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APN: 644-070-12, 16, 17, 19 & 24

CCV File No. OR651G

**STORM WATER MANAGEMENT FACILITIES MAINTENANCE AGREEMENT  
WITH GRANT OF ACCESS AND COVENANTS**

**OTAY RANCH VILLAGE 8 WEST**

THIS STORM WATER MANAGEMENT FACILITIES MAINTENANCE AGREEMENT (“Agreement”), dated \_\_\_\_\_, 2020, for the purpose of reference only and effective the date on which the last party hereto affixes his/her signature (“Effective Date”), is entered into between HomeFed Village 8, LLC, a Delaware limited liability company and Otay Land Company, LLC, a Delaware limited liability company (“Owner(s)”) and the City of Chula Vista, a municipal corporation, (“City”) (individually, each may be referred to as “Party” and collectively as “Parties”) with reference to the following facts:

**RECITALS**

WHEREAS, Owner(s) has(have) applied for a Land Development (“Grading Permit”) for the development of Otay Ranch Village 8 West (“Project”), located on portions of Lots 27 and 28 of Otay Rancho, per Map No. 862 filed February 7, 1900 (“Project Site”) as depicted in Exhibit “A” and more particularly described in Exhibit “B”, both attached hereto and incorporated herein by reference; and

WHEREAS, as a condition of the Grading Permit, Owner(s) is(are) required to implement and maintain structural or non-structural pollution prevention measures, such as site design, source control, treatment control, and hydromodification control (where applicable) methods required to minimize polluted runoff and any other environmental impacts from Project during the post-development phase (collectively “BMPs”); and

WHEREAS, condition of approval number 26 of the City of Chula Vista Standard Tentative Map Conditions of Approval per Section 5-300 of City’s Subdivision Manual, approved by City Council by Resolution 2010-278, requires the Owner(s) to enter into a maintenance agreement to secure the maintenance of drainage related facilities including but not limited to the removal of silt from any temporary or permanent basins, the repair of downstream erosion, and provide any resource agency permit necessary of said improvements for the Project (collectively, “Erosion/Sedimentation Control Facilities”); and

WHEREAS, Owner(s) has(have) represented that certain drainage improvements, biofiltration BMP basins, detention basins, desilting basins, drainage outfall, storm water quality management facilities and erosion/sedimentation control facilities as shown on the rough grading plans for the Project, Chula Vista Drawing Number 14011, will meet City and Regional Water Quality Control Board requirements for water quality for the entirety of Village 8 West; and

WHEREAS, a portion of the BMPs are located on-site, and a portion of the BMPs are located offsite on the real property more particularly described on Exhibit "C"; and

WHEREAS, Owner(s) will initially maintain such improvements as provided in this Agreement; and

WHEREAS, pursuant to City's urban runoff regulations, including Chula Vista Municipal Code, Chapter 14.20 (the "Storm Water Management and Discharge Control Ordinance") and the Chula Vista BMP Design Manual, Owner(s) is(are) required to prepare and submit a Stormwater Quality Management Plan (SWQMP), which includes an Inspection, Operation, and Maintenance Plan (IOMP); and

WHEREAS, the Owner(s) has(have) submitted SWQMP, which is on file in the office of the City Engineer; and

WHEREAS, the SWQMP proposes that storm water runoff from Project be detained and treated by the use of permanent Storm Water Management Facilities ("SWMFs"); and

WHEREAS, the SWMFs are classified in the SWQMP as site design, treatment control, and hydromodification control BMPs; and

WHEREAS, the SWQMP specifies the manner and standards by which the SWMFs must be inspected, maintained, and repaired in order to retain their effectiveness; and

WHEREAS, prior to the issuance of any construction permits for Project, City requires Owner(s) to enter into Agreement to ensure the installation, inspection, maintenance, and repair of permanent SWMFs.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

## **ARTICLE I. DEFINITIONS**

1.1 Unless context indicates otherwise, for the purpose of this Agreement, all the below-listed terms shall be defined as follows:

"Agreement" means this Storm Water Management Facilities Maintenance Agreement with Grant of Access and Covenants.

"City" means the City of Chula Vista, an official of the City, or any staff member authorized to act on behalf of the City.

“Best Management Practices, or BMPs” means structural or non-structural pollution prevention measures, such as site design, source control, treatment control, and hydromodification control methods required to minimize polluted runoff from Project during the post-development phase.

“Drainage Improvement” includes, but is not limited to, storm water management facilities and other permanent and temporary public or private drainage improvements, biofiltration BMP basins, detention basins, desilting basins, drainage outfall, and erosion/sediment control facilities proposed for construction within the Project, as shown in Exhibit C.

“Inspection, Operation, and Maintenance Plan” or “IOMP” means a description of inspection, operation, and maintenance activities and schedules required to ensure proper operation and effectiveness of the SWMFs into perpetuity.

“Grading Plans” mean the City of Chula Vista Rough Grading Plans for Chula Vista Tract No.19-03 Otay Ranch Village 8 West, Drawing Number 14011, Work Order No. OR651G. Grading plans can be amended from time to time by approval of the City Engineer.

“Owner(s)” means the current land owner(s) of Project Site, which is the subject of this Agreement, anyone authorized to act on behalf of the land owner(s) of Project Site, and any and all of owner’s successors in interest, whether individual, partnership, corporation, or other entity such as a Home Owners’ Association (“HOA”), regardless of the manner of transfer, including purchase, devise, or gift.

“Project” means all improvements and land dedicated to the development, which is the subject of Agreement, including any offsite water quality facilities.

“Project Site” means the land dedicated to the development, which is the subject of Agreement, including any offsite water quality facilities.

“Security” means any bond, cash deposit, or letter of credit that City may require from Owner(s) to assure the faithful performance of the obligations of Agreement.

“Storm Water Management Facility” (“SWMF”) means any and all onsite and offsite structural facilities constructed as Project’s site design, treatment control, hydromodification control BMPs, desilting basins, drainage outfall, and erosion/sediment control facilities, proposed as part of the development project submittals, and as approved by City prior to the issuance of a development permit, or as amended with City’s approval after the development is complete.

“Storm Water Quality Management Plan” (“SWQMP”) means a document prepared in accordance with the requirements of the Chula Vista BMP Design Manual and submitted to the City as part of Project’s permit application documents.

