

## STAFF REPORT

**Date:** Tuesday, April 12, 2016

**To:** Bryan H. Montgomery, City Manager

**From:** Kevin Rohani, P.E. Public Works Director/ City Engineer

**Subject:** Approving the Agreement with Clyde Miles Construction, Co. for "Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry" for Quicksilver Subdivision 8985 located at Lois Lane and authorizing the City Manager to execute the agreement

Approved and Forwarded to City Council:

  
Bryan H. Montgomery, City Manager

### Introduction

The installation of the Permanent Stormwater Pollution Prevention Measures (BMP's) for the Quicksilver Subdivision is being constructed with the subdivision improvements associated with the project. The City's Stormwater Management and Discharge Control Ordinance require proper operation and maintenance of the Permanent BMP's by the respective property owners. The "Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry" memorializes the owner's maintenance, operations and inspection obligation under the City's Ordinance and the approved plans.

### Background and Analysis

Under the Contra Costa Countywide National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit, projects "deemed complete" after February 15, 2005 are to comply with the provisions of the Permit. The City adopted an Ordinance, as required by the Permit, to enable this activity within the City of Oakley. A requirement of the permit is that each property implement stormwater treatment devices, fund the perpetual maintenance of those devices, and enter into an agreement with the City stating that the property owner will maintain the devices, grant a right of entry to City staff for inspections, and agree to pay the cost of City inspections.

### Fiscal Impact

There is no fiscal impact associated with the agreement since all inspection, operations, and maintenance costs are the responsibility of the property owners.

### Conclusion

Staff recommends that the City Council adopt the resolution approving the "Stormwater Management Facilities Operations and Maintenance Agreement and

Right of Entry” for each of the 11 lots associated with the Quicksilver Subdivision and authorize the City Manager to sign the agreements on behalf of the City.

**Attachments**

- 1) Resolution
- 2) “Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry” for the Quicksilver Subdivision 8985

RESOLUTION NO. XX- 16

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY, CALIFORNIA, APPROVING THE AGREEMENT WITH CLYDE MILES CONSTRUCTION, CO. (APN 035-720-022; -023; -024; -025; -026; -027; -028; -029; -030; -031; -032) FOR "STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT AND RIGHT OF ENTRY" FOR THE QUICKSILVER SUBDIVISION 8985 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

**WHEREAS**, the City of Oakley's Stormwater Management and Discharge Control Ordinance requires proper operation and maintenance of the Permanent Stormwater Pollution Prevention Measures installed for the Quicksilver Subdivision; and

**WHEREAS**, the "Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry" memorializes the owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved plans; and

**WHEREAS**, the installation of the Permanent Stormwater Pollution Prevention Measures for the Quicksilver Subdivision is construction with the subdivision improvements; and,

**WHEREAS**, Clyde Miles Construction, Co., the current owner of the 11 lots in subdivision 8985 described in Exhibit A, desires to execute the "STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AND RIGHT OF ENTRY"; and

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, that the City Council of the City of Oakley does hereby approve the "STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AND RIGHT OF ENTRY" for the Quicksilver Subdivision 8985 in the form attached hereto and authorizes the City Manager to execute the agreement.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Oakley at a meeting held on this 12<sup>nd</sup> day of April, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

ATTEST:

\_\_\_\_\_  
Kevin Romick, Mayor

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date

**Recording Requested By:  
CITY OF OAKLEY**

**Return to: CITY OF OAKLEY  
City Clerk  
Libby Vreonis  
3231 Main Street  
Oakley, CA 94561**

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**Document Title**

**CITY OF OAKLEY**

**COVENANT RUNNING WITH THE LAND,  
STORMWATER MANAGEMENT FACILITY OPERATIONS  
AND MAINTENANCE AGREEMENT, AND RIGHT OF ENTRY**

**PROJECT: QUICKSILVER SUBDIVISION 8985**

**OWNERS NAMES: CLYDE MILES CONSTRUCTION, CO.**

**ASSESSOR'S PARCEL NUMBERS: 035-720-022; -023; -024; -025;  
-026; -027; -028; -029; -030; -031; -032 (11 Lots)**

**STORMWATER MANAGEMENT FACILITIES  
OPERATION AND MAINTENANCE AGREEMENT  
AND RIGHT OF ENTRY**

This Storm Water Management Facilities Operation and Maintenance Agreement and Right of Entry ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between Clyde Miles Construction, Co., (hereinafter referred to as "Property Owner" and the City of Oakley, a municipal corporation ("City").

