

Appendix F

Sample Maintenance Agreement

Recording requested by
and when recorded return to:

CITY OF SALINAS
Permit Center
65 West Alisal Street, Suite 101
Salinas, CA 93901
Attn: Dale Rosskamp

Title of Document

Above space for Recorder's use



**STORMWATER TREATMENT FACILITY
MAINTENANCE AGREEMENT
(Device Maintenance and Access)**

THIS STORMWATER TREATMENT FACILITY MAINTENANCE AGREEMENT

("Agreement") is executed as of _____, 200__ by _____
_____ (hereafter the "Declarant") with reference to the following facts:

- A. Declarant is the owner of that certain property, located within the City of Salinas, California (hereinafter, "Salinas"), commonly referred to as _____, Monterey County, California APN XXX-XXX-XXX-XXX and more particularly described in Exhibit A and the plat thereof on Exhibit B, attached hereto and incorporated herein by reference (hereinafter the "Subject Property").
- B. At the time of Salinas's initial approval of the development project known as _____ wherein the Subject Property is located, Salinas required installation of on-site control measures to minimize pollutants in urban runoff.
- C. Declarant has chosen to install _____, hereinafter referred to as the "Device", as the on-site control measure to minimize pollutants in urban runoff.
- D. The Device has been installed in accordance with plans and specifications accepted by Salinas.
- E. The maintenance of the Device is essential to its ability to function as it was designed.
- F. The Device, being installed on private property and draining only private property, is a private facility, and all maintenance or replacement of the Device is the sole responsibility of the Declarant in accordance with the terms of this Agreement.
- G. The Declarant is aware that periodic and continuous maintenance, including, but not necessarily limited to, filter material replacement and sediment removal, is required to assure

peak performance of the Device in accordance with the maintenance procedures prepared for the Device which maintenance procedures are attached hereto as Exhibit C and incorporated herein.

H. Maintenance of the Device will require compliance with all Local, State, or Federal 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 benefits, as well as the benefits obtained by the Declarant and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, Declarant hereby declares, covenants, and agrees as follows:

1. **Covenant Running with Land**. The Declarant does hereby covenant that the burdens and benefits herein made and undertaken shall constitute covenants running with the Subject Property and constitute an encumbrance on said Subject Property which shall bind all successors, heirs and assigns and Salinas is hereby specifically given the right to enforce this Agreement.

2. **Declarant Responsibility to Maintain**. Declarant, its successors and assigns, shall at all times maintain the Device in accordance with the requirements stated in Exhibit C and Declarant shall use its best efforts to maintain the Device in a manner assuring its peak performance at all times. All reasonable precautions shall be exercised by Declarant and Declarant's representatives in a manner consistent with all relevant laws and regulations in effect at the time of removal and consistent with the direction of the City Engineer. Declarant shall not destroy, remove or otherwise modify the Device in a manner that lessens its effectiveness and shall, at its sole cost and expense, adequately maintain the Device in good working order and repair acceptable to Salinas. At its sole expense, Declarant shall make changes or modifications to the Device as may be determined as reasonably necessary by Salinas to ensure that the Device is properly maintained and continues to operate as originally designed and approved.

a. **Routine and Preventative Maintenance**. Declarant shall be responsible for all routine and preventative maintenance necessary to ensure the Device operates and functions in the manner in which it was intended, in accordance with all applicable federal, state and local laws and regulations. Declarant's obligations under this section shall include the removal of all litter and debris within the Device and the regular mowing and seeding of the Device to promote growth and pollutant uptake. Declarant shall properly dispose of any cuttings or vegetative waste which result from such maintenance or repair.

Declarant shall be responsible for the management of any erosion or slope failure that occurs within the Device. Declarant shall provide for the repair of any areas of erosion or slope failure as soon as possible after discovery. Any damage to the vegetation within the Device shall be promptly repaired by Declarant and any invasive species or weeds shall be promptly removed by Declarant to ensure the proper operation and functioning of the Device. If necessary, flow through the Device shall be redirected to avoid deterioration or erosion while such maintenance or repair is being completed.

b. **Vector Control**. The Device shall be properly inspected, maintained and repaired by Declarant to ensure uniform percolation throughout and to prevent the accumulation of standing

water or debris or other harborages for vectors. Declarant shall promptly abate any vectors or potential vectors that occur within the Device. The Northern Salinas Valley Mosquito Abatement District shall be contacted, as needed, for assistance should any mosquito issues arise.

c. **Sediment Management.** Sediment accumulation from the normal operation of the Device will be managed appropriately by Declarant. The Declarant will provide for the removal and disposal of accumulated sediments. Disposal of accumulated sediments shall not occur on the Subject Property. Any disposal or removal of accumulated sediments or debris shall be in compliance with federal, state and local laws and regulations.

d. **Pesticide and Herbicide Use.** Application of any pesticides or herbicides by Declarant to meet the obligations of this Agreement shall be minimal and in accordance with all applicable federal, state and local laws and regulations and in accordance with any restrictions imposed upon such use or application by the City Engineer or his designee.

3. **Retention of Records.** For a time period of the most recent three (3) years, Declarant shall maintain written documentation verifying all material(s) removed from the Device, including identifying the material(s) removed, quantity, and manner and place of disposal thereof. Such documentation is subject to review by Salinas from time to time upon request.

