**RECORDING REQUESTED BY:**

Owner\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner City State Zip\_\_\_\_\_\_\_\_\_\_\_

**WHEN RECORDED SEND TO:**

Owner\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner City State Zip\_\_\_\_\_\_\_\_\_\_\_

**AND TO:**

City Clerk

City of Menlo Park

701 Laurel Street

Menlo Park, CA 94025

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_THIS SPACE FOR RECORDER’S USE ONLY

STORMWATER TREATMENT MEASURES CONSTRUCTION AND MAINTENANCE AGREEMENT

###### **RECITALS**

This Stormwater Treatment Measures Maintenance Agreement (“Agreement”) is entered into this \_\_\_\_\_\_\_\_\_\_\_ [insert date] by and between the City of Menlo Park (“City”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert name of property owner] (“Property Owner”), a property 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, a new Municipal Regional Stormwater NPDES Permit; and

**WHEREAS,** Provision C.3.e.ii. 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 City of Menlo Park is the permittee public agency with jurisdiction over the Property, and

**WHEREAS**, the Property Owner, \_\_\_\_\_\_\_\_\_\_\_\_\_[insert name], is the owner of real property commonly known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert address] (the “Property”), and more particularly described in the attached legal description (Exhibit A).

**WHEREAS**, attached hereto as Exhibit B is a legible reduced-scale copy of the Site Plan, which has been approved by and is on file with the City of Menlo Park Engineering Division, showing the stormwater treatment measure(s) that Property Owner has agreed to construct on the Property; and

**WHEREAS**, the Property Owner recognizes that the stormwater treatment measure(s) shown on Exhibit B, must be installed and maintained as indicated in this Agreement and as required by the NPDES permit.

**WHEREAS,** the Property Owner acknowledges that the stormwater treatment measure(s) shall be owned, maintained and repaired by Property Owner to ensure its (their) proper functioning for the health, safety and welfare of the citizens of the City, and

**WHEREAS**, it is the purpose of this Agreement to memorialize in writing the Property Owner’s agreement for installation, use, maintenance and repair of the stormwater treatment measure(s).

**THEREFORE**, the Property Owner hereby covenants and agrees 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 in strict accordance with the approved plans and specifications identified for the development and any other requirements thereto which have been approved by the Cityin 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 accepting responsibility for operation and maintenance of stormwater treatment measures as set forth in this Agreement until the responsibility is legally transferred to another person or entity. Before the Property is legally transferred to another person or entity, the Property Owner shall provide to the City at least one of the following:

    1)  A signed statement to 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.

**SECTION 3: MAINTENANCE OF TREATMENT MEASURES**

The Property Owner shall not destroy or remove the stormwater treatment measures from the Property nor modify the stormwater treatment system in a manner that reduces its effectiveness, and shall, at Property Owner’s sole expense, adequately maintain the stormwater treatment measure(s) in good working order acceptable to the Cityand in accordance with the maintenance plan agreed hereto and attached as Exhibit C. 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. The Property Owner 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 shall, on an annual basis, conduct a minimum of one inspection of the stormwater treatment measure(s) before the wet season. This inspection shall occur between August 1st and October 1st of each year. More frequent inspections may be required by the maintenance plan (Exhibit C). The Property Owner shall pay all costs and expenses of the inspection(s).

The results of inspections shall be recorded on the Treatment Measure Operation and Maintenance Inspection Report (annual report), attached to this agreement as Exhibit D and the Treatment Measure Checklist (annual report attachment), attached to this agreement as Exhibit E. One Checklist shall be completed for each treatment measure.

The annual report shall be made under penalty of perjury and shall be submitted to the City in order to verify that inspection and maintenance of the applicable stormwater treatment measure(s) have been conducted pursuant to this agreement. The Property Owner shall provide in the annual report a record of the volume of all accumulated sediment removed as a result of the treatment measure(s).

The reporting period shall be the calendar year and the annual report shall be submitted no later than January 10 of the following year. It shall be delivered to the Stormwater Coordinator, Engineering Division, City of Menlo Park, 701 Laurel St., Menlo Park, CA 94025 or another member of the City staff as directed by the City.

SECTION 6: NECESSARY CHANGES AND MODIFICATIONS

If the City determines that changes or modifications to the stormwater treatment measure(s) and/or the maintenance plan (Exhibit C) are reasonably necessary to ensure that the treatment measures are adequately maintained and continue to function as originally designed and approved by the City, the City shall notify the Property Owner in writing of such determination and of the changes/modifications the City believes to be necessary.

The Property Owner may, at its sole expense, make the recommended changes and modifications. Alternatively, the Property Owner may, also at its sole expense, have an independent stormwater consultant (approved by the City) review the recommended changes and modifications and make only those changes and modifications recommended by the consultant.

**SECTION 7: ACCESS TO THE PROPERTY**

The Property Owner hereby grants permission to the City of Menlo Park, the San Francisco Bay Regional Water Quality Control Board, the San Mateo County Mosquito Abatement District, the San Mateo County Flood Control District 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 whenever there is a reasonable basis to believe that a violation of this Agreement, the City’sstormwater management ordinance, guidelines, criteria, other written direction, or the NPDES Municipal Stormwater Permit and any amendments or reissuances of it 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 this Agreement, the ordinance, guideline, criteria, permit or other written direction. The agency shall provide reasonable (as may be appropriate for the particular circumstances) notice to the Property Owner before entering the property. Such notice will not be necessary if emergency conditions require immediate remedial action.