**RECITALS:**

This Agreement is made and entered into with reference to the following facts:

**WHEREAS**, the Permanent Storm Water Pollution Prevention Measures (hereinafter referred to as Best Management Practices of "BMP") have been installed in and must be maintained for the development called Quicksilver (Subdivision 8985), located at Lois Lane, Oakley, City of Oakley, Contra Costa County, State of California and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "property" or "real property"); and,

**WHEREAS**, the Property Owner is the owner of real property more particularly described on the attached as Figure 1; and,

**WHEREAS**, the City is the owner of Lois Lane and its storm drains that are adjacent to the property, and

**WHEREAS**, the City's Storm Water Management and Discharge Control Ordinance ("Ordinance") requires proper operation and maintenance of the BMP constructed on this property; and,

**WHEREAS**, the development conditions of approval require that BMP, as shown on the approved Storm Water Control Plan be constructed and properly operated and maintained by the Property Owner; and,

**WHEREAS**, the City has approved the Storm Water Control Operation and Maintenance Plan prepared by \_\_\_\_\_, on the day of \_\_\_\_\_, 20\_\_, as this Plan may be subsequently modified from time to time with City's approval; and,

**WHEREAS**, the Storm Water Control Operation and Maintenance Plan includes an annual inspection checklist for the BMP constructed on this property, and,

**WHEREAS**, this Agreement memorialized the Property Owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved Plans.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

### **Section 1**

**Responsibility for Operations and Maintenance:** The Property Owner will make available copies of the approved Storm water Control Plan and approved Storm Water Control Operation and Maintenance Plan (hereinafter the "Plans") at the property with the facility or property manager and must maintain the BMP in a good working condition acceptable to the City for the life of the project, and in compliance with the Ordinance and the approved Plans. Upon transfer of the property, the Property Owner shall provide the new owner with the current Plans.

### **Section 2**

**Inspection by Property Owner:** The Property Owner, as its own expense, shall conduct annual inspections during the month of September or October of each year. The annual inspection report shall include completion of the checklist described in the approved Storm Water Operation and Maintenance Plan. A qualified independent inspector who is acceptable to the City must inspect the BMP. The Property Owner must submit the inspection report on the BMP to the City Engineer within 30 days after each inspection. A processing fee established in the City's standard fee schedule shall accompany the annual inspection report.

### **Section 3**

**Right of Entry and Facility Inspection by the City:** The Property Owner hereby grants permission to the City, its authorized agents and employees, and the Central Contra Costa Sanitary District, the Contra Costa County Fire Protection District, County Environmental Health Department, the Control Costa Mosquito and Vector Control District, and the Regional Water Quality Control Board to enter the property, and to inspect the BMP whenever any of the foregoing entities deems necessary to enforce provisions of the City's Storm Water and Urban Runoff Pollution Control Ordinance. These entities may enter the premises at any reasonable time to inspect the premises and BMP operation, to inspect and compile records related to storm water compliance, and to collect samples and take measurements. Whenever possible, these entities will provide notice prior to entry.

### **Section 4**

**Failure to Perform Required Facility Repairs or Maintenance by the Property Owner:** If the Property Owner or its successors fail to maintain the BMP in good working order and in accordance with the approved Plans and the City's Ordinance, the City, with prior notice, may enter the property to return the BMP to good working order. The City is under no obligation to maintain or repair the BMP, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this section takes any action to return the BMP to good working order, the Property Owner shall reimburse the City for all the costs of the City's costs and the Property Owner will have 30 days to pay the invoice. If the Property Owner fails to pay the invoice within 30 days, the City may secure a lien against the real property of the Property Owner in the amount of such costs. In addition the City may make the cost of abatement of the nuisance caused by the failure to maintain the BMP a special assessment against the property that may be collected at the same time and in the same manner as ordinary municipal taxes are collected as provided in Government Code section 39773.5. This Section 4 does not prohibit the City from pursuing other legal recourse against the Property Owner.

