

No Fee Required (Gov't Code § 27383)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY ENGINEER
CITY OF ESCONDIDO
201 N. BROADWAY
ESCONDIDO, CA 92025

(SPACE ABOVE FOR RECORDER'S USE ONLY)

STORM WATER CONTROL FACILITY MAINTENANCE AGREEMENT
APN NO. _____

THIS STORM WATER CONTROL FACILITY MAINTENANCE AGREEMENT (this "Agreement") is entered into between the City of Escondido, a California municipal corporation ("CITY") and _____, Developer and/or Property Owner ("LOT OWNER(s)," and collectively with the CITY, the "Parties"), and in accordance with the CITY of Escondido Grading Plan No. GP__-____ ("Grading Plan").

WHEREAS, installation and maintenance of Storm Water Control Facilities ("SWCF(s)") is required pursuant to the Escondido Municipal Code, by the California Regional Water Quality Control Board ("RWQCB"), and by the CITY as a condition of approval of property development; and

WHEREAS, LOT OWNER(s) is the owner of certain real property identified as Assessor Parcel Number (APN) _____; commonly known as _____, Escondido, California; and more particularly described within Exhibit A, attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, LOT OWNER(s) has proposed development of the Property that provides benefit to the general public and the CITY and meets the requirements of RWQCB Order R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100, and National Pollution Discharge Elimination System No. CAS0109266; and

WHEREAS, the current and future subdivision LOT OWNER(s) will use the SWCF(s) as installed per the Grading Plan and the provisions of the Storm Water Quality Management Plan prepared by the LOT OWNER(s) and approved by the CITY on _____, 202_ ("Storm Water Plan"); and

WHEREAS, it is the mutual desire of the Parties that the SWCF(s) be maintained in a safe and usable condition by the LOT OWNER(s); and

WHEREAS, it is the mutual desire of the Parties to establish a method for the maintenance and repair of the SWCF(s); and

WHEREAS, the CITY shall have the right but not the obligation to enforce full compliance with the terms and conditions of this Agreement; and

WHEREAS, it is the mutual intention of the Parties that this Agreement constitute a covenant running with the land, binding upon each successive person having or acquiring any right, title, or interest in all or any portion of the Property.

NOW, THEREFORE, in consideration of the above premises, the mutual covenants and promises below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Property is benefited by this Agreement, and present and successive LOT OWNER(s) of all or any portion of the Property are expressly bound hereby for the benefit of the land. In the event any of the herein described parcels of land are subdivided further, the LOT OWNER(s), heirs, assigns, and successors in interest of each such newly created parcel shall be liable under this Agreement for their then pro rata share of expenses and such pro rata shares of expenses shall be computed to reflect such newly created parcels.

2. The cost and expense of maintaining the SWCF(s) shall be the responsibility of and paid by the LOT OWNER(s) or their heirs, assigns, and successors in interest. The SWCF(s) shall be constructed and maintained by the LOT OWNER(s) in accordance with the CITY-approved Grading Plan and Storm Water Plan, on file with the CITY.

3. Repair and maintenance responsibilities for all structural SWCF(s) and required Best Management Practices ("BMP") are set forth in the Storm Water Plan. LOT OWNER(s) shall, as changes occur, provide the CITY with the name, title, and phone number of the persons or entities responsible for maintenance and reporting activity; the persons or entities responsible for funding, schedules, and procedures for inspection and maintenance of the SWCF(s) and implementation of worker training requirements; and any other activities necessary to ensure BMP maintenance. The Storm Water Plan shall provide for the servicing of all SWCF(s) as needed and at least once during August or September of each year, and for the retention of inspection and maintenance records for at least three (3) years. LOT OWNER(s) shall submit annual certification to the CITY's Department of Engineering Services between September 1 and October 1 of each year. The certification shall document all maintenance performed and compliance with applicable permits.

4. The CITY shall have the right to inspect the SWCF(s) and related records as needed to ensure the SWCF(s) are being properly maintained.

5. If any LOT OWNER fails to pay its share of costs and expenses as required to use, maintain, or repair the SWCF(s) in this Agreement, then the CITY or any other LOT OWNER shall be entitled without further notice to institute legal action for the collection of funds advanced on behalf of the LOT OWNER who did not pay its share of costs and expenses and shall be entitled to recover in such action, in addition to the funds advanced, interest thereon at the current prime rate of interest, until paid; all costs and disbursements of such action, including such sum or sums as the court may fix; and reasonable attorney's fees.

6. Any liability of the LOT OWNER(s) to any worker employed to make repairs or provide maintenance under this Agreement, or to third persons, as well as any liability of the LOT OWNER(s) for damage to the property of any such worker, or any third persons, as a result of or arising out of repairs and maintenance under this Agreement, shall be borne, as between or among the LOT OWNER(s), in the same percentages as they bear the costs and expenses of such repairs and maintenance. Each LOT OWNER shall be responsible for and maintain its own insurance. By this Agreement, the Parties do not intend to provide

for the sharing of liability with respect to personal injury or property damage other than that attributable to the repairs and maintenance undertaken under this Agreement. Each LOT OWNER agrees to indemnify any other LOT OWNER(s) from any and all liability for injury to the LOT OWNER or damage to its property when such injury or damage results from, arises out of, or is attributable to any maintenance or repairs undertaken pursuant to this Agreement.