## ARTICLE II. OWNER'S BMP OBLIGATIONS

- 2.1 **Construction of BMP Facilities.** Owner(s) shall construct the Drainage Improvements and BMP Facilities, as shown on the approved Grading Plans for the Project and any subsequent grading plans for Village 8 as approved by the City Engineer. These Drainage Improvements and BMP Facilities shall comply with all the provisions of the National Pollutant Elimination System and the City's BMP Manual Clean Water Act. Owner(s) understand(s) and agree(s) that Owner(s) is/are responsible for obtaining all necessary permits, approvals, and certifications, if any, from applicable federal or state agencies, including but not limited to, if applicable, Caltrans, the California Department of Fish and Game and/or the US Army Corps of Engineers. City shall cooperate with Owner as necessary to obtain all such permits, approvals and certifications.
- 2.2 **Maintenance of BMP Facilities.** Owner(s) shall operate and maintain the Drainage Improvements and BMP Facilities as shown in Exhibit C in accordance with the latest City-approved IOMP until such time as the HOA accepts the maintenance of all or any part the Drainage Improvements or the BMP Facilities in perpetuity. In addition, it is a requirement of this Agreement that the Owner or the HOA shall submit to the City an Assessment and Maintenance Report for all the BMP Facilities every five years. The Assessment and Maintenance Report shall be prepared by a Registered Civil Engineer and shall be subject to the approval of the City Engineer. Said report shall also describe all the prior maintenance work that has been completed within the previous five years and any future major repair.

## ARTICLE III. OWNER'S SWMF OBLIGATIONS

- 3.1 **Construction and Maintenance of Stormwater Management Facilities (SWMF).** Owner(s) shall install, inspect, maintain, repair, and replace all SWMFs for the Project as provided on Exhibit "C" and as otherwise required by the Director of Public Works and City Engineer, or his/her designated representative, in their reasonable discretion.
- 3.1.1 Scope of Maintenance. Owner's maintenance shall include inspection and servicing of SWMFs on the schedule determined necessary to ensure that the SWMFs retain their effectiveness.
- 3.1.2 Duration of Obligation. Owner's obligation to maintain, repair, and replace the SWMFs shall continue in perpetuity until all obligations under this Agreement are assigned to, and assumed by, a Responsible Party approved by City as provided in this Agreement.
- 3.2 **Grant of Right of Entry.** Owner(s) shall grant to the City, its representatives, or contractors, the right to enter the Project to inspect SWMFs, or perform any permitted acts or obligations under this Agreement, including maintenance of said facilities in the event the Owner(s) fails(fail) to fulfill its(their) maintenance obligations after proper notice.

- 3.2.1 No Prior Notice. City shall have the right, at any time and without prior notice to Owner(s), to enter upon any part of Project as may be necessary or convenient for any acts permitted hereunder.
- 3.2.2 Unobstructed Access. Owner(s) shall at all times maintain Project so as to make City's access clear and unobstructed.
- 3.3 **Modification of IOMP**. Owner(s) shall, at the City's request, in City's sole discretion, amend the IOMP. The Owner(s) may amend the IOMP from time-to-time, subject to City approval. The IOMP is attached hereto as Exhibit "D."
- 3.3.1 Part of Owner's Obligations. Any obligations, conditions, or requirements of an amended IOMP shall become part of this Agreement immediately as if originally included herein, and the Owner(s) shall be responsible for such amended obligations, conditions, or requirements. The amended IOMP shall not be applied retroactively.

The IOMP shall describe employee training programs and duties, routine inspection, service and operating schedules, maintenance frequency, and specific maintenance activities.

- 3.4 **Submission of Documents**. Owner(s) shall include a copy of the IOMP for the SWMFs in the SWQMP for Project and submit a copy to City, at or before the time this Agreement is executed.

#### ARTICLE IV. ASSIGNMENT AND RELEASE

- 4.1 **Assignment by Owner**. Owner(s) represent(s) to City that it intends to, and has the authority to, transfer (subject to the City's approval as provided herein) all or some of its responsibilities and obligations under this Agreement to a Responsible Party (each a "Responsible Party"). A Responsible Party may include the HOA formed with respect to all or part of the Project Site. A transfer from Owner to a Responsible Party will not be effective and will not release Owner from any responsibilities or obligations under this Agreement until City makes a written determination that all of the following conditions have been satisfied:
- 4.1.1 Responsible Party Accepts Obligations. The Responsible Party unconditionally agrees, in writing, to accept and assume all of Owner's obligations and responsibilities under this Agreement from and after the date of the assignment. The assignment must provide that the burden of this Agreement remains a covenant running with the land, subject to Section 10.21. The assignment must be approved by the appropriate governing body of the Responsible Party by resolution or similar procedural method and must be executed by a person with authority to bind the Responsible Party.
- 4.1.2 Responsible Party Insurance. The Responsible Party procures and maintains, at its sole cost and expense, commencing no later than the date of the assignment, a policy or policies of insurance, naming the City as an additional insured, which

meet or exceed the insurance requirements set forth in Article VII of this Agreement.

- 4.1.3 Responsible Party Indemnity. The Responsible Party acknowledges and agrees in writing that it will indemnify, defend, and hold harmless City and all Indemnitees in the same manner and to the same extent as required by Owner pursuant to Article VI of this Agreement.
- 4.1.4 Responsible Party Security. The Responsible Party acknowledges and agrees that it subject to the requirements to obtain security as provided in Article VIII of this Agreement.
- 4.1.5 City's Prior Written Consent. Except for an assignment to the HOA as provided in this Agreement, Owner obtains City's prior written consent to the proposed assignment, including approval as to form and content by the City Attorney. The City shall not unreasonably withhold its consent to such assignment.

If the above conditions are satisfied and Owner assigns its rights and obligations under this Agreement to a Responsible Party, the Responsible Party shall assume all responsibilities and perform all obligations of Owner under this Agreement. To effectuate an assignment under this Agreement, the Parties agree to use an Assignment of Obligations Under Storm Water Management Facilities Maintenance Agreement With Grant of Access and Covenants in substantially the same form as the attached Exhibit "E", subject to changes as approved by the City Attorney.

- 4.2 **Release of Owner**. When all conditions precedent in Section 4.1 are fulfilled and the Assignment of Obligations Under of Obligations Under Storm Water Management Facilities Maintenance Agreement With Grant of Access and Covenants has been recorded, Owner shall be released from its obligations under this Agreement. Owner acknowledges that it has a contractual obligation to perform the terms and conditions of this Agreement until released by the City from this Agreement. At least thirty (30) days prior to proposed assignment, Owner shall give a notice to the City of Owner's desire to assign its obligations herein and provide the City with the appropriate documents listed in Section 3.1.
- 4.3 **Phased Transfer**. The parties agree that an assignment of obligations under this Agreement may be phased (that is, there may be multiple transfers) subject to City's prior written approval.

