

STORMWATER TREATMENT MEASURES
MAINTENANCE AGREEMENT

Address: 2184 Cobblehill Place
APN: 041-101-440
BLD 2016-00158 (Lot 10)
PLN2006-00357
NOM2021-00008

RECITALS

This Stormwater Treatment Measures Maintenance Agreement (“Agreement”) is entered into this _____ day of 2022 by and between the County of San Mateo (“County”) and Highland Estates Development I, LLC (“Property Owner”), the owner of real property described in Exhibit A to this Agreement.

WHEREAS, on November 19, 2015, the Regional Water Quality Control Board, San Francisco Bay Region, adopted Order R2-2015-0049, amending the San Mateo Countywide NPDES Municipal Stormwater Permit (Order R2-2009-0074) (“NPDES Permit”); and

WHEREAS, provision C.3.e.ii of this NPDES Permit 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 Property Owner is the owner of real property commonly known as 2184 Cobblehill Place (the “Property”), and more particularly described in the legal description attached as Exhibit A to this Agreement, and incorporated herein by reference; and

WHEREAS, attached hereto as Exhibit B and incorporated by reference into the Agreement, is a legible reduced-scale copy of the Stormwater Control Plan or comparable document showing the stormwater treatment measures that the Property Owner has stated will be located and/or constructed on the Property; and

WHEREAS, the County is the permittee public agency with jurisdiction over the Property; and

WHEREAS, the Property Owner recognizes that the stormwater treatment measure(s) more particularly described and shown on Exhibit B, of which full-scale plans and any amendments thereto are on file with the Planning Department of the County and incorporated by reference into the Agreement, must be installed and permanently maintained as indicated in this Agreement and as required by the NPDES Permit; and

WHEREAS, the County and the Property Owner agree that the health, safety and welfare of the citizens of the County require that the stormwater treatment measure(s) described in the Site Plan in Exhibit B be constructed and permanently maintained on the Property; and

WHEREAS, the County’s Stormwater Management Ordinance, guidelines, criteria and other written directions require that the stormwater treatment measure(s), as shown on the approved Site Plan, be constructed and maintained by the Property Owner.

THEREFORE, in consideration of the benefit received by the Property Owner as a result of the County’s approval of the Site Plan, the Property Owner hereby covenants and agrees with the County as follows:

SECTION 1: CONSTRUCTION OF TREATMENT MEASURES

Property Owner agrees to construct the on-site stormwater treatment measure(s) shown on the Site Plan in strict accordance with the approved plans and specifications identified for the development and any other requirements thereto which have been approved by the County in conformance with appropriate County ordinances, guidelines, criteria and other written direction.

SECTION 2: OPERATION AND MAINTENANCE RESPONSIBILITY

This Agreement shall serve as the signed statement and agreement by the Property Owner accepting responsibility for the permanent operation and maintenance of stormwater treatment measures as set forth in this Agreement, and the documents incorporated by reference into the Agreement, and as required by the NPDES Permit 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 County at least one of the following:

