

<p><b>Recording requested by and after recording return to:</b></p> <p>Town of Atherton 91 Ashfield Drive Atherton, CA 94027</p> <p>attn: City Engineer</p>	<p style="text-align: center;">THIS SPACE FOR RECORDER'S USE ONLY</p>
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**STORMWATER TREATMENT AND DETENTION MEASURES  
MAINTENANCE AGREEMENT**

This Stormwater Treatment and Detention Measures Maintenance Agreement ("Agreement") is entered into this \_\_\_\_\_ date of \_\_\_\_\_, 200\_\_ by and between the Town of Atherton, a municipal corporation, (" Town") and [insert name of property owner] , a \_\_\_\_\_, (the "Property Owner").

RECITALS

**WHEREAS**, on February 19, 2003, the Regional Water Quality Control Board, San Francisco Bay Region, adopted Order R2-2003-0023, CAS002992 1, reissuing the San Mateo Countywide National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit for the San Mateo Countywide Clean Water Program, for which the Town of Atherton is a permittee; and

**WHEREAS**, Provision C.3.e.ii. of this NPDES permit, and as it may be amended or reissued, requires the Town to provide minimum verification and access assurances that all treatment and detention measures shall be adequately operated and maintained by persons and entities responsible for the stormwater treatment and detention measures; and

**WHEREAS**, property Owner is the owner of real property commonly known as ("Property"), and more particularly described in the attached Exhibit A, upon which stormwater treatment and detention measures are located or to be constructed, as shown in Exhibit B (the "Site Plan"); and

**WHEREAS**, the Property Owner, its administrators, co-owners, executors, successors, heirs, assigns or any other persons, including any homeowners association (hereinafter collectively referred to as "Property Owner") recognizes that the stormwater treatment and detention 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 and/or Engineering Department of the Town of Atherton must be installed and maintained as indicated in this Agreement and as required by the NPDES permit.

**WHEREAS**, the Town and the Property Owner agree that the health, safety and welfare of the citizens of the Town require that the stormwater treatment and detention measure(s) detailed in the Site Plan shall be constructed and maintained on the Property; and

**WHEREAS**, the Town's Stormwater Management and Discharge Control Ordinance, guidelines, criteria and other written directions require that the stormwater treatment and detention measure(s), as shown on the approved Site

Plan, be constructed and maintained by the Property Owner

**NOW, THEREFORE**, in consideration of the benefit received by the Property Owner as a result of the Town's approval of \_\_\_\_\_, the Property Owner hereby covenants and agrees as follows:

#### SECTION 1: CONSTRUCTION OF TREATMENT AND DETENTION MEASURES

The on-site stormwater treatment and detention measure(s) shown on the Site Plan shall be constructed or cause to 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 Town in conformance with appropriate Town 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 and detention measures as set forth in this Agreement until the responsibility is legally transferred to another entity. Before the Property is legally transferred to another entity, the Property Owner shall provide to the Town at least one of the following:

- A) A signed statement from the public entity assuming post-construction responsibility for treatment and detention measure maintenance and that the treatment and detention measures meet all local agency design standards; or B) 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 C) 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 and detention measures; or D) Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of treatment and detention measures.

#### SECTION 3: MAINTENANCE OF TREATMENT AND DETENTION MEASURES

The Property Owner shall not destroy or remove the stormwater treatment and detention measures from the Property nor modify the stormwater treatment and detention system in a manner that lessens its effectiveness, and shall, at its sole expense, adequately maintain the stormwater treatment and detention measure(s) in good working order acceptable to the Town and in accordance with the maintenance plan submitted by the Property Owner and approved by the Town Engineer or his or her designee, attached hereto as **Exhibit C**, and incorporated herein by this reference. This includes all pipes, channels or other conveyances built to convey stormwater to the treatment and detention 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 and detention 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, complete the Treatment and Detention Measure Operation and Maintenance Inspection Report (annual report), attached to this Agreement as **Exhibit D**. The annual report shall include all completed Inspection and Maintenance Checklists for the reporting period and shall be submitted to the Town in order to verify that inspection and maintenance of the applicable stormwater treatment and detention measure(s) have been conducted pursuant to this Agreement. The annual report shall be submitted no later than December 31 of each year, under penalty of perjury, to:

Town of Atherton  
91 Ashfield Drive  
Atherton, CA 94027

attn: City Engineer

or another member of the Town staff as directed by the Town. The Property Owner shall provide a record of the volume of all accumulated sediment removed from the treatment and detention measure(s) in the annual report. The Property Owner shall conduct a minimum of one (1) annual inspection of the stormwater treatment and detention 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, **Exhibit C**. The results of inspections shall be recorded on the Inspection and Maintenance Checklist(s) attached as **Exhibit D**.

#### SECTION 6: NECESSARY CHANGES AND MODIFICATIONS

At its sole expense, the Property Owner shall make changes or modifications to the stormwater treatment and detention measure(s) and/or the long-term Maintenance Plan, **Exhibit C**, as may be determined as reasonably necessary by the Town to ensure that treatment and detention measures are properly maintained and continue to operate as originally designed and approved.