## ARTICLE V. CITY'S RIGHTS

- 5.1 **Perform Maintenance**. City shall have the right, but not the obligation, to elect to perform any or all of the maintenance activities provided herein.
- 5.1.1 Notice. Except in the case of an emergency, prior to performing any maintenance activities, City shall provide Owner(s) with a written notice ("Notice"), informing Owner(s) of its (their) failure to satisfactorily perform its (their) obligations under Agreement.

- 5.1.1.1 *Emergencies*. In the event of an emergency, as determined by City, City shall not be required to provide Owner(s) with notice in advance of performing any and all maintenance activities it deems necessary.
- 5.1.2 Time to Cure. Owner(s) shall have a reasonable time, as defined in the Notice, to cure any failure to perform its (their) maintenance obligations. If a cure cannot be completed within the time limit identified in the Notice, Owner(s) shall provide City with a written request for additional time, which shall include sufficiently detailed explanation as to why the cure cannot be completed within such timeframe. If the City approves a request for additional time, Owner(s) shall immediately commence such cure and diligently pursue to completion.
- 5.1.3 Costs of Maintenance. In the event City performs any maintenance under this Article V, then Owner(s) shall pay all costs City incurred in performing said maintenance activities. Payment shall be subject to the following terms:
- 5.1.3.1 *Due Date*. Net 30.
- 5.1.3.2 *Interest*. Any late payment shall be subject to a rate of eight percent (8%) interest per annum.
- 5.1.3.3 *Use of Security*. If payment is not received by the Due Date, City may, at its option, recover its costs through use of any security provided by Owner(s). Any costs associated with recovery shall be charged to and be an obligation of Owner(s).
- 5.2 **City Inspections**. City shall have the right to conduct inspections of the SWMFs from time-to-time as required by the National Pollutant Discharge Elimination System Municipal Permit, Order No. R9-2013-0001 and any re-issuances thereof, to ensure adequate maintenance and effectiveness of the SWMFs. Owner(s) agrees (agree) to pay all inspection fees as may be established by City.
- 5.3 **Approvals**. Owner(s) acknowledge(s) and agree(s) that the performance of Owner's/Owners' obligations herein is required for the health and safety of the residents of the City. Therefore, the Owner(s) agree(s) that the City shall have the absolute and unfettered right to withhold the issuance of any grant of approval for the Project if the Owner(s) is/are determined by the City not to be in material compliance with the terms of this Agreement, provided that the foregoing shall not apply from and after the HOA's assumption of maintenance responsibilities set forth herein. If Owner(s) is/are determined by the City not to be in material compliance with any term of this Agreement, the City shall notify Owner(s) of its non-compliance and provide the Owner(s) with thirty (30) days to cure said non-compliance. The Owner(s) shall not be in non-compliance if, upon notification of non-compliance, Owner(s) diligently starts to work toward cure of said non-compliance and diligently pursues, as determined by the City Engineer, a course of action to achieve a cure within a reasonable time-frame.

## ARTICLE VI. INDEMNITY

- 6.1 **General Requirement.** Owner(s) shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents, employees, and volunteers (“Indemnitees”) from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Owner(s), its officials, officers, employees, agents, and contractors (“Indemnitors”), arising out of or related to the installation, inspection, maintenance, repair, or replacement of the BMPs or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence or sole willful misconduct of the Indemnitees. Also covered is under the indemnity obligations is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnitees, which may be in combination with the active or passive negligent acts or omissions of the Indemnitors.
- 6.2 **Costs of Defense and Award.** Included in the obligations in Section 6.1, above, is the Owner’s obligation to defend, at Owner’s own cost, expense and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnitees. Owner(s) shall pay and satisfy any judgment, award or decree that may be rendered against Indemnitees for any and all legal expense and cost incurred by each of them in connection therewith.
- 6.3 **Conduct Own Defense.** If City elects, at its reasonable discretion due to a non-waivable conflict of interest, to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense on any claim related to the installation, inspection, maintenance, repair or replacement of the SWMFs, Owner(s) agrees (agree) to pay the reasonable value of attorney’s fees and all of City’s reasonable costs.
- 6.4 **Insurance Proceeds.** Owner’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Indemnitees.
- 6.5 **Declarations.** Owner’s obligations under this Article VI shall not be limited by any prior or subsequent declaration by the Owner(s).
- 6.6 **Enforcement Costs.** Owner(s) agrees (agree) to pay any and all costs Indemnitees incur enforcing the indemnity and defense provisions set forth in this Article VI.
- 6.7 **Survival.** Owner’s obligations under this Article VI shall survive the termination of this Agreement.

## ARTICLE VII. INSURANCE

- 7.1 **Insurance.** Owner(s) shall not begin work under this Agreement until it has (they have):



- (i) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in this Article VII;
- (ii) obtained City approval of each company or companies; and
- (iii) confirmed that all policies contain the specific provisions required by this Section.

7.2 **Types of Insurance.** At all times during the term of this Agreement, Owner(s) shall maintain commercial general liability insurance coverage and amounts of coverage reasonably required by City to protect the City from any potential claims, which may arise from the installation, inspection, maintenance, repair or replacement of the SWMFs or any other obligations under this Agreement.

7.3 Policy Endorsements Required.

7.3.1 Additional Insureds. City of Chula Vista, its officers, officials, employees, agents and volunteers are to be named as additional insureds with respect all required policies of insurance with respect to liability arising out of obligations under this Agreement performed by or on behalf of the Owner(s).

7.3.2 Primary Insurance. Owner's General Liability insurance coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of the Owner(s) and in no way relieves the Owner(s) from its (their) responsibility to provide insurance.

7.3.3 Waiver of Subrogation. Owner's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage for the term required by this Agreement.

7.3.4 Cancellation. The insurance policies required must be endorsed to state that coverage will not be canceled by either party, except after thirty (30) days' prior written notice to the City by certified mail, return receipt requested. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

7.4 **Proof of Insurance Coverage.** Owner(s) shall furnish the City with original certificates and amendatory endorsements affecting coverage required. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences on the Project. The City reserves the right to require, at any time, complete, certified, copies of all required endorsements evidencing the coverage required by these specifications.

7.5 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer

will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the Owner(s) will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- 7.6 **Active Negligence.** Coverage shall not extend to any indemnity coverage for the active negligence of the additional insureds in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- 7.7 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit the Owner's obligations under this Agreement, including Indemnity.

### ARTICLE VIII. SECURITY

- 8.1 **Security Required.** If within any five-year period, City inspectors determine on two occasions that Owner(s) has (have) failed to effectively operate, maintain, or repair the SWMFs, and such failure continues beyond a reasonable time after notice to Owner(s), City may require Owner(s) to provide City with Security to assure the faithful performance of the obligations of this Agreement.