**Section 5**

**Indemnity:** The Property Owner agrees to defend, indemnify and holds harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City and which are in any way connected with the construction, operation, presence, existence or maintenance of the BMP by the Property Owner, or from any personal injury or property damage that may result from the City or other public entities entering the property under Section 3 or 4.

**Section 6**

**Successors and Assigns:** The covenants or the Property Owner set forth in numbered Sections 1 through 5 above shall run with the land, and the burdens thereof shall be binding upon each and every part of the property and upon the Property Owner, its successors and assigns in ownership (or any interest therein), for the benefit of Lois Lane and its storm drains and each and every part thereof and said covenants shall inure to the benefit of and be enforceable by the City, its successors and assigns in ownership of each and every part of the street and storm drains.

**Section 7**

**Severability:** Invalidation of any one of the provisions of the Agreement shall in no way effect any other provisions and all over provisions shall remain in full force and effect.

Recommended for approval:

City of Oakley

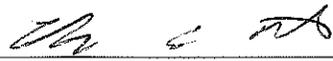
\_\_\_\_\_  
City Engineer  
Kevin Rohani  
Reviewed By:

\_\_\_\_\_  
City Manager  
Bryan H, Montgomery  
Attest:

\_\_\_\_\_  
City Attorney  
Derek P. Cole

\_\_\_\_\_  
City Clerk  
Libby Vreonis

Property Owners:

  
\_\_\_\_\_  
CLYDE E. MILES

Attachments: Acknowledgements



MARCH 10, 2016  
JOB NO. 05-03-00

**EXHIBIT A**

**LEGAL DESCRIPTION**

REAL PROPERTY SITUATE IN THE CITY OF OAKLEY, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

A PORTION OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

LOT 1 THROUGH 11, TOGETHER WITH THE RIGHT OF WAY OF QUICKSILVER COURT AND MERCURY COURT, AS SHOWN ON THE FINAL MAP ENTITLED "SUBDIVISION 8985 - QUICKSILVER" RECORDED MAY 25, 2007 IN THE OFFICE OF THE CONTRA COSTA COUNTY RECORDER IN BOOK 504 OF MAPS AT PAGE 26. A COPY OF PAGE 3 OF SAID MAP IS ATTACHED HERETO.

THE AREA DESCRIBED CONTAINS 2.3 ACRES OF LAND, MORE OR LESS.

**END OF DESCRIPTION**



*Paul Canumay*  
MERIDIAN ASSOCIATES, INC.  
PAUL CANUMAY LS 3272  
EXPIRES 6-30-2016

**BASIS OF BEARINGS**

THE BEARING " NORTH 89° 14' 54" WEST " BETWEEN FOUND MONUMENTS ON THE CENTERLINE OF CYPRESS ROAD, AS SHOWN ON THE MAP OF SUBDIVISION 6473, BROOK TREE UNIT 2 (286 MAPS 21) IS THE BASIS OF BEARINGS FOR THIS MAP. BEARINGS AND DISTANCES SHOWN ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE III. ALL DISTANCES SHOWN ARE GROUND LEVEL DISTANCES.

**NOTE:**

SEE SHEET 2 FOR REFERENCES TO EXISTING MAPS.

**LEGEND**

- FOUND STANDARD STREET MONUMENT TAG & MAP AS NOTED
- FOUND MONUMENT, AS NOTED
- SET CITY STANDARD STREET MONUMENT, L.S. 3272
- SET 3/4" IRON PIPE & TAG, L.S. 3272
- M-M MONUMENT TO MONUMENT
- M-BOLT MONUMENT TO BOLT
- (T) TOTAL
- SF SQUARE FEET
- (R) RADIAL
- R RADIUS
- Δ DELTA
- L ARC LENGTH
- P.U.E. PUBLIC UTILITY EASEMENT
- ① REFERENCE NUMBER