1. A signed statement from a public entity assuming permanent 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 permanent 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 and which shall run with the land; or
3. Written text in project conditions, covenants and restrictions (“CCRs”) for residential properties permanently assigning O&M responsibilities to the homeowners association for O&M of the treatment measures, such responsibilities to run with the land; or
4. Any other legally enforceable agreement or mechanism acceptable to County 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 lessens its effectiveness, and shall, at Property Owner's sole expense, adequately repair and maintain the stormwater treatment measure(s) in good working order acceptable to the County and in accordance with the Maintenance Plan agreed hereto and attached as Exhibit C ("Maintenance Plan"), and incorporated by reference into this Agreement. This includes all pipes, channels or other conveyances built by Property Owner 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 for the life of the project 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 in accordance with the Maintenance Plan and applicable federal, state, and County laws, regulations and guidelines, as these may be amended from time to time. The Property Owner will provide for the timely removal and disposal of accumulated sediments. Disposal of accumulated sediments shall not occur on the Property, unless specifically 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, complete a Treatment Measure Operation and Maintenance Inspection Report ("Annual Report") using a form available from the County's Planning Department. The Annual Report shall include all completed Inspection and Maintenance Checklists for the reporting period, as well as a copy of this Operation and Maintenance Agreement, and shall be submitted to the County in order to verify that inspection and maintenance of the applicable stormwater treatment measure(s) have been conducted pursuant to this Agreement. **The Annual Report shall be submitted no later than December 31 of each year**, signed under penalty of perjury, to the Current Planning Section, Attention: NPDES Planner, or another member of the County staff as subsequently directed in writing by the County. 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 Property Owner shall conduct a minimum of one annual inspection of the stormwater treatment measure(s) before the wet season. This inspection shall occur between August 1st and October 1st each year. More frequent inspections may be required by the Maintenance Plan in Exhibit C. The results of inspections shall be included on an Inspection and Maintenance Checklist(s) form available in the Exhibits to this Agreement and submitted to the County as part of the Annual Report. The property owner shall pay the required fees to cover County staff time spent performing necessary compliance monitoring activities, such as annual report reviews and necessary inspections.

SECTION 6: NECESSARY CHANGES AND MODIFICATIONS

At its sole expense, the Property Owner shall make all changes, repairs or modifications to the stormwater treatment measure(s) and/or the Maintenance Plan shown in Exhibit C as may be determined as reasonably necessary by the County to ensure that treatment measures are properly maintained and continue to operate as originally designed and approved, provided however, Property Owner shall be responsible for repairs or modifications that are not part of the approved Maintenance Plan only after receipt of notice from the County with regards to such repair and maintenance and after the opportunity to meet and confer with the County with regards to such repairs or modifications.

SECTION 7: ACCESS TO THE PROPERTY

The Property Owner hereby grants permission to the County; the San Francisco Bay Regional Water Quality Control Board (Regional Board); the San Mateo County Mosquito Abatement District (Mosquito Abatement District); and their respective 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 County's Stormwater Management Ordinance, guidelines, criteria, other written direction, or the NPDES Permit (and any amendments or re-issuances of this permit) is occurring, has occurred or threatens to occur. The above-listed agencies shall also have a right to enter the Property when necessary for abatement of a public nuisance or correction of a violation of the ordinance, guidelines, criteria or other written direction. The County, Regional Board, or the Mosquito Abatement District shall provide reasonable (as may be appropriate for the particular circumstances) notice to the Property Owner before entering the Property and shall not interfere with the Property Owner's tenants, guest, licensees and invitees during any such entry.

SECTION 8: FAILURE TO MAINTAIN TREATMENT MEASURES

In the event the Property Owner fails to maintain the stormwater treatment measure(s) as shown on the approved Site Plan in good working order acceptable to the County and in accordance with the Maintenance Plan, the County, and its authorized agents and employees, with reasonable notice, may enter the Property and take whatever steps it deems necessary and appropriate to return the treatment measure(s) to good working order, provided, however, County shall not be authorized to remove any structures or improvements on the Property or in any way interfere with Property Owner's use of the Property. Such notice will not be necessary if emergency conditions require immediate remedial action. This provision shall not be construed to allow the County to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that the County 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

County.

SECTION 9: FAILURE TO FILE ANNUAL REPORT

In the event the Property Owner fails to file the Annual Report required under this Agreement in a form acceptable to the County, the County, and its authorized agents and employees, with reasonable notice, may enter the Property and take whatever steps it deems necessary and appropriate to inspect the Property. Such notice will not be necessary if emergency conditions require immediate remedial action. It is expressly understood and agreed that the County is under no obligation to inspect, maintain or repair the treatment measure(s) and in no event shall this Agreement be construed to impose any such obligation on the County.