8.1.1 Amount of Security. The amount of the security shall equal the cost to maintain the SWMFs for two (2) years, which cost shall be determined as identified in the Project SWQMP ("Security Amount").

8.1.2 Type of Security. Security may be of any of the following types:

8.1.2.1 *Performance Bond.* Owner(s) shall provide to the City a performance bond in favor of the City in the Security Amount and subject to the provisions below.

- a. Certificate of Agency. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- b. Licensing and Rating. The bonds shall be from surety companies admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this agreement, listed as approved by the United States Department of Treasury Circular 570, <http://www.fms.treas.gov/c570>, and which also satisfy the requirements stated in Section 995.660 of the Code of Civil Procedure, except as provided otherwise by laws or regulation, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent (10%) of its capital and surplus.
- c. Insolvency or Bankruptcy. If the surety on any bond furnished by the Owner(s) is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the

Project is located, Owner(s) shall within seven (7) days thereafter substitute or require the substitution of another bond and surety, acceptable to the City.

8.1.2.2 *Letter of Credit.* As security for Owner's obligations under this Agreement, Owner(s) shall cause an irrevocable letter of credit in the Security Amount ("Letter of Credit") to be issued in favor of the City by a reputable state or national financial institution with a branch located in Chula Vista.

- a. Draw on Letter of Credit. The City may draw upon the Letter of Credit for the full amount or any series of partial amounts as necessary by means of a sight draft accompanied by a statement from the City Manager, Deputy City Manager, Business Center Manager, that the Owner(s) has(have) not satisfied Owner's obligations hereunder.

8.1.2.3 *Cash Deposit.* In lieu of a Performance Bond or Letter of Credit, Owner(s) may deposit the Security Amount with the City.

- a. Return of Security. Any unused balance of the Security at the end of the Term shall be returned to the Owner(s) in accordance with City's accounting procedures.

8.1.3 Adjustment for Inflation. The Security Amount shall be adjusted at a rate of 5% per annum.

8.1.4 Term. Security shall remain in full force and effect for two (2) years from the date it is received by the City provided no further failures are identified by City Inspectors during the initial two (2) year period. In the event additional violations occur, the City shall retain the Security until such time as the City Manager, in his sole discretion, deems appropriate to ensure the Owner's obligations will be satisfied.

8.1.5 Form of Security. Security required under this Article shall be in a form satisfactory to the City Manager and City Attorney.

8.1.6 Use of Security. In accordance with Article III, City may use all or any portion of this Security to fund the costs associated with the City's performance of any of the maintenance activities for the Project's SWMFs.

8.1.7 Replenish Security. If at any time the Security Amount shall drop below the amount required under Section 8.1.1, Owner(s) shall deposit additional funds, provide an additional Letter of Credit to City, or provide an additional bond within thirty (30) days, such that the total amount of Security available to the City is equal to the amount required in Section 8.1.1.

## ARTICLE IX. RECORDS

- 9.1 **Record Keeping.** The designation of a Responsible Party to maintain the SWMFs does not relieve Owner(s) of any of the obligations or duties under this Agreement. Owner(s), its (their) successors, or a designated Responsible Party, shall retain records of the IOMP and maintenance and inspection activities for at least five years. Said records shall be made available within 5 days, upon request by City.

## ARTICLE X. STANDARD PROVISIONS

- 10.1 **Headings.** All headings are for convenience only and shall not affect the interpretation of this Agreement.
- 10.2 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.
- 10.3 **Reference to Paragraphs.** Each reference in this Agreement to an Article or Section refers, unless otherwise stated, to an Article or Section in this Agreement.
- 10.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.
- 10.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Owner(s), shall be deemed to be both covenants and conditions.
- 10.6 **Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 10.7 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal. In the event that any provision of this Agreement shall for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement shall remain in full force and effect and the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements to this Agreement or such other appropriate action as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein.
- 10.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to

this Agreement is a decision that is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

- 10.9 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 10.10 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 10.11 **Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 10.12 **Further Assurances.** City and Owner each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 10.13 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- Exhibit A: Vicinity map
  - Exhibit B: Legal Description for Project
  - Exhibit C: Depiction and Description of BMP and HMP type, location and dimensions
  - Exhibit D: Maintenance recommendations and frequency. Inspection, Operation, and Maintenance Plan (IOMP)
- 10.14 **Compliance with Controlling Law.** The Owner(s) shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including but not limited to Chula Vista Municipal Code Chapter 14. In addition, the Owner(s) shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
- 10.15 **Enforcement.** Failure to comply with the terms of this Agreement constitutes a violation of the Chula Vista Municipal Code Chapter 14.20 "Storm Water Management and Discharge Control" and may result in enforcement action pursuant to City's storm water regulations and administrative procedures.
- 10.16 **Jurisdiction, Venue, and Attorney Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as

close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

- 10.17 **Administrative Claims Requirement and Procedures.** No suit shall be brought arising out of this agreement, against the City, unless a claim has first been presented in writing and filed with the City of Chula Vista and acted upon by the City of Chula Vista in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, the provisions of which are incorporated by this reference as if fully set forth herein.
- 10.18 **Third Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any individual, entity, or other not a party to this Agreement.
- 10.19 **Non-Assignment.** Except as expressly provided herein, the Owner(s) shall not assign the obligations under this Agreement, whether by express assignment, by sale of the company, or any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.
- 10.20 **Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 10.21 **Agreement Runs with Project.** The terms, covenants and conditions contained in this Agreement shall constitute covenants running with the land and shall be binding upon the heirs, executors, administrators, successors and assigns of Owner(s) and City and shall be deemed to be for the benefit of the City. It is the intent of the Parties that this Agreement be recorded and be binding upon all persons purchasing or otherwise acquiring all or any lot, unit or other portion of Project, who shall be deemed to have consented to and become bound by all the provisions of this Agreement. However, individual owners of residential lots and condominiums shall have no obligations pursuant to this Agreement. This Agreement shall commence upon execution of this Agreement by all Parties named in the Agreement.
- 10.22 **Independent Contractors.** The Owner(s), any contractors, subcontractors, and any other individuals employed by the Owner(s) shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Owner(s) concerning the details of performing the Services under this Agreement, or to exercise any control over such performance, shall mean only that the Owner(s) shall follow the direction of the City concerning the end results of the performance.