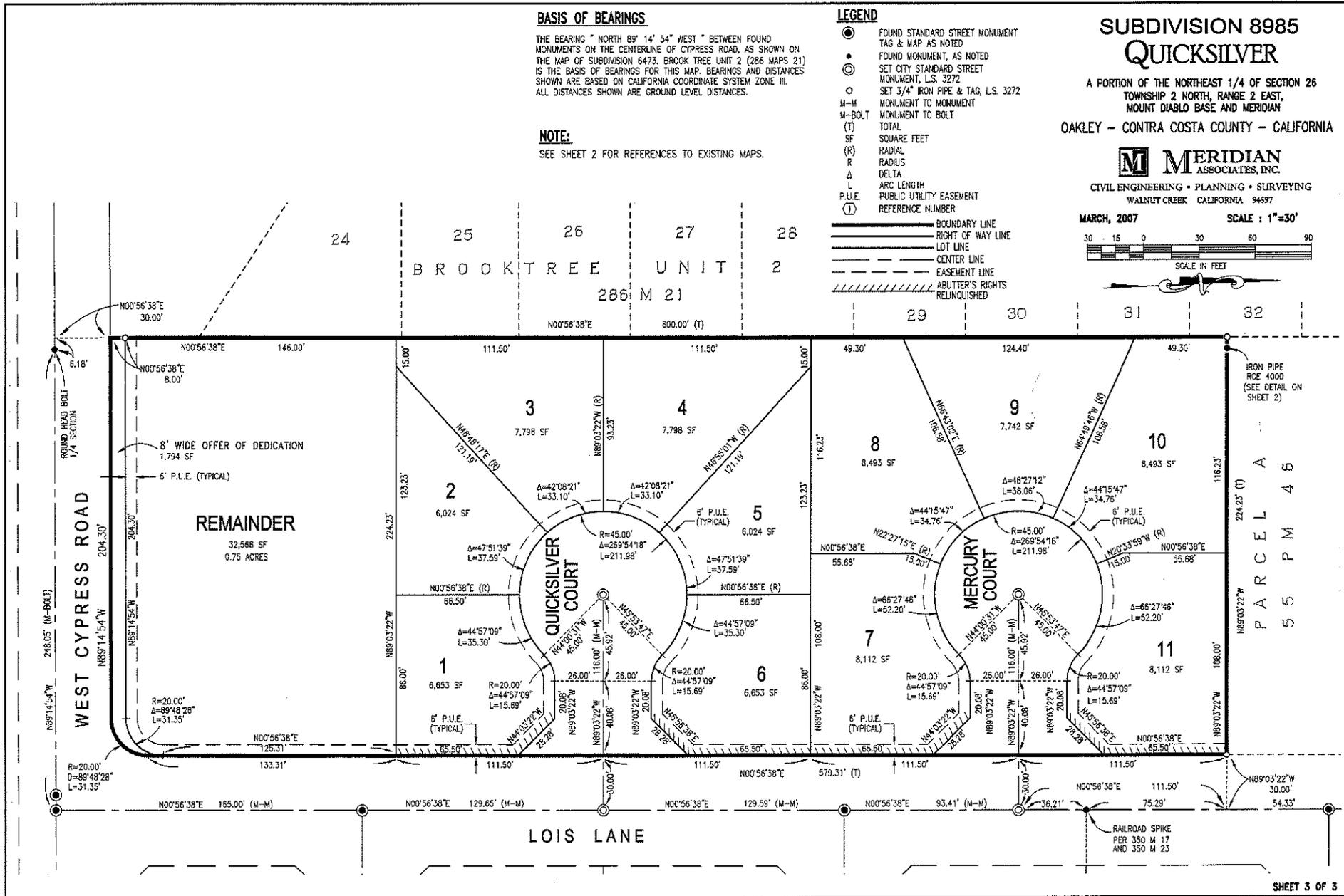
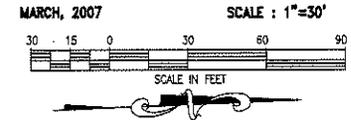
- BOUNDARY LINE
- RIGHT OF WAY LINE
- LOT LINE
- CENTER LINE
- EASEMENT LINE
- ABUTTER'S RIGHTS RELINQUISHED

**SUBDIVISION 8985  
QUICKSILVER**

A PORTION OF THE NORTHEAST 1/4 OF SECTION 26  
TOWNSHIP 2 NORTH, RANGE 2 EAST,  
MOUNT DIABLO BASE AND MERIDIAN  
OAKLEY - CONTRA COSTA COUNTY - CALIFORNIA



**MERIDIAN ASSOCIATES, INC.**  
CIVIL ENGINEERING • PLANNING • SURVEYING  
WALNUT CREEK CALIFORNIA 94597



504 M 28