

RECORDED AT THE REQUEST OF:

City of Carpinteria

WHEN RECORDED RETURN TO:

City Clerk's Office
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

(Recorder's Use Only)

**STORM WATER RUNOFF BMP ACCESS AND
MAINTENANCE AGREEMENT**

**REQUEST RECORDING WITHOUT FEE
RECORDED FOR BENEFIT OF CITY OF
CARPINTERIA PURSUANT TO
SECTION 27383 OF THE
GOVERNMENT CODE.**

Storm Water Runoff Control Access and Maintenance Agreement

Recorded at the request of: City of Carpinteria

After recording, return to:

City of Carpinteria

City Clerk: Brian Barrett

Storm Water Runoff BMP Access and Maintenance Agreement

PROJECT:

APN:

PROPERTY ADDRESS:

THIS AGREEMENT is made and entered into in Carpinteria, California this ____ day of _____, by and between _____ (“Owner”), and the **City of Carpinteria (“City”)**, a municipal corporation, State of California, with reference to the following facts and intentions:

WHEREAS, Owner owns real property (“**Property**”) in the City of Carpinteria, State of California, more specifically described in Exhibit “A” (attached) and depicted in Exhibit “B” (attached) and incorporated herein by this reference;

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

WHEREAS, Owner has chosen to install _____ (“**Device**”), as the on-site control measure to minimize pollutants in urban runoff;

WHEREAS, said Device has been installed in accordance with plans and specifications accepted by the City;

WHEREAS, said Device, installed on and draining only private property, is a private facility with all maintenance or replacement being the sole responsibility of the Owner in accordance with the terms of this Agreement;

WHEREAS, Owner 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 Device 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, the parties agree and stipulate as follows:

- 1. Right of Entry to Perform Maintenance.** Owner grants City or City’s designee complete access, of any duration, to the Device and its immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by City’s Director of Public Works no advance notice, for the purpose of inspection, sampling, testing of the Device, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner’s expense as provided in paragraph 3 below. City shall make every effort at all times to minimize or avoid interference with Owner’s use of the Property.

2. **Required Maintenance.** Owner shall use its best efforts to diligently maintain the Device in a manner expected to assure 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 Device and the ultimate disposal of the material(s) in a manner consistent with all applicable laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination. City shall not be liable for Owner's disposal of materials, or for any harm resulting from such disposal.

3. **Failure to Maintain.** 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, the City 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's 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.

4. **No Obligation.** It is fully understood that this Agreement does not create any obligation on the part of the City to perform any work of whatever nature on Owner's Device.

5. **Hold Harmless.** Owner hereby agrees to save and hold harmless City and City's designee from all cost, injury, and damage arising from work performed under this Agreement, and from any other injury or damage to any person or property whatsoever, any of which is caused by an activity, condition, or event arising out of the performance, preparation for performance, or nonperformance of City under this Agreement.

6. **Indemnification.** To the fullest extent permitted by law, Owner hereby indemnifies, holds harmless and agrees to defend City from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments arising from this Agreement. Owner's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the termination of this Agreement, as to claims arising or accruing prior to the termination of this agreement.

7. **Remedies.** The City may require the owner to post security in a form and for a time period satisfactory to the City as a guarantee for the performance of the obligations stated herein. Should the Owner fail to perform the obligations under the Agreement, the City 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 Director may withdraw any previous storm water related approval with respect to the property on which a Device has been installed until such time as Owner repays to City its reasonable costs incurred in accordance with paragraph three above.

8. **Term.** The term of this Agreement shall commence upon the execution by the parties and remain in effect indefinitely.

9. **Recording.** This agreement shall be recorded in the County Clerk's office, by a representative of the City, and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.

10. **Attorney's Fees.** 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 in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.

11. **Lien.** 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.

12. **Successors.** All of the rights and obligations herein undertaken shall bind and inure to the benefits of the respective heirs, personal representatives, successors, grantees and assigns of the Parties and the restrictions, covenants and obligations pertaining to the Property shall run with the land and shall continue until this Agreement is terminated. 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 at the same time such notice is provided to the successor. The term "Owner" shall include not only the present Owner, but also his or her heirs, successors, executors, administrators, and assigns.

13. **Time of the Essence.** Time is of the essence in the performance of this Agreement.

14. **Notice.** Any notice 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 the address set forth below. 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.

Signature of Owner MUST have notarial acknowledgment

Signature

Date

Print or type name

Company

Address

Telephone

INSERT NOTARY HERE

CERTIFICATION

The OWNER's agreement to construct and maintain private drainage improvements and private drainage maintenance easements set forth above, is hereby acknowledged and recordation is approved.

Date: _____

City of Carpinteria

By: _____
Dave Durlinger, City Manager

APPROVED AS TO FORM:

Jena Acos, on behalf of Brownstein
Hyatt Farber Schreck, LLP acting as
City Attorney of the City of Carpinteria

EXHIBIT A
Condition Letter

EXHIBIT B
Legal Description

All that land situated in the City of Carpinteria, California, described as follows:

Parcel _____ of Parcel Map No. _____, in the County of Santa Barbara, State of California, per the map thereof, recorded in Book ____, Pages _____, of Parcel Maps in the Office of the County Recorder of said County.

EXHIBIT C
Storm Water Maintenance Plan