- 10.23 **No Waiver.** No failure of either the City or Owner(s) to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 10.24 **Notices.** Owner(s) agrees(agree) that it shall, prior to transferring ownership of any land on which any part of the Project covered by this Agreement are located, and also prior to transferring ownership of any such SWMFs, provide clear written notice of the above maintenance obligations associated with that SWMF to the transferee. Owner(s) further agrees(agree) to provide evidence that Owner(s) has(have) requested the California Department of Real Estate to include in the public report issued for the development of Project, a notification regarding the SWMF maintenance requirements described in this Agreement.
- 10.24.1 **Serving Notice.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested.
- 10.25 **Entitlement to Subsequent Notices.** No notice to or demand on the Parties for notice of an event not herein legally required to be given shall in itself create the right in the Parties to any other or further notice or demand in the same, similar or other circumstances.
- 10.26 **Remedies.** The rights of the Parties under this Agreement are cumulative and not exclusive of any rights or remedies that the Parties might otherwise have unless this Agreement provides to the contrary.
- 10.27 **Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which, when taken together shall constitute but one instrument.
- 10.28 **Signing Authority.** Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement; that all resolutions or other actions have been taken so as to enable it to enter into this Agreement and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

*End of page (next page is signature page)*

SIGNATURE PAGE FOR  
STORM WATER MANAGEMENT FACILITIES MAINTENANCE AGREEMENT WITH  
GRANT OF ACCESS AND COVENANTS

OTAY RANCH VILLAGE 8 WEST

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNERS:

CITY OF CHULA VISTA:

HOMEFED VILLAGE 8, LLC  
a Delaware Limited Liability Company

\_\_\_\_\_  
William Valle, City Engineer

By: Erin N. Rubie

By: Boushra Salem, Principal Civil Engineer

Name: Erin N. Rubie

APPROVED AS TO FORM:

Title: Vice President

\_\_\_\_\_  
Glen R. Googins, City Attorney

OTAY LAND COMPANY, LLC  
a Delaware Limited Liability Company

ATTEST:

By: Erin N. Rubie

\_\_\_\_\_  
Kerry Bigelow, City Clerk

Name: Erin N. Rubie

Title: Vice President

Dated: \_\_\_\_\_

Notary to attach acknowledgment for each signature.)  
(Corporate Authority required for each Signatory, if applicable.)



## 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 San Diego )

On September 29, 2020 before me, Tristan Manoff, Notary Public  
(insert name and title of the officer)

personally appeared Erin N. Ruhe  
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)



## 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 San Diego )

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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)



Attachments:

1. Exhibit A: Vicinity map
2. Exhibit B: Legal Description for Project
3. Exhibit C: Depiction and Description of BMP and HMP type, location and dimensions
5. Exhibit D: Maintenance recommendations and frequency. Inspection, Operation, and Maintenance Plan (IOMP)

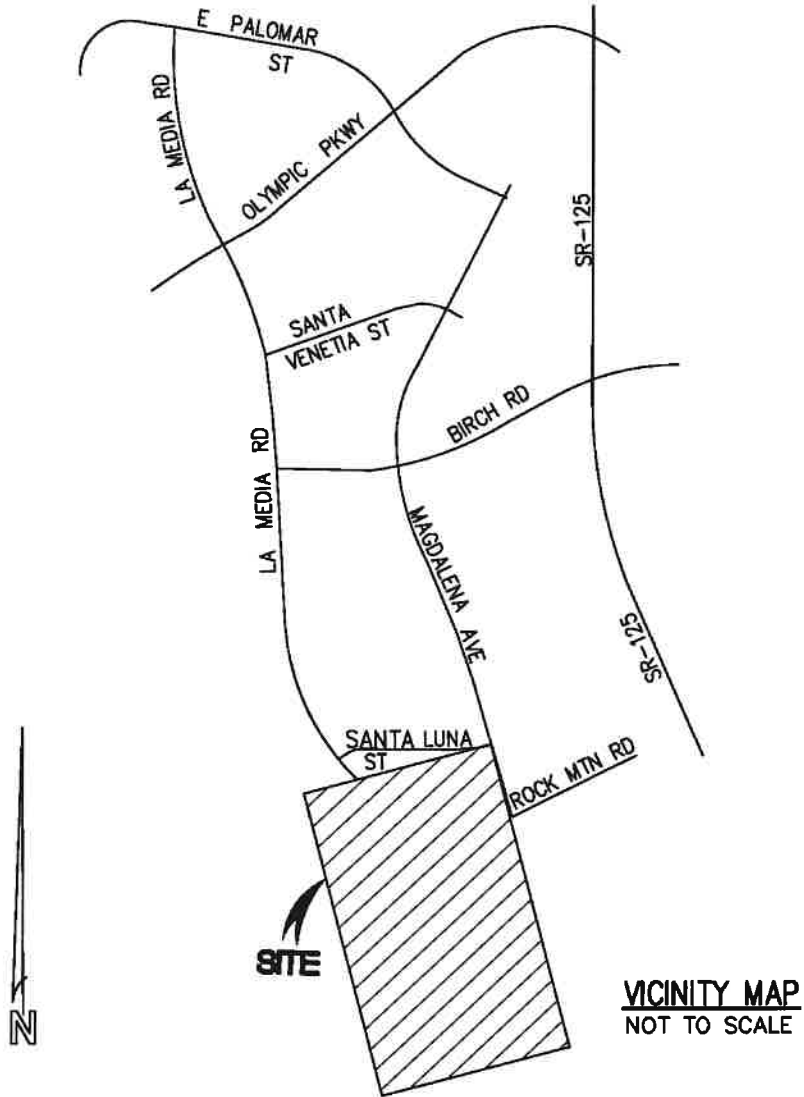
**EXHIBIT "A"**

**Vicinity Map**

**[See Attached]**

*EXHIBIT 'A'*

CITY OF  
CHULA VISTA



**EXHIBIT "B"**

**Legal Description**

**[See Attached]**

***EXHIBIT 'B'***

**LEGAL DESCRIPTION**

**BEING PORTIONS OF LOTS 27 AND 28 OF OTAY RANCHO, IN THE COUNTY OF  
SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 862,  
FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY,  
FEBRUARY 7, 1900.**

*EXHIBIT 'B'*

LEGAL DESCRIPTION

BEING ALL OF OTAY RANCH VILLAGE 8 WEST, IN THE CITY OF CHULA VISTA,  
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF  
NO. \_\_\_\_\_, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO  
COUNTY, \_\_\_\_\_

