City of Lafayette Staff Report

For: City Council
By: Lindy Chan, Associate Planner
Meeting Date: January 9, 2012
Subject: Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry between Antone & Sindia Dudum and the City of Lafayette, located at 1208 Rose Lane, APN 245-040-009.

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Introduction

The attached Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry between Antone & Sindia Dudum and the City of Lafayette is required for the construction of the new single-family residence. The attached agreement meets the requirement for approval.

Fiscal Impact

None.

Recommendation

Accept Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry and authorize the City Clerk to accept and record.

Attachment

1. Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry
Recording Requested By: 
CITY OF LAFAYETTE

Return to: City of Lafayette 
City Clerk (LC) 
3675 Mt. Diablo Blvd. 
Suite 210 
Lafayette, CA 94549

Document Title

CITY OF LAFAYETTE

STORMWATER MANAGEMENT FACILITIES OPERATIONS 
AND MAINTENANCE AGREEMENT 
AND RIGHT OF ENTRY

PROJECT: 1208 ROSE LANE

OWNERS NAMES: ANTONE & SINDIA DUDUM

ASSESSOR'S PARCEL NUMBER: 245-040-009
STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT
AND RIGHT OF ENTRY

This Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry ("Agreement") is made and entered into this 19th day of MARCH, 2010, by and between ANTONIO & SINDIA DUDUM (hereinafter referred to as "Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS:

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

WHEREAS, the Permanent Stormwater Pollution Prevention Measures (hereinafter referred to as "Best Management Practices or "BMP") have been installed in and must be maintained for the development called 1208 Rose Lane, located at 1208 Rose Lane, Lafayette, 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 Exhibit A; and,

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

WHEREAS, the City's Stormwater 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 Building Construction Plan be constructed and properly operated and maintained by the Property Owner; and,

WHEREAS, the City has approved the Stormwater Control Operation and Maintenance Plan prepared by Doss Doss Civil Engineering on the day of ______________________, 2010, as this Plan may be subsequently modified from time to time with City's approval; and,

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

WHEREAS, this Agreement memorializes 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 Operation and Maintenance: The Property Owner will make available copies of the approved Building Construction Plan and approved Stormwater Control Operation and Maintenance Plan (hereinafter the “Plans”) at the property, with the facility or property manager or other appropriate maintenance personnel, and must maintain the BMP in 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, at its own expense, shall conduct annual inspections by _October 1st_ of each year. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control 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 these 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.

For the first three years after acceptance of the completed development located on Property, Property Owner’s inspection and reporting obligations under this section shall be secured by a cash deposit to the City in the amount of $5,000.00. The cash deposit shall be refunded to Property Owner at the end of those three years if Property Owner has timely complied with its inspection and reporting obligations for each of those years. Each failure to conduct an inspection and submit the report in a timely manner shall result in an extension by an additional three years of the period before Property Owner may be refunded its cash deposit.

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 Contra 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 Stormwater 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 copy 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 incurred by the City. The City will provide the Property Owner with an itemized invoice 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 38773.5. 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. The property owner shall maintain liability insurance specifically covering the BMP and City. City shall specify amount of coverage and require proof of insurance to be provided to City on a regular basis as determined by the City.

SECTION 6

Successors and Assigns: The covenants of 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 Rose 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 this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

Recommended for approval: City of Lafayette:

City Engineer

City Manager
Mayor
Reviewed by: 

City Attorney 

Attest: 

City Clerk 

Property Owners:

Antone Dudum

Sindia Dudum

Attachments: Acknowledgements
Exhibit A
ALL PURPOSE ACKNOWLEDGMENT

State of California  )
 ) s.s.
County of Contra Costa  )

On March 19, 2010, before me, personally appeared
________________________ and ____________________________

personally known to me;

or 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.

WITNESS my hand and official seal.

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ Individual(s)
☐ Corporate Officer(s) Titles
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing: ________

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document: ________
Number of pages: ________
Date of document: ________
Signer(s) other than named above: ________

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On 12-7-11 before me, Joanne Lee Robbins, notary public, personally appeared Antoine Duvun, 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

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ____________________________

Document Date: ___________________________________ Number of Pages: __________

Signer(s) Other Than Named Above: ______________________

Capacity(ies) Claimed by Signer(s)

Signer's Name: ____________________________

☐ Individual

☐ Corporate Officer — Title(s): ____________________________

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: ____________________________

Signer Is Representing: ____________________________

Signer's Name: ____________________________

☐ Individual

☐ Corporate Officer — Title(s): ____________________________

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: ____________________________

Signer Is Representing: ____________________________
EXHIBIT A

Legal Description

Real property in the City of Lafayette, County of Contra Costa, State of California, described as follows:

LOT 9, AS SHOWN ON THE MAP OF TRACT 2615, FILED NOVEMBER 28, 1958 IN BOOK 71 OF MAPS, PAGE 29, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY.

APN 245-040-009