7. LOT OWNER(s)' Indemnification of CITY.

a. To the fullest extent permitted by law, LOT OWNER(s) shall jointly and severally indemnify, defend with legal counsel reasonably satisfactory to the CITY, and hold harmless the CITY and the CITY's officers, directors, employees, and council members (collectively, "Indemnitees") from all actions, fines, sanctions, levies, penalties, orders, and assessments of any kind and against any and all liability, loss, damage, fine, penalty, expense, claim, or cost (including without limitation costs and fees of litigation) of every nature, including but not limited to any RWQCB Orders, that may arise out of or relate to LOT OWNER(s)'s obligations for implementation of storm water management in accordance with the RWQCB Order R9-2013-0001 and subsequent amendments (collectively, "Claims"), including any reasonable attorney's fees, costs, and expenses incurred by the Indemnitees in responding to or defending any Claims. The obligations of LOT OWNER(s) shall include but not be limited to design, construction, maintenance, and required documentation of the maintenance activities related to all proposed storm water treatment measures included in the Storm Water Plan, or, arising out of or in connection with this Agreement or its performance (including acts of omission) except for liability caused by the Indemnitees' willful misconduct.

b. LOT OWNER(s)' obligation to defend shall apply whether or not Indemnitees were negligent or otherwise at fault and whether or not any Claims have merit. LOT OWNER(s)' obligation to defend shall apply with full force and effect regardless of any concurrent negligence or fault by the Indemnitees, or any of them. However, LOT OWNER(s) shall not be obligated under this Agreement to indemnify any Indemnitee after entry of a non-appealable final judgment after trial or award in a judicial proceeding for that portion of the final judgment that arises from the willful misconduct of that Indemnitee.

c. LOT OWNER(s)' duty to defend the Indemnitees is separate, independent, and free-standing from LOT OWNER(s)' duty to indemnify and hold harmless the Indemnitees. LOT OWNER(s)' defense obligation shall arise immediately upon receipt by the CITY or LOT OWNER(s) of any written notice of any Claims, or written Notice of Violation or equivalent notice of intent to levy any fines, penalties, or sanctions against Indemnitees by the RWQCB or other enforcement agency, and shall continue until the entry of any final and non-appealable judgment or order, including without limitation any final and non-appealable RWQCB Order or other enforcement order.

d. LOT OWNER(s)' obligation to indemnify, defend, and hold harmless shall be carried on to future owners of the Property, including any successors in title.

e. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

f. The indemnity protections provided by this Agreement are not intended to exceed the indemnity available under applicable law. If the indemnity protections are found by a court to be unlawful in any way, the protection shall be curtailed or adjusted, but only to the minimum extent required to conform to applicable law.

8. If, in the CITY's sole judgment, the SWCF(s) are not being maintained to standards set forth in Paragraph 3 of this Agreement, the CITY may thereupon provide written notice to all LOT OWNER(s) to initiate repairs or construction within ninety (90) days. Upon failure to demonstrate good faith to make repairs or construction within ninety (90) days, the LOT OWNER(s) agree that the CITY may make all needed repairs to the SWCF(s) and/or construct SWCF(s) to meet the standards set forth in Paragraph 3 and to then assess costs to all LOT OWNER(s) on a pro rata basis.

9. If the CITY elects to make necessary maintenance or repairs in accordance with this Agreement, said work shall be without warranty. Said repairs shall be accepted "as is" by the LOT OWNER(s) without any warranty of workmanship and be guaranteed and indemnified by them in accordance with this Agreement.

10. The obligations and benefits provided for in this Agreement shall run with the land obligated and benefited, respectively, and shall be binding on all persons having or acquiring any right, title, or interest in the Property or any part thereof. As such, it is the intent of the Parties that this Agreement and the promises, covenants, rights, and obligations set forth herein (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement, and binding upon LOT OWNER(s)' successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the LOT OWNER(s); and (iii) shall bind LOT OWNER(s) and their respective heirs, executors, administrators, successors, and assigns.

11. The terms of this Agreement may be amended in writing upon majority approval of the LOT OWNER(s) and consent of the CITY.

12. This Agreement shall be governed by the laws of the State of California. In the event any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

LOT OWNER: XXXXXXXX

PRINT NAME AND TITLE

SIGNATURE

DATE SIGNED

LOT OWNER: XXXXXXXX

PRINT NAME AND TITLE

SIGNATURE

DATE SIGNED

LOT OWNER: XXXXXXXX

PRINT NAME AND TITLE

SIGNATURE

DATE SIGNED

CITY OF ESCONDIDO,
a California municipal corporation

Director of Engineering Services / City Engineer

DATE SIGNED

ATTACH ACKNOWLEDGMENTS FOR ABOVE SIGNATURES

APPROVED AS TO FORM:
Michael McGuinness, City Attorney

By: _____

EXHIBIT A

Legal Description of Property