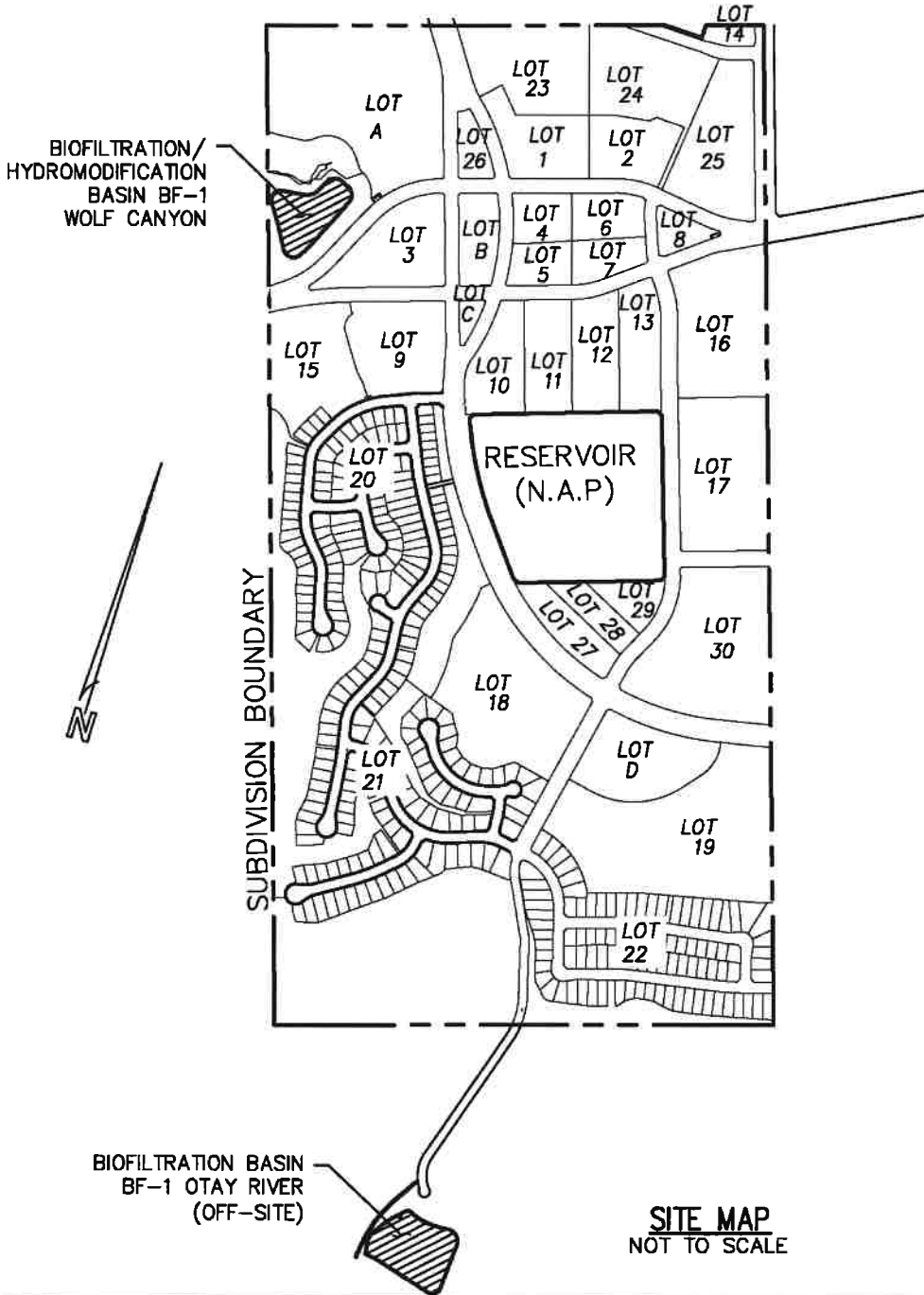


**EXHIBIT "C"**

**Depiction and Description of BMP and HMP type, location and dimensions**

**[See Attached]**

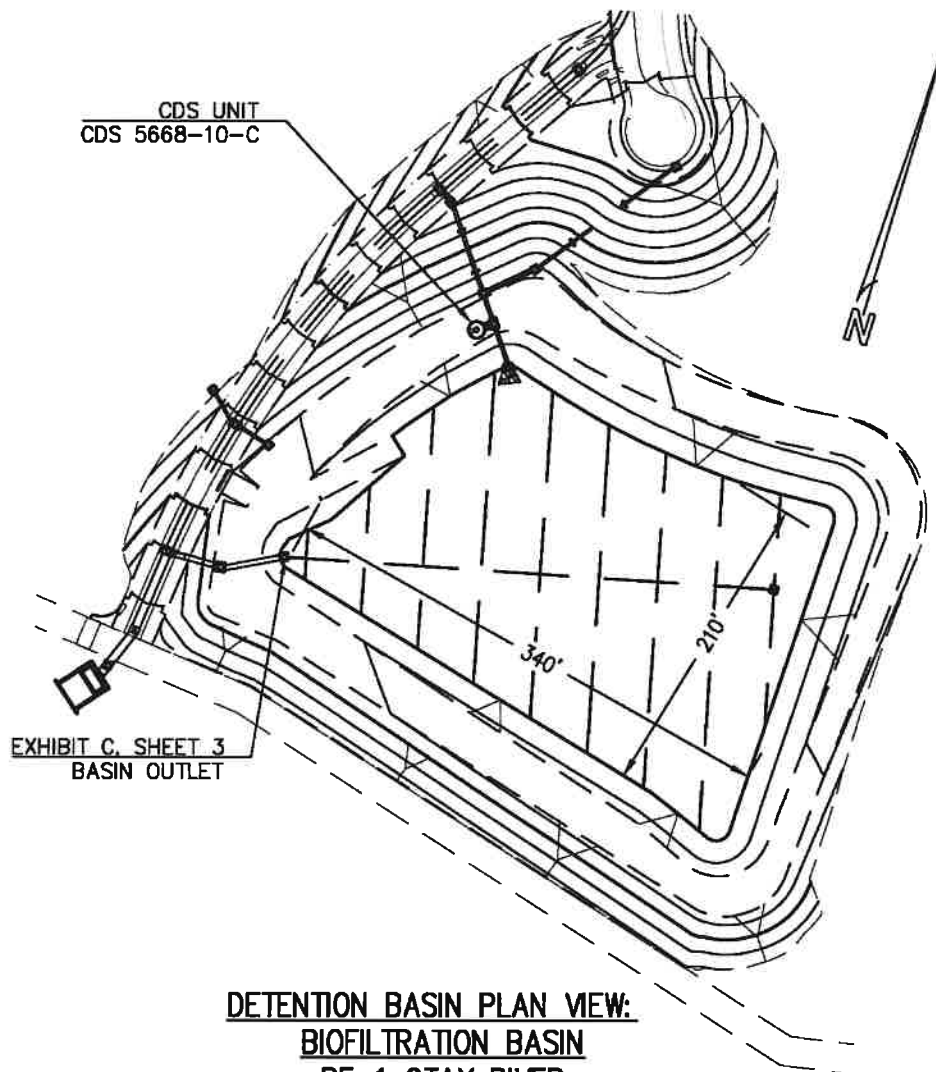
# EXHIBIT "C"



