

FREE RECORDING REQUESTED
PURSUANT TO GOVERNMENT
CODE SECTION 27383
RECORDING REQUESTED BY:

CITY OF ESCONDIDO

WHEN RECORDED MAIL TO:

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

(SPACE ABOVE FOR RECORDER'S USE ONLY)

Documentary Transfer Tax \$ _____

Signature _____

STORM WATER CONTROL FACILITY MAINTENANCE AGREEMENT

APN NO. _____

THIS AGREEMENT for the design, construction, maintenance and repair of the Storm Water Control Facilities (SWCF(s)), installed on the property as identified in the San Diego County Assessor Tax Roll for 20__, as APN No. _____, and commonly known as _____, Escondido, California, ("Property") is entered into between the **CITY OF ESCONDIDO**, a municipal corporation ("CITY") and _____, Developer and/or Property Owner ("LOT OWNER(s)"), and in accordance with the CITY of Escondido Grading Plan No. GP__-____ ("Grading Plan"). ("Agreement")

WHEREAS, installation and maintenance of Storm Water Control Facilities is required pursuant to the Escondido Municipal Code, 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 being developed that provides benefit to the general public and the CITY and meets the requirements of the California RWQCB Order R9-2013-0001 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 ("Storm Water Plan") prepared by the LOT OWNER(s) and approved by the CITY on _____, 201_; and

WHEREAS, it is the mutual desire of the parties to this Agreement 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 this Agreement 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

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WHEREAS, it is the mutual intention of the parties that this Agreement constitute a covenant running with the land, binding upon each successive LOT OWNER of all or any portion of the property.

NOW, THEREFORE, IT IS HEREBY AGREED 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 associated with the project 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 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 until the property is redeveloped. The certification shall document all maintenance performed and compliance with applicable permits.

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

5. Should any LOT OWNER(s) fail to pay their 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 their 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 as and for a 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 agent, or 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 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 his own insurance, if any. By this Agreement, the parties do not intend to provide for the sharing of liability with respect to

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personal injury or property damage other than that attributable to the repairs and maintenance undertaken under this Agreement. Each of the LOT OWNER(s) agrees to indemnify the others from any and all liability for injury to him or damage to their 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. CITY Indemnification.

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 (hereinafter referred to as "Indemnitees") from all actions, fines, sanctions, levies, penalties, orders and assessments of any kind harmless against any and all liability, loss, damage, fine, penalty, expense, claim, or cost (including without limitation costs and fees of litigation) of every nature (collectively referred to as "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, including any reasonable attorney's fees, costs and expenses incurred by the Indemnitees in responding to any RWQCB Orders arising out of or relating to implementation of storm water management. LOT OWNER(s) obligations shall include but not be limited to design, construction, maintenance and required documentation of the maintenance activities related to all storm water treatment measures proposed for the project and included in the STORM WATER PLAN, approved _____, 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 the RWQCB's Orders have any 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 CITY or LOT OWNER(s) of any 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 RWQCB or other enforcement orders.

d) LOT OWNER(s) obligation to indemnify, defend and hold harmless shall be carried on to future property OWNERS and shall continue until the time that the site is redeveloped.

e) It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement, unless the property is properly redeveloped.

(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

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required to conform to applicable law.

(g) Nothing in the Agreement, the specifications or other contract documents or CITY approval of the plans and specifications or inspection of the work is intended to include a review, inspection, acknowledgment of any responsibility for any such matter, and CITY, CITY's engineer, and their consultants, and each of their officials, directors, officers, employees and agents, shall have absolutely no responsibility or liability thereof.

8. If, in the CITY's sole judgment said 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), the LOT OWNER(s) agree that the CITY may make all needed repairs to said 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) equally.

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 this Agreement.

10. The foregoing covenants shall run with the land and shall be deemed to be for the benefit of the land of each of the LOT OWNER(s) and each and every person who shall at any time own all or any portion of the property referred to herein.

11. It is understood and agreed that the covenants herein contained shall be binding on the heirs, executors, administrators, successors, and assigns of each of the LOT OWNER(s).

12. This Agreement shall be recorded and that all obligations created shall constitute a covenant running with the land and any subsequent purchaser of all or any portion thereof, by acceptance of delivery of a deed and/or conveyance regardless of form shall be deemed to have consented to and become bound by this Agreement.

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

14. This Agreement shall be governed by the laws of the State of California. In the event that any of the provisions of this Agreement are 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 ON PAGE 5:

SIGNATURE PAGE

LOT OWNER(s): XXXXXXXX

PRINT NAME AND TITLE

SIGNATURE

DATE SIGNED

PRINT NAME AND TITLE

SIGNATURE

DATE SIGNED

PRINT NAME AND TITLE

SIGNATURE

DATE SIGNED

ATTACH CALIFORNIA ALL PURPOSE NOTARY ACKNOWLEDGMENT FOR ABOVE SIGNATURES

**CITY OF ESCONDIDO,
a municipal Corporation**

Date Signed: _____

By: _____

Director of Public Works / City Engineer

APPROVED AS TO FORM:
Michael McGuinness, City Attorney

By: _____