If it is determined during inspection by an agency listed above, that the Property Owner has breached any maintenance obligation, the cost of which is in excess of one thousand dollars ($1,000.00), the Property Owner agrees to reimburse that agency for the cost and expenses of said inspection.

SECTION 8: FAILURE TO MAINTAIN TREATMENT MEASURES

The Property Owner recognizes that use, modification and proper maintenance of the stormwater treatment measure(s) is for the benefit of all citizens of the City and that the City is an intended third party beneficiary of this Agreement and may, upon notice of hearing, as set forth below, exercise powers of enforcement of this agreement.

If the Property Owner determines during inspection that the treatment measure(s) requires repair or replacement, all such work shall be performed within sixty (60) days or such later time as may be approved by the City if such work cannot reasonably be completed within sixty (60) days.

In the event the Property Owner fails to maintain the stormwater treatment measure(s) as required by Exhibit C, the City shall by mail or personal delivery give written notice of the breach of any maintenance obligation to the Property Owner with a demand that such breach be remedied. If such breach is not remedied within sixty (60) days of the mailing or delivery of such notice, the City shall have standing and the right, (but not the obligation) to bring a court action against the Parties to enforce such provision.

The notice may also contain a date for a hearing on the matter before a City employee designated by the City (which hearing shall be held no sooner than fifteen (15) days after mailing of such notice), and if after such hearing the City determines that there has been inadequate maintenance, the City shall have the right (but not the obligation) to undertake the maintenance of the treatment measure(s). 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 this Agreement, performs work of any nature (direct or indirect), including any re-inspections or any actions it deems necessary or appropriate to return the treatment measure(s) to 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, the Property Owner shall be liable and responsible to immediately reimburse the City for all funds reasonably expended or shall forfeit any required bond for the costs incurred by the Cityhereunder.

If these costs are not paid within the prescribed time period, the Citymay assess theProperty Owner the cost of the work, both direct and indirect, and applicable penalties. Such assessment shall constitute a lien against the Property included in this Agreement and may be enforced against the Property, the Property Owner and any successor owners 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 failure to maintain the treatment measure(s).

In the event of any dispute involving the City enforcing the terms and provisions of this Agreement, or the City exercising any and all legal remedies, the prevailing party shall be entitled to recover reasonable attorney fees and costs incurred.

**SECTION 10: INDEMNIFICATION**

The Property Owner shall indemnify, hold harmless and defend the City and its authorized or subsidiary agencies, their officers, officials, agents, employees and servants from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, payments or actions of every name, kind and description, including attorney fees claimed, which might arise or be asserted based on negligence or willful misconduct of the Property Owner or their respective employees, agents or contractors, brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this agreement by parties, their officers, agents, employees and servants and/or any damages, penalty, claims or injury resulting from the presence, existence or maintenance of the treatment measure(s). The duty of the Property Owner to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

In the event a claim is asserted against the City, its authorized agents, officers, officials or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents, officers, officials or employees shall be allowed, the Property Owner 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.

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; 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 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**

This Agreement shall run in perpetuity as long as the stormwater treatment measure(s) remains in place and is binding upon, and inures to the benefit of, the Property Owner and their heirs, successors, assigns, executors, administrators, personal and legal representatives.

The Property Owner further agrees whenever the Property or any portion thereof is held, sold, conveyed or otherwise transferred, it shall be subject to this Agreement which shall apply to, bind and be obligatory to all present and subsequent owners of the Property or any portion thereof.

**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 with the County Recorder within twenty (20) days of the date of execution. Recordation shall be at the expense of the Property Owner. The City reserves the option to record this Agreement.

**SECTION 16: RELEASE OF AGREEMENT**

In the event that the Citydetermines 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 Maintenance Agreement, which the Property Owner shall record in the County Recorder’s Office at the Property Owner’s expense. The City reserves the option to record such release of this Maintenance Agreement. 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 or amended without prior written consent of the City Director of Public Works. Such modifications shall be effective upon the date of execution by the Property Owner and shall be recorded. Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Property Owner Signature Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Type or print Property Owner name and address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Type or print Property Owner address, city, state and zip code

APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Justin I. C. Murphy

Director of Public Works

City of Menlo Park

APN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert assessor’s parcel number]

Attachments:

Notary Acknowledgements

SIGNATURE AUTHORITY (IF OWNER IS NOT AN INDIVIDUAL)

Exhibit A: Legal Description of Parcel (to be provided by Owner’s Civil Engineer)

Exhibit B: Site Plan showing Treatment Measure(s) Location (to be provided by Owner’s Civil Engineer)

Exhibit C: Maintenance Plan (to be provided by Owner – City has templates)

Exhibit D: Treatment Measure Checklist (accompanies the annual report - City has templates)

Exhibit E: Annual Inspection Report (annual report to be provided by City)