# EXHIBIT 'C'

SHEET 2 OF 5

## OFF-SITE STORM WATER MANAGEMENT FACILITIES

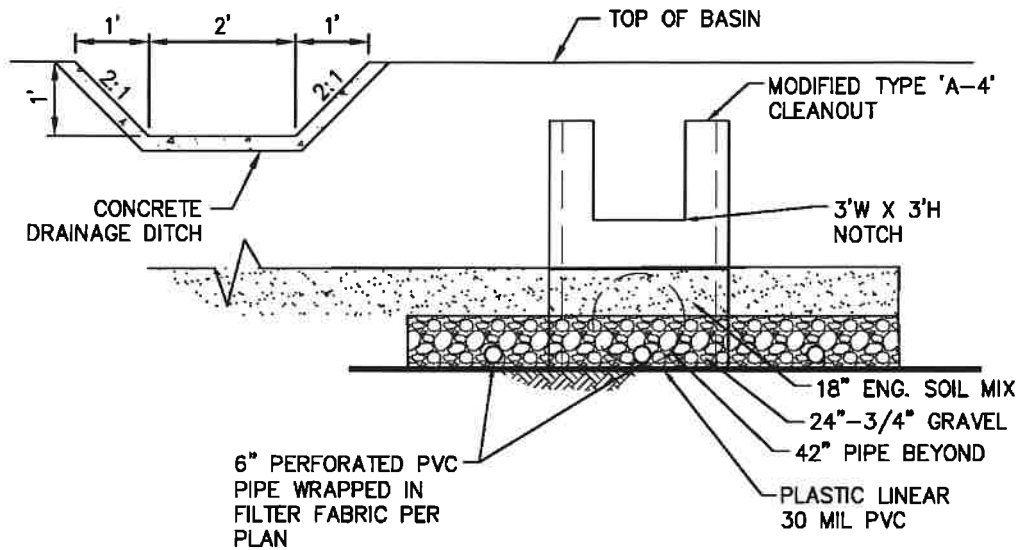


DETENTION BASIN PLAN VIEW:  
BIOFILTRATION BASIN  
BF-1 OTAY RIVER  
SCALE 1"=100'

# EXHIBIT 'C'

SHEET 3 OF 5

## OFF-SITE STORM WATER MANAGEMENT FACILITIES



### BASIN OUTLET BIOFILTRATION BASIN BF-1 OTAY RIVER NO SCALE

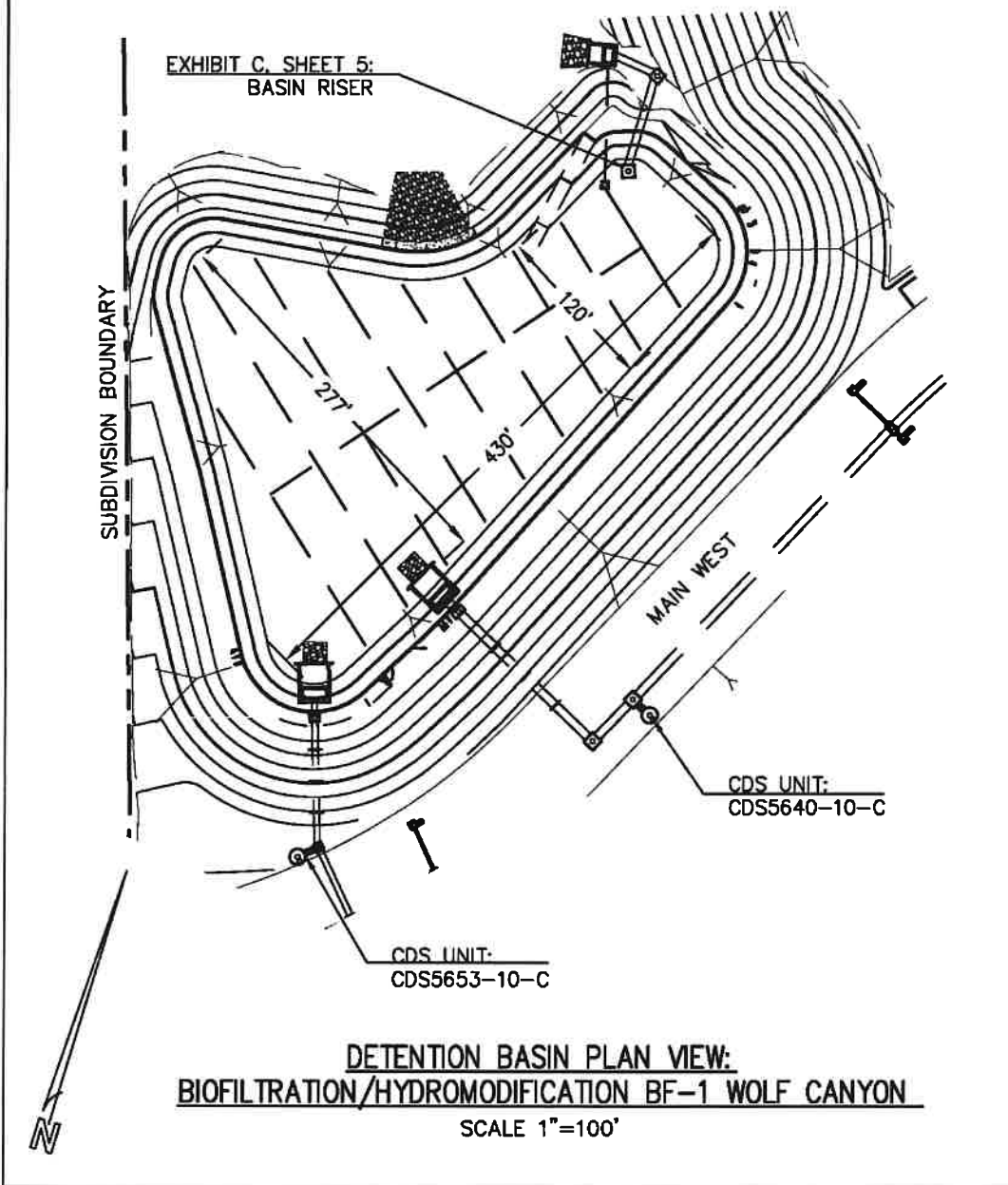
#### NOTES:

1. BIOFILTRATION 'ENGINEER SOIL' LAYER SHALL BE MINIMUM 18" DEEP 'SANDY LOAM' SOIL MIX WITH NO MORE THAN 5% CLAY CONTENT, THE MIX SHALL CONTAIN 50-60% SAND, 20-30% COMPOST OR HARDWOOD MULCH, AND 20-30% TOPSOIL.
2. GRAVEL BASE SHALL BE 3/4" CRUSHED ROCK LAYER WITH A MINIMUM DEPTH OF 24." MAY BE DEEPENED TO INCREASE THE INFILTRATION AND STORAGE ABILITY OF THE BASIN.

