be construed to allow City to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that City is under no obligation to maintain or repair the Stormwater Treatment Systems and in no event shall this Agreement be construed to impose any such obligation on City. City may require Property Owner to provide a performance bond, security, or other financial assurance providing for the maintenance of the Stormwater Treatment Systems.

9. Reimbursement and Payment of Costs. In the event City performs work of any nature (direct or indirect), including work under **Section 8**, above, any inspections/re-inspections, or other actions City deems necessary or appropriate to return the Stormwater Treatment Systems to good working order, or incurs any direct or indirect costs or expends any funds in or related thereto (including the performance of said work for labor, use of equipment, supplies, materials, and the like); or any penalties, fees, fines, and other monetary and non-monetary penalties, reparations, or mitigations arising out of or related to Property Owner's failure to inspect and maintain and submit reports for the Stormwater Treatment Systems, are imposed on or assessed against City (the foregoing are collectively referred to herein as "**Costs**"), Property Owner shall reimburse City for such Costs within thirty (30) days of receipt of City's written demand, and/or shall forfeit any required bond upon demand. If the Costs are not paid within the prescribed time period, City may assess Property Owner for the Costs and applicable penalties. Said assessment shall be a lien against the Property or may be placed on the property tax bill and collected at the same time and in the same manner as ordinary municipal taxes are collected as provided in Government Code § 38773.5. The actions described in this **Section 9** are in addition to, and not in lieu of, any and all legal remedies as provided in any applicable CC&Rs, by law or equity, or otherwise available to City as a result of failure to maintain the Stormwater Treatment Systems.
10. Indemnification. Property Owner shall indemnify, hold harmless, and defend each of the Inspecting Entities from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, judgments, costs, payments, and fees (including attorney fees), personal injury, death, or property damage, claimed or which might arise or be asserted against any Inspecting Entity that are alleged or proven to result or arise from the (a) entry onto the Property by any Inspecting Entity under this Agreement, or (b) the Stormwater Treatment Systems (including construction, presence, existence, non-existence, operation, non-operation, repair, disrepair, maintenance, lack of maintenance, inspection, or failure to inspect, whether by Property Owner, any Inspecting Entity, or any third party). Each of the foregoing is referred to herein as a "**Claim.**" In the event a Claim is asserted against City, City will promptly notify Property Owner and Property Owner shall defend at its own expense any suit based on such Claim. If any Claim against any Inspecting Entity shall be allowed, Property Owner shall pay for all costs and expenses in connection herewith. Property Owner's indemnification obligation as to a particular Inspecting Entity shall not apply to any Claim arising from the sole or active negligence or willful misconduct of the Inspecting Entity against whom that Claim is asserted.
11. No Additional Liability. It is the intent of this Agreement to insure the O&M by Property Owner; provided, however, that this Agreement shall not be deemed to create any additional liability not otherwise provided by law for damage alleged to result from or caused by stormwater runoff.
12. Scope of Responsibility; Transfer of Property.
 - a. This Agreement runs with the land and any portion thereof, and applies to and shall bind and be obligatory on all present and subsequent owners of the Property or any portion thereof, including their respective successor and assignee owner(s). Each such person or entity is a "Property Owner" responsible in perpetuity with respect to the extent of his, her or its ownership of the Property or any portion thereof.

b. Upon transfer of the Property or any portion thereof, the transferor Property Owner(s) shall provide the transferee Property Owner(s) with a copy this Agreement, the then-current Plans, and an Inspection and Maintenance Checklist that is complete and current as of the transfer date, and shall promptly notify City in writing of the transfer and name(s) of the transferee Property Owner(s) and the address(es) to be used for notices hereunder (see **Section 13**). Upon such transfer, the transferee Property Owner(s) shall be responsible for complying with the terms and conditions of this Agreement, and the transferor of Property Owner(s) shall bear no future responsibility for inspection or reporting under this Agreement, provided, however, that no transfer of the Property or any portion thereof is intended or shall be construed to release any transferor or transferee Property Owner from any obligations or liabilities with respect to the Stormwater Treatment Systems (including O&M) that accrued or arose out of acts or omissions during its/their period of ownership. Nothing in this Agreement is intended or shall be construed to allow any responsibilities under this Agreement to be transferred separate and apart from the Property or any portion(s) thereof.

13. Notices. Except as otherwise stated, all notices given under this Agreement must be in writing. Such notices shall be addressed to City and to the then-current Property Owner at the address indicated below. Concord Municipal Code Sections 1.05.090 through 1.05.170, inclusive, and any amendments thereto, shall apply to notices under this Agreement.

City:

City of Concord
Attention: City Engineer
1950 Parkside Drive, MS/40
Concord, CA 94519
Telephone: (925) 671-3470

Property Owner:

Telephone:
Facsimile:

14. Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any action at law or in equity brought by any of the parties for the purpose of enforcing a right or rights provided for by this Agreement shall be held exclusively in a state court in Contra Costa County, California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county. Property Owner shall comply with all applicable federal, state, and local laws, rules, and regulations, and any amendments thereto, and shall obtain all applicable licenses and permits.

15. Interpretation. Headings are for convenience only. The recitals and any exhibits attached to this Agreement are incorporated by reference as though fully restated herein. The words “include” and “including” shall be interpreted as though followed by the words “without limitation.” This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted. Waiver by either

party of any breach of any term, covenant, or condition contained in this Agreement, or any default in their performance of any obligations under this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default constitute a continuing waiver of same. To the extent there is any conflict between this Agreement and any applicable CC&Rs, this Agreement shall control.

16. 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 party 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.
17. Covenant Running with the Land. This Agreement shall be recorded by City in the Contra Costa County Recorder's Office at Property Owner's expense. The covenants and agreements contained herein shall be deemed to be covenants running with the Property or any portion thereof for the benefit of City, as well as affected streets, storm drains, waterways, bodies of water, each and every part thereof, and the successors and assigns in ownership of all or any part of the foregoing. Property Owner agrees for itself and its successors and assigns, that in the event a court of competent jurisdiction determines that the covenants in this Agreement do not run with the Property such covenants shall be recorded as equitable servitudes against the Property and the project in favor of City.
18. Legal Advice; Authority. Property Owner represents and warrants to City that: (a) Property Owner has carefully read this Agreement, and in signing this Agreement, does so with full knowledge of any right which Property Owner may have; (b) Property Owner has received independent legal advice from its legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and (c) Property Owner has freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of City or any City Party except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. Each individual or entity executing this Agreement on behalf of Property Owner represents and warrants that he or she or it is duly authorized to execute and deliver this Agreement on behalf of Property Owner and that such execution is binding upon Property Owner.
19. Effective Date and Modification. This Agreement is effective as of the Effective Date. This Agreement shall not be modified except by written instrument executed by City and the then-current Property Owner. Modifications shall be effective upon the date of execution and shall be recorded against the Property.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PROPERTY OWNER:

a
By: _____
[signature must be notarized]

Name: _____

Its: _____

By: _____
[signature must be notarized]

Name: _____

Its: _____

CITY:

CITY OF CONCORD, a California municipal corporation

By: _____
Valerie J. Barone, City Manager
[signature must be notarized]

ATTEST:

By: _____
Joelle Fockler, CMC, City Clerk

APPROVED AS TO FORM:

By: _____
Susanne Brown, City Attorney

Exhibit List

- Exhibit A – Legal Description of Property
- Exhibit B – COA
- Exhibit C – Improvement Plans
- Exhibit D – O&M Manual
- Exhibit E – [Form] Inspection and Maintenance Checklist
- Exhibit F – [Form] Annual Report