4. **Failure to Maintain.** In the event the Declarant, or its successors or assigns, fails to maintain and repair the Device as required by this Agreement, after thirty (30) days written notice thereof, Salinas may and is hereby authorized to cause, at the Declarant's sole cost and expense, any and all maintenance to the Device necessary under the requirements specified in Exhibit C. In addition to the actual costs of such maintenance, the Declarant shall reimburse Salinas for an additional fifteen percent (15%) thereof to cover costs of administration. All such actual and administrative costs shall accrue interest from the date incurred by Salinas at the maximum rate authorized by law until paid in full. The notice provided herein shall be effective on the date sent by U.S. Mail, first class postage prepaid to the record owner of the Subject Property as shown on the most recent tax roll. If such costs are not paid within the time frame established by Salinas, the unpaid costs shall be assessed against the Subject Property. Said assessment shall be a lien against the Subject Property and may be collected as ordinary taxes by Salinas. 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 Salinas as a result of Declarant's failure to maintain the Device.

5. **Security.** The Declarant, at the Declarant's sole cost and expense, shall post a security in a form, for time period, and in an amount satisfactory to Salinas, to guarantee the Declarant's performance of the obligations set forth herein. Should the Declarant fail to perform the obligations under this Agreement, then Salinas may realize against said security, and in the case of a cash bond, act for the Declarant using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of this Agreement. Said security shall be available to Salinas to satisfy the Declarant's reimbursement obligation under paragraph 3 hereof.

6. **Access by Salinas.** Declarant grants Salinas or Salinas's designee and all other responsible

government agencies and their agents or designees the unrestricted right of access to the Device, including its immediate vicinity, and including ingress and egress to and from said Device, at any time, upon twenty-four (24) hour advance notice in writing, of any duration for the purpose of inspection, sampling, and testing of the Device. Salinas shall make reasonable efforts at all times to maintain or avoid interference with Declarant's use of the Subject Property. It is specifically understood and agreed that Salinas is under no obligation to maintain or repair the Device and in no event shall the Device be considered to impose any such obligation on Salinas.

7. **Indemnification.** Declarant and its successors, heirs and assigns shall indemnify, defend, and hold Salinas, its officers, employees, agents and representatives, harmless from and against any and all liability, claims, demands, suits, damages, loss and causes of action arising out of or asserted against Salinas by reason of Declarant's design, construction, maintenance, repair, and care of the Device. Declarant shall also have the obligation to indemnify, defend against any claims, demands, causes of action, liability or loss arising from, connected with, caused by or claimed to be caused by the active or passive negligence of Salinas, its officers, employees, agents or representatives which may be in combination with the negligence of Declarant, its employees, agents or officers, or any third party. It is understood that the duty of Declarant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code, and that Declarant shall at its own expense, upon written request by Salinas, defend any such suit or action brought against Salinas, its officers, agents, employees or representatives.

Declarant shall reimburse the Salinas for all costs and expenses (including but not limited to reasonable fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by Salinas in enforcing the provisions of this section.

8. **Successors and Assigns Bound.** Declarant hereby agrees and acknowledges that maintenance of the Device as herein above set forth and the costs of maintenance, Salinas's access to the device, and Salinas's right of ingress and egress to the Device and recovery of costs if Declarant fails to maintain the Device as herein set forth, are a burden and restriction on the use of the Subject Property. The provisions of this Agreement shall be enforceable as an equitable servitude and as conditions, restrictions and covenants running with the land, and shall be binding upon the Declarant and upon each and all of its respective heirs, devisees, successors, and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon any future owners of the Subject Property and each of them. Whenever the Subject Property is sold, conveyed or otherwise transferred, Declarant shall provide Salinas with no less than thirty (30) days written notice identifying the new owner who shall be subject to this Agreement which shall apply to, bind and be obligatory to all present and subsequent owners of the Subject Property.

9. **Enforcement.** It is the express intent of the Declarant that the terms and provisions of this Agreement shall be enforceable as an equitable servitude by Declarant. To the extent necessary to do so, Declarant and its successors and assigns, hereby confer and assign rights to enforce the terms and conditions of this Agreement to Salinas and this Agreement may be enforced by any proceedings at law or in equity by or against the Declarant and its successors and assigns.

10. **Recording of Agreement.** This Agreement shall be recorded in the Office of the Recorder of Monterey County, California and shall constitute notice to all successors and assigns of the title to the Subject Property of the rights and obligations herein set forth.

11. **Amendment.** This Agreement may be amended by Declarant, but only if in writing, and only after written approval of Salinas.

12. **Attorney's Fees.** In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

13. **Taxes.** Declarant shall pay all real estate taxes and any other charges or fees that may be assessed against the Subject Property and the Device

IN WITNESS WHEREOF, Declarant has executed this Agreement as of the day and year written above.

CITY OF SALINAS

Robert C. Russell
Deputy City Manager/City Engineer

Date

APPROVED AS TO FORM:

Vanessa W. Vallarta, City Attorney
By
Christopher A. Callihan, Sr. Deputy City Attorney

Date

DECLARANT

(name)

Date