#### SECTION 7: ACCESS TO THE PROPERTY

The Property Owner hereby grants permission to the Town; the San Francisco Bay Regional Water Quality Control Board (Regional Board); the San Mateo County Mosquito Abatement District (Mosquito Abatement 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 and detention measure(s) in order to ensure that treatment and detention 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 when it has a reasonable basis to believe that a violation of this Agreement, the Town's stormwater management ordinance, guidelines, criteria, other written direction, or the San Mateo Countywide Clean Water Program's NPDES municipal stormwater permit (Regional Board Order R2-2003-0023, and any amendments or re-issuances of this permit) 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 the ordinance guideline, criteria or other written direction. Whenever possible, the Town, Regional Board, or the Mosquito Abatement District shall provide reasonable notice to the Property Owner before entering the property.

#### SECTION 8: FAILURE TO MAINTAIN TREATMENT AND DETENTION MEASURES

In the event the Property Owner fails to maintain the stormwater treatment and detention measure(s) as shown on the approved Site Plan or comparable document in good working order acceptable to the Town and in accordance with the maintenance plan incorporated in the Agreement, the Town, 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 and detention measure(s) to good working order, in addition to all other rights and remedies available in law and in equity. Prior notice will not be necessary if emergency conditions require immediate remedial action. This provision shall not be construed to allow the Town to erect any structure of a permanent nature on the Property. It is expressly understood and agreed that the Town is under no obligation to maintain or repair the treatment and detention measure(s) and in no event shall this Agreement be construed to impose any such obligation on the Town.

#### SECTION 9: REIMBURSEMENT OF TOWN EXPENDITURES

In the event the Town, pursuant to the Agreement, performs work of any nature (direct or indirect), including any reinspections or any actions it deems necessary or appropriate to return the treatment and detention measure(s) in 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 reimburse the Town, or shall forfeit any required bond upon demand within thirty (30) days of receipt thereof for the costs incurred by the Town hereunder. If these costs are not paid within the prescribed time period, the Town 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 prorated against the beneficial users of the Property or may be placed on the property tax bill and collected as ordinary taxes by the Town. 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 Town as a result of the Property Owner's failure to maintain the treatment and detention measure(s).

#### SECTION 10: INDEMNIFICATION

The Property Owner shall indemnify, hold harmless and defend the Town 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 Town that are alleged or proven to result or arise from the construction, presence, existence or maintenance of the treatment and detention measure(s) by the Property Owner or the Town. In the event a claim is asserted against the Town, its authorized agents, officers, officials or employees, the Town 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 Town, 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 Town.

#### SECTION 11: NO ADDITIONAL LIABILITY

It is the intent of this Agreement to insure the proper maintenance of the treatment and detention 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 Town may request the Property Owner to provide a performance bond, security or other appropriate financial assurance providing for the maintenance of the stormwater treatment and detention measure(s) pursuant to the Town's ordinances, guidelines, criteria or written direction.

#### SECTION 13: TRANSFER OF PROPERTY

This Agreement shall run with the land and shall be binding upon all heirs, successors, and assigns of Property Owner. The Property Owner further agrees whenever the Property 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.

#### 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 by the Property Owner or by the Town by mutual agreement, within five (5) business days, or such time as agreed upon by both parties, after the execution date of this Agreement as stated above among the deed records of the County Recorder's Office of the County of San Mateo, California at the Property Owner's expense.

#### SECTION 16: RELEASE OF AGREEMENT

In the event that the Town determines that the stormwater treatment and detention measures located on the Property are no longer required, then the Town, at the request of the Property Owner shall execute a release of this Inspection and Maintenance Agreement, which the Property Owner, or the Town by mutual agreement, shall record in the County Recorder's Office at the Property Owner's expense. The stormwater treatment and detention 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 except by written instrument executed by the Town and the Property -Owner at the time of modification. Such modifications shall be effective upon the date of execution and shall be recorded.

**SECTION 18: MISCELLANEOUS**

- a. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Mateo.
- b. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

**PROPERTY OWNER**

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print Property Owner name

\_\_\_\_\_  
Type or print Property Owner address, City, state, zip code

\_\_\_\_\_  
Type or print Property Owner phone number

{ attach notary acknowledgement }

**TOWN OF ATHERTON**

\_\_\_\_\_  
Signature for the Town

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type or print name and title

{ attach notary acknowledgment }

Approved as to form:

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Signature for the City Attorney's Office

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Type or print name and title

**Exhibit A**

*{legal description of property}*

## **Exhibit B**

*{legible reduced -scale (no larger than 8.5 "x14") conceptual plan showing location and type of stormwater treatment and detention measures. Stormwater treatment and detention measures should be labeled (e.g. swale #1, swale #2) and the direction of stormwater flow indicated. The location of bubblers and disconnected downspouts should be included in the conceptual plan.}*

## **Exhibit C**

*{maintenance plan}*

## **Exhibit D**

*{annual report form for  
treatment and detention measure operation and  
maintenance inspection}*

Form to be based on the most recent version of the following original reference document:

**Appendix I** of the  
C.3 Stormwater Technical Guidance  
For developers, builders and project applicants  
Dated: March 20, 2007  
by: San Mateo Countywide Water Pollution Prevention Program