

An Agreement for the Residents of a Subdivision to Operate and Maintain a Stormwater Management Facility Instruction Sheet for this Agreement

This agreement is designed to be used when development is occurring on property that will be subdivided as part of the project, and stormwater management facilities are required to be constructed on a separate parcel from those lots that will be privately developed, and no homeowners' association is being formed to own or maintain the parcel where the stormwater management facilities are located.

1. Fill in the name of your jurisdiction in the appropriate blanks on the cover page, in the opening paragraph of the agreement, in the definition of NPDES Permit, in Section 1, and on the signature page. Fill in the appropriate citation to your jurisdiction's stormwater ordinance in the definition of Ordinance.

2. Fill in the name of the property owner in the blank on the cover page, in the opening paragraph of the agreement, in the definition of Property Owner (twice) and on the signature page. Get the name from a title report. If the owner is a corporation, two signatures of corporate officers are required. An incorrect name may result in the agreement not being indexed properly by the County Recorder. Also insert the name of the project and the assessor's parcel number on the cover page.

3. Insert the numbers of the lots in the subdivision in the definition of Lots. If the stormwater management facility is located on a parcel designed something other than Parcel A, change the designation in the same definition and in Sections 1, 3 and 4.

4. Enter the recording information from the final subdivision map in the definition of Map.

5. Insert the name of the preparer of the Stormwater Operations and Maintenance Plan in the definition of Plan.

6. Insert the name of the adjoining public street in Recital B and Section 6. This is very important because for this Agreement to be binding on successors to the present owner, the law requires that the property "benefited" by the Agreement be specified in the Agreement.

7. All the lots that will be sold for homes should be identified in the first sentence under Section 1. For example, "The Owners of Lots 1 through 8, inclusive, shall contribute equally..." where there are eight lots that will be developed with homes in the subdivision.

The number of lots that constitute a majority should be included in the second paragraph of Section 1. For example, "No Owner may Maintain the Stormwater Facility without first obtaining the written consent of the Owners of at least four (4) other Lots. Such consent shall not be unreasonably withheld. In the absence of such an agreement by Five (5) of the Lot Owners on the Owner who will Maintain the Stormwater Facility, the Stormwater Facility shall be Maintained by the Owner of Lot _." The last blank should be the number of the lot adjoining the parcel with the stormwater management facility; this owner becomes the person who maintains the stormwater management facility by default if the other owners cannot agree on another person.

8. Insert the month of the year you want the annual inspection to occur in Section 2.

9. Add the legal description of the property to Exhibit A. This should be the Lots that will be privately owned in the subdivision, e.g., : "Lots __ through __, inclusive as shown on the final map of Subdivision _____ filed of record on _____, 20__ in Book _____ of Maps at pages __ through __, inclusive in the Official Records of the Contra Costa County Recorder" (with the blanks filled in as they are in the definitions). Again this is very important. For the Agreement to be binding on successors who buy the Lots the new owners must have the constructive notice of the Agreement that is provided by proper recording of the Agreement. Proof-read your legal description. It is this legal description that gives notice to successors, not the assessor's parcel number you inserted on the cover page.

10. Check that the issues described in "CC&R and Subdivision Map Provisions which Require a Subdivision's Residents to Operate and Maintain a Stormwater Management Facility" are addressed in the property owner's proposed CC&Rs and subdivision map.

11/7/2007

Recording Requested By:
CITY OF _____

Return to: **CITY OF _____**
 City Clerk
 P.O. Box
 _____, **CA 945**

Document Title

CITY OF _____

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

PROJECT: _____

OWNERS NAMES: _____

ASSESSOR'S PARCEL NUMBER: _____

**COVENANT RUNNING WITH THE LAND,
STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT,
AND RIGHT OF ENTRY**

This Covenant Running with the Land, Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry ("Agreement") is made and entered into this _____ day of _____, 20____, by and between _____, (hereinafter referred to as "Property Owner") and The City of _____, a municipal corporation ("City").

The following terms used in this Agreement shall have the meanings specified below:

DEFINITIONS

Lot: The term "**Lot**" shall mean Lots ___ through ___, inclusive, and Parcel A as shown on the Map of the Property.

Map: The term "**Map**" shall mean the final map of Subdivision _____ filed of record on _____, 20___ in Book _____ of Maps at pages ___ through ___, inclusive in the Official Records of the Contra Costa County Recorder.

Maintain: The term "**Maintain**" or "**Maintained**" shall mean taking all actions reasonably necessary to keep the Stormwater Facility in first class operation, condition and repair, which actions include but are not limited to regular inspections, painting, cleaning, maintenance, refinishing, repairing, replacing and reconstructing the Stormwater Facility, and in the case of landscaping, plant replacement, mulch replacement, irrigating, trimming mowing, and fertilizing the landscaping. The term shall also include the routine maintenance, and the annual inspection and reporting described in the Stormwater Control Operation and Maintenance Plan, and the payment of any applicable City fees.

NPDES Permit: The term "**NPDES Permit**" shall mean the San Francisco Bay Regional Water Quality Control Board's National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0029912 (issued to the City of _____) as amended, and as may be superseded by subsequent NPDES permits that are reissued from time to time.

Ordinance: The term "**Ordinance**" shall mean Chapter ___ of Title _ of the _____ Municipal Code (Stormwater Management and Discharge Control), as may be amended from time to time.

Property Owner: The term "**