SECTION 10: REIMBURSEMENT OF COUNTY EXPENDITURES

In the event the County, pursuant to this Agreement, performs work of any nature (direct or indirect), including any inspections, re-inspections or any actions it deems necessary or appropriate as indicated in Sections 8 or 9 above, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Property Owner shall reimburse the County, upon demand within thirty (30) days of receipt thereof for the costs incurred by the County hereunder. If these costs are not paid within the prescribed time period, the County may assess the Property Owner the cost of the work, both direct and indirect, and applicable penalties. Said assessment shall be a lien against the Property or may be placed on the property tax bill and collected as ordinary taxes by the County. 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 County as a result of the Property Owner's failure to report or to maintain the treatment measure(s).

SECTION 11: INDEMNIFICATION

The Property Owner shall indemnify, hold harmless and defend the County and its authorized agents, officers, officials and employees from and against any and all claims, demands, suits, damages, liabilities, losses, accidents, casualties, occurrences, claims and payments, including attorney fees claimed or which might arise or be asserted against the County that are alleged or proven to result or arise from the construction, presence, existence, inspection or maintenance of the treatment measure(s) by the Property Owner or the County. In the event a claim is asserted against the County, its authorized agents, officers, officials or employees, the County 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 County, 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 County.

SECTION 12: 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 stormwater runoff.

SECTION 13: PERFORMANCE FINANCIAL ASSURANCE

The County 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 County's ordinances, guidelines, criteria or written direction.

SECTION 14: TRANSFER OF PROPERTY

This Agreement shall run with the title to the land and any portion thereof. 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 15: 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. Notwithstanding, the Agreement is severable at the time of the full demolition of the project whereby all impervious surfaces and structures are removed from the property.

SECTION 16: RECORDATION

This Agreement shall be recorded by the Property Owner in the County Recorder's Office of the County of San Mateo, California, within ten (10) working days after the execution date of this Agreement at the Property Owner's expense. The County reserves the option to record this Agreement and shall be entitled to collect any expenses related to recordation if it does so. The Property Owner shall provide County with a copy of the recorded document.

SECTION 17: RELEASE OF AGREEMENT

In the event that the County determines that the stormwater treatment measures located on the Property are no longer required, then the County, 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 County 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 18: 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 except by written instrument executed by the County and the Property Owner at the time of modification. Such modifications shall be effective upon the date of execution and shall be recorded.

SECTION 19: GOVERNING LAW

This Agreement shall be governed by the laws of the State of California.

SECTION 20. WAIVER

Waiver by County of any breach of one or more of these terms, covenants or conditions of this Agreement or any default in the performance of any obligations under this Agreement shall not be construed as waiver of any other term, covenant, condition or obligation; nor shall a waiver of any incident of breach or default constitute a continuing waiver of same.

SECTION 21: ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, arrangements or understandings (oral or written) between or among the parties relating to the subject matter of the Agreement which are not fully expressed herein. This Agreement may not be amended or modified except by a written instrument signed by both parties and recorded in the San Mateo County Recorder's Office.

SECTION 22: NOTICE

All notices or other communications shall be deeded given when: (a) personally delivered or (b) mailed by postage prepaid mail to the parties at the addresses set forth below:

County: Planning and Building Department
455 County Center, Second Floor
Redwood City, CA 94063

Property Owner: Highland Estates Development I, LLC
655 Skyway, Suite 230
San Carlos, CA 94070
Attn: Noel Chamberlain

SECTION 23: EXHIBITS

The following exhibits are attached hereto and fully incorporated by reference herein:

- Exhibit A: Legal Description of Property
- Exhibit B: Stormwater Control Plan
- Exhibit C: Maintenance Plan
- Exhibit D: Photographs of Stormwater Treatment Measures
- Exhibit E: Annual Report Template

IN WITNESS WHEREOF, the parties hereby execute this Agreement as follows:

Signature for the County

Lisa Aozasa

Deputy Director

San Mateo County Planning & Building Department

Date

Type or Print Name and Title

ATTEST:

Property Owner Signature

Date

Type or Print Name and Title

ACKNOWLEDGEMENT:

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)