

RECORDING REQUESTED BY:

CITY OF VISTA

WHEN RECORDED MAIL TO:

**CITY OF VISTA
200 CIVIC CENTER DRIVE
VISTA, CA 92084-6275
ATTN: CITY CLERK**

Fee Exempt: Government Code Section 27383

APN: xxx-xxx-xx

DTT: \$0.00; R&TC § 11922, Conveyance to Government Agency; Signed: _____

PRIVATE STORM WATER POLLUTION CONTROL FACILITIES MAINTENANCE AGREEMENT

THIS AGREEMENT is entered into between the **CITY OF VISTA**, a chartered municipal corporation (“CITY”) and **NAME, status** (“OWNER”), and dated for reference purposes as of **date**.

DEFINITIONS

BEST MANAGEMENT PRACTICES: Control measures (“BMPs”) taken to mitigate changes to both quantity and quality of urban runoff as they may be defined or promulgated from time-to-time in the City’s NPDES storm water management permit.

GOVERNING APPROVALS: C xxx; LD #xxx; GP(s) xxx; and DWG No(s). xxx

PROPERTY: Real property legally described in Exhibit A [and commonly known as _____][with no common street address].

FACILITIES: Those certain private storm water pollution control facilities (“SWPCFs”) and appurtenances developed or installed on the PROPERTY as detailed in the GOVERNING APPROVALS as the same may be amended from time to time through changes in the governing ordinances and statutes.

WATER QUALITY TECHNICAL REPORT: The approved plan (the “WQTR”) is designed to mitigate changes to both quantity and quality of urban runoff from the PROPERTY. The plan was initially approved by the City with GOVERNING APPROVALS, is on file with the City, and shall be modified from time-to-time pursuant to the City’s then-current NPDES storm water management permit.

RECITALS

- A. This Agreement is required as a condition of approval by the CITY.
- B. The OWNER is the owner of the PROPERTY and is required to install and provide for the perpetual maintenance of the FACILITIES as a condition of being permitted to develop the PROPERTY.
- C. It is the mutual desire of the parties hereto that the FACILITIES be maintained in a safe and usable condition by the OWNER.
- D. It is the mutual intention of the parties that this Agreement constitutes a covenant running with the land, binding upon each successive lot owner of all or any portion of the PROPERTY.

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PC x-xxx; LD #xx-xxx; GP xx-xxx; DWG NO. xxxx

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NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The cost and expense of maintaining the FACILITIES shall be paid by the OWNER or the heirs, assigns and successors in interest of the OWNER.
2. Repairs and maintenance under this Agreement shall consist of all work reasonably necessary or proper in the sole discretion of the CITY to repair and preserve FACILITIES. Repair and maintenance responsibilities for all post-construction structural FACILITIES and required BMPs associated with the project are set forth in the most current WQTR. The WQTR shall all times specify by 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 FACILITIES and implementation of worker training requirements, and any other activities necessary to ensure BMP maintenance. The plan shall provide for servicing of all post-construction structural FACILITIES as needed and at least once annually within 60 days prior to October 1st, and for the retention of inspection and maintenance records for at least three years. Adherence to the plan shall result in effective Storm Water pollution control. The CITY shall have the right to inspect the FACILITIES and records as needed to ensure the FACILITIES are being properly maintained.
3. OWNER Indemnification.
 - 3.1. The OWNER shall indemnify and hold the CITY 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, "Liability") arising out of or in connection with this Agreement or its performance (including acts of omission) except for Liability caused by the CITY's sole negligence or willful misconduct.
 - 3.2 For purposes of this Section, the CITY includes CITY's officers, officials, employees, agents, representatives, and volunteers.
 - 3.3 It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.
 - 3.4 The indemnity protections provided by this Section 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.
4. If in the CITY'S sole judgment the FACILITIES are not being maintained to standards set forth in this Agreement, the CITY may thereupon provide written notice to the OWNER 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 OWNER agrees that the CITY may make all needed repairs to the FACILITIES to meet the standards set forth in paragraph 3 and to then assess costs to the OWNER.
5. CITY shall have no responsibility or liability for the exercise or non-exercise of any discretionary powers it may have under this Agreement. Nothing in this Agreement, the specifications or other contract documents relating to the work required by this Agreement, or CITY approval of the plans and specifications or inspection of the work, is intended to create any contractual liability, express or implied, for the construction, maintenance or repair of the FACILITIES required by this Agreement, and the CITY, CITY'S engineer, and their consultants, and each of their officials, directors, officers, employees and agents, shall have absolutely no responsibility or liability therefor.
6. If CITY elects to make necessary repairs in accordance with paragraph 5 above, that work shall be without warranty. The repairs shall be accepted "as is" by the OWNER without any warranty of workmanship and shall be guaranteed and indemnified by it in accordance with paragraph 4. CITY will endeavor to minimize interference with OWNER's use of the PROPERTY.

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7. The foregoing covenants shall run with the land, shall be deemed to be for the direct benefit of the land, and shall be binding on the heirs, executors, administrators, successors, and assigns of the OWNER. 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 these presents.

8. Nothing in this Agreement shall be construed to in any way limit or constrain CITY's exercise of its regulatory powers, police powers, or other powers of enforcement insofar as they may relate to the subject matter of this Agreement or any other matter within the power or authority of the CITY.

9. 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. The exclusive jurisdiction and venue of any legal action instituted in connection with this Agreement shall be San Diego County, California.

"CITY"

"OWNER"

CITY OF VISTA, a chartered municipal corporation

NAME, status

By: _____
GREGORY D. MAYER, CITY ENGINEER

By: _____

Name/Title

By: _____

Name/Title

(When signing as Corporation necessary signatures are
President OR Vice President AND Secretary OR
Assistant Secretary.)

NOTE: A CALIFORNIA ALL PURPOSE NOTARY ACKNOWLEDGMENT MUST BE ATTACHED FOR ALL SIGNATURES ABOVE

ATTEST:
KATHY VALDEZ, CITY CLERK

By: _____

APPROVED AS TO FORM:
DAROLD PIEPER, CITY ATTORNEY

By: _____