

APPENDIX I EXAMPLE AGREEMENTS, FORMS, AND LETTERS

I.1 Example Storm Water Runoff BMP Access and Maintenance Agreement

Recorded at the request of: City of Santa Barbara

After recording, return to:

City of _____

City Clerk _____

Storm Water Runoff BMP Access and Maintenance Agreement

OWNER: _____

PROPERTY ADDRESS: _____

APN: _____

THIS AGREEMENT is made and entered into in _____, California this ____ day of _____, by and between _____, hereafter referred to as "Owner" and the City of Santa Barbara, a municipal corporation, State of California hereinafter referred to as "**City**";

WHEREAS, the Owner owns real property ("Property") in the City of Santa Barbara, State of California, more specifically described in Exhibit "A" and depicted in Exhibit "B", each of which exhibits is attached hereto and incorporated herein by this reference;

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

WHEREAS, the Owner has chosen to install a _____, hereinafter referred to as "**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, with installation on private property and draining only private property, is a private facility with all maintenance or 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, 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, it is mutually stipulated and agreed as follows:

1. Owner hereby provides the 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. Owner shall use its best efforts diligently to maintain the Device 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 Device and the ultimate disposal of the material(s) in a manner consistent with all relevant 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.
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, 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, attorneys fees and interest thereon at the maximum rate authorized by the Civil Code from the date of the notice of expense until paid in full.
4. The City may require the owner to post security in form and for a time period satisfactory to the city of guarantee the performance of the obligations state 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 3 above.
5. This agreement shall be recorded in the [Enter the City department where agreements will be recorded], at the expense of the Owner 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.

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 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.

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 at the same time such notice is provided to the successor.

9. Time is of the essence in the performance of this Agreement.

10. 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.

IF TO COUNTY:

IF TO OWNER:

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

APPROVED AS TO FORM:

 County Attorney

OWNER:

 Name: _____
 Title: _____

COUNTY OF: _____

Name: _____
 Title: _____

OWNER: _____

Name: _____
 Title: _____

ATTEST: _____

County Clerk Date

NOTARIES ON FOLLOWING PAGE

EXHIBIT A

(Legal Description)

EXHIBIT B

(Map/Illustration)

I.2 Example Storm Water Runoff BMP Access and Maintenance Agreement (Short Form)

(Short Form)

Recorded at the request of and mail to:

Covenant and Agreement Regarding Storm Water Treatment Device Maintenance

The undersigned hereby certify that we are the owners of hereinafter legally described real property located in the City of _____, County of _____, State of California.

Legal Description: _____

as recorded in Book _____, Page _____, Records of _____
County, which property is located and known as (Address) _____

And in consideration of the County of _____ allowing _____

_____ on said property, we do hereby covenant and agree to and with said City to maintain according to the Maintenance Plan (Attachment 1), all structural storm water treatment devices including the following:

This Covenant and Agreement shall run all of the above described land and shall be binding upon ourselves, and future owners, encumbrances, their successors, heirs, or assignees and shall continue in effect until released by the authority of the City upon submittal of request, applicable fees, and evidence that this Covenant and Agreement is no longer required by law.

NOTARIES ON FOLLOWING PAGE

EXHIBIT A

(Map/Illustration)

1.3 Example Facility Inspection Notification

[Letterhead]

[Address of Facility manager]

Subject: Storm Water Management Facility Inspection Notification

Response requested by: [Date]

Dear Facilities Manager,

The City of Santa Barbara must ensure that all storm water management facilities in the City are adequately maintained and functioning properly, under terms of Section [XXXXX], City Code. These facilities are crucial components for protecting our streams from erosion and flooding and key factors in improving water quality. By this letter we are notifying you of an inspection between [enter the dates here: mm-dd-yy and mm-dd-yy].

Our records show that you are the owner of:

Facility No.	Description	Access

By law, the Department of Public Works must notify the owner of any deficiencies that may be found during the inspection. The process will include a visual inspection of the facility, a checklist (template(s) enclosed) and possibly digital photographs.

You will receive a written copy of the inspectors report, including any appropriate suggestions or requirements for maintenance. As [owners of the property] containing private storm water management facilities, you are responsible for the maintenance of the facilities, under Municipal Code [XXXXX]. The code also requires that within 30 days of the receipt of this report, your [company], as property [owner], respond and correct any deficiencies noted in the report or provide proof of intent to make the corrections.

Please provide us, if possible, the name and address of the person within your organization who currently oversees the maintenance of the storm water management facilities. If you have any questions about this process, please call [City representative] of this office at [Phone number].

Sincerely,

[Head]

[Section]

[Division]

1.4 Example Notice of Violation Letter

Whereas, _____ Home Owners Association (owner) did:

- 1. Fail to maintain storm water management facility [Description] located at [Location] known as storm water facility (Facility ID) in accordance with the Santa Barbara Municipal Code [XXXX] and,
- 2. Receive notice of maintenance deficiencies in a letter date [Date] written by [XXXX] of the Department of Public Works and received by the owners agent [XXXX] and receive notice of deficiencies through the owners agent via telephone and,
- 3. Fail to correct maintenance items within the 30 day time frame specified in the letter date [date] and subsequent verbal compliance time extensions with agent of [date] and [date] and,

Whereby, owner and Department of Public Works agreed to meet on [date] to discuss the maintenance items.

By this notice, the owner must:

- Task 1 and,
- Task 2 and,
- Task 3 and,

Comply with this Notice of Violation within 30 days.

Failure to comply will result in a Class A Civil Citation in accordance with Section [XXXX] of the Municipal Code with each day representing a separate violation.

Signature implies no guilt but receipt of this Notice of Violation

Signature _____ Date _____

Name _____

President of _____ Home Owners Association

_____ Date _____

Department of Public Works
[Phone number] [email address]

1.5 Example Request for Maintenance Form

[Letterhead]

[Address of Facility manager]

Subject: Storm water Management Facility Maintenance Notification

Response requested by: [Date]

Dear [Facilities Manager] [Home Owners Association President] [Property Manager],

Our records show that you are the owner of:

Facility No.	Description	Access

The City of Santa Barbara [through its contractor] has inspected your storm water management structure. A list of necessary maintenance or repairs to the facility as a result of that inspection is attached. The next step in repairing your facility would be to get bids and a scope of work from several contractors and then hire a contractor to perform the necessary work. You may use any contractor that meets the regulatory requirements of the job. [We have compiled a list of contractors as a service because of the numbers of requests we receive for this information. The City does not recommend any contractor.]

Once you have a contractor, you must contact Department of Public Works Inspection Staff, [XXXX] [Phone number] or [YYYYY] [Phone number] to arrange a site visit to discuss the repairs. Then [XXXXX] or [YYYYY] will make a final approval inspection after the repairs are completed.

You will need to contact an engineer or [other qualified person] to prepare site plans [or other documents] for these permits. If you have questions concerning the permitting process, you shall contact the Department of Public Works permitting services at [Phone number].

You have 30 days from receipt of this letter to respond and correct any deficiencies noted in the report or provide proof of intent to make the corrections. We will make every effort to assist you in this process but failure to complete the repairs in the specified time will result in enforcement action being taken against you in accordance with [XXXXX] of the Municipal Code. If you have any questions about this process, please call [City representative] of this office at [Phone number].

Sincerely,

[Head]

[Section]

[Division]