# EXHIBIT 'C'

SHEET 4 OF 5

BMP AND HMP TYPE, LOCATION, AND DIMENSIONS



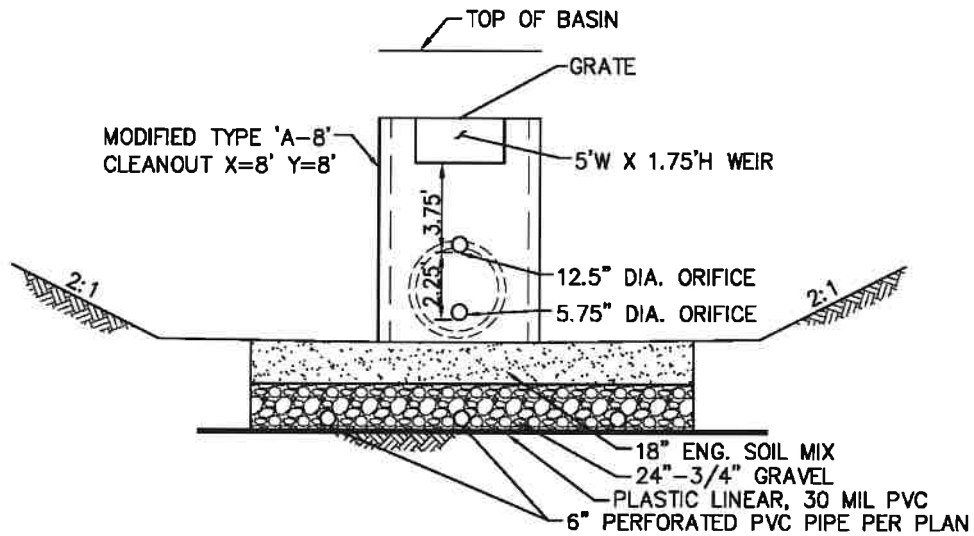
**DETENTION BASIN PLAN VIEW:  
BIOFILTRATION/HYDROMODIFICATION BF-1 WOLF CANYON**

SCALE 1"=100'

# EXHIBIT 'C'

SHEET 5 OF 5

BMP AND HMP TYPE, LOCATION, AND DIMENSIONS



## DETENTION BASIN RISER BIOFILTRATION/HYDROMODIFICATION BF-1 WOLF CANYON NO SCALE

### NOTES:

1. BIOFILTRATION 'ENGINEER SOIL' LAYER SHALL BE MINIMUM 18" DEEP 'SANDY LOAM' SOIL MIX WITH NO MORE THAN 5% CLAY CONTENT, THE MIX SHALL CONTAIN 50-60% SAND, 20-30% COMPOST OR HARDWOOD MULCH, AND 20-30% TOPSOIL
2. GRAVEL BASE SHALL BE 3/4" CRUSHED ROCK LAYER WITH A MINIMUM DEPTH OF 24." MAY BE DEEPENED TO INCREASE THE INFILTRATION AND STORAGE ABILITY OF THE BASIN.

**EXHIBIT "D"**

**Maintenance Recommendations and Frequency. Inspection, Operation and Maintenance**

**Plan (IOMP)**

**[See Attached]**

## *EXHIBIT 'D'*

### INSPECTION, OPERATION, AND MAINTENANCE PLAN (IOMP)

BEST MANAGEMENT PRACTICES	INSPECTION FREQUENCY	MAINTENANCE
<p>BIORETENTION BASINS (BF-1 OTAY RIVER)</p>	<p>MONTHLY, AFTER LARGE STORM EVENTS, AND AFTER REMOVAL OF ACCUMULATED DEBRIS OR MATERIAL.</p>	<p><u>RESPONSIBLE PARTY:</u> HOMEFED VILLAGE 8, LLC, OR ASSIGNEE</p> <p><u>PREVENTATIVE/CORRECTIVE MAINTENANCE:</u>                      -REMOVE ALL DEAD AND DISEASED VEGETATION AND TRASH ACCUMULATION.                      -FERTILIZER AND PESTICIDE USE IS TO BE IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS.                      -REMOVE SEDIMENT AND DEBRIS TO ENSURE NO CLOGGING OR BLOCKAGE OF OUTLET STRUCTURES                      -REMOVE STANDING WATER WHEN NEEDED TO PREVENT MOSQUITO BREEDING.                      -INSPECT ENGINEERED SOIL FOR CONTAMINATION WITH SILT OR OTHER DEBRIS AND REMOVE AND REPLACE AS NEEDED.                      -INSPECT GRAVEL BASE FOR POSITIVE DRAINAGE, REMOVE AND REPLACE AS NEEDED.</p>
<p>BEST MANAGEMENT PRACTICES</p> <p>BIORETENTION/ HYDROMODIFICATION BASINS (BF-1 WOLF CANYON)</p>	<p>INSPECTION FREQUENCY</p> <p>MONTHLY, AFTER LARGE STORM EVENTS, AND AFTER REMOVAL OF ACCUMULATED DEBRIS OR MATERIAL.</p>	<p>MAINTENANCE</p> <p><u>RESPONSIBLE PARTY:</u> HOMEFED VILLAGE 8, LLC, OR ASSIGNEE</p> <p><u>PREVENTATIVE/CORRECTIVE MAINTENANCE:</u>                      -REMOVE ALL DEAD AND DISEASED VEGETATION AND TRASH ACCUMULATION.                      -FERTILIZER AND PESTICIDE USE IS TO BE IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS.                      -REMOVE SEDIMENT AND DEBRIS TO ENSURE NO CLOGGING OR BLOCKAGE OF OUTLET STRUCTURES                      -REMOVE STANDING WATER WHEN NEEDED TO PREVENT MOSQUITO BREEDING.                      -INSPECT ENGINEERED SOIL FOR CONTAMINATION WITH SILT OR OTHER DEBRIS AND REMOVE AND REPLACE AS NEEDED.                      -INSPECT GRAVEL BASE FOR POSITIVE DRAINAGE, REMOVE AND REPLACE AS NEEDED.</p>