

OPERATION & MAINTENANCE (O&M) PLAN and STATEMENT OF RESPONSIBILITY

Property Owner Information:

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|-------------------------|--|--------|--------|------|--|
| Property Owner Name: | | | | | |
| Name of Contact Person: | | | | | |
| Mailing Address: | | | | | |
| City: | | State: | | Zip: | |
| Telephone: | | | Email: | | |

Development Information:

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|--|--|--------|--------|------|--|
| Name of Development | | | | | |
| Development Address: | | | | | |
| City: | | State: | | Zip: | |
| Assessor Parcel No.: | | | | | |
| Name of Person or Organization Responsible for Performing Inspections and Maintenance of the Treatment Control Measures: | | | | | |
| Mailing Street Address: | | | | | |
| City: | | State: | | Zip: | |
| Telephone: | | | Email: | | |

Treatment Control Measures:

List the treatment control measures at the development and their inspection frequencies (minimum of once per year). For each treatment control measure, describe conditions that require maintenance or repair. Describe preventative maintenance needed to keep the treatment control measure effective.

| Treatment Control Measure | Inspection Frequency | Describe Conditions that Require Maintenance / Repair and Describe Routine Preventative Maintenance |
|---------------------------|----------------------|---|
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STATEMENT OF RESPONSIBILITY

THIS AGREEMENT is made and entered into in _____, California,
this ____ day of _____, by and between _____
hereinafter referred to as "Owner" and the City of Merced;

WHEREAS, the Owner owns real property ("Property") in the City of Merced, State of California, depicted on the attached map, which are attached hereto;

WHEREAS, at the time of initial approval of the development project known as _____ within the Property described herein, the City of Merced required the project to employ on-site control measures to minimize pollutants in urban runoff;

WHEREAS, the Owner has chosen to install the following treatment control measures: _____, hereinafter referred to as "facilities", as the on-site control measures to minimize pollutants in urban runoff;

WHEREAS, said facilities have been installed in accordance with the requirements of the City of Merced Post-Construction Standards Plan and the Owner's plans and specifications accepted by the City of Merced;

WHEREAS, said facilities, with installation on private property and draining only private property, is a private facility with all operation, maintenance and replacement, therefore, the sole responsibility of the Owner in accordance with the terms of this Agreement;

WHEREAS, the Owner is aware that periodic and continuous maintenance (as described on page 1 of this O&M Plan), including, but not necessarily limited to, sediment removal, is required to assure peak performance of the facilities and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs;

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner hereby provides the City of Merced or City of Merced's designee complete access, of any duration, to the facilities and its immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by City of Merced with no advance notice, for the purpose of inspection, sampling, testing of the facilities, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner's expense as provided in paragraph 3 below. The Owner/Operator shall retain all operation and maintenance records at the facility for City of Merced inspection, and a copy shall be provided to the City of Merced if requested. The City of Merced shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.
2. Owner shall use its best efforts to diligently maintain the facilities in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of material(s) from the facilities and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. When requested from time to time by the City of Merced, the Owner shall provide the City of Merced with documentation identifying the material(s) removed, the quantity, and disposal destination.
3. In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) days of being given written notice by the City of Merced, the City of Merced is hereby authorized to cause any maintenance necessary to be done and


charge the entire cost and expense to the Owner or Owner's successors or assigns, including administrative costs, attorney fees and interest thereon at the maximum rate authorized by the Municipal Code from the date of the notice of expense until paid in full, and Owner hereby agrees to pay such charge within 30 days of receipt of City of Merced's written demand for payment.

4. The City of Merced may require the owner to post security in form and for a time period satisfactory to the City of Merced to guarantee the performance of the obligations stated herein. Should the Owner fail to perform the obligations under the Agreement, the City of Merced may, in the case of a cash bond, act for the Owner using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of the Agreement. As an additional remedy, the City of Merced may withdraw any previous storm water related approval with respects to the property on which the facilities have been installed until such time as Owner repays to City of Merced its reasonable costs incurred in accordance with paragraph 3 above.
5. The Owner will be sent an annual self-certification form each year by the City of Merced to certify that all of the inspections and maintenance have been performed per page 1 of this O&M Plan and that the facilities are in effective working condition. The Owner has 60 days to complete and return the annual self-certification form to the City of Merced. If the report is not received within the 60-day period, the City of Merced will perform the inspection and assessment; and the Owner will be billed for it as described above.
6. In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, then the Owner and its successors or assigns agree(s) to pay all costs incurred by the City of Merced in enforcing the terms of this Agreement, including reasonable attorney fees and costs, and that the same shall become a part of the lien against said Property.
7. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.
8. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to the City of Merced at the same time such notice is provided to the successor.
9. Any notice or demand for payment to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to addresses listed on Page 1 of this agreement either for the Owner or the City of Merced. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

City of Merced

APPROVED AS TO FORM:


KENNETH ROZELL
Senior Deputy City Attorney

By _____

Name of Development: _____

By _____

PROPERTY OWNER

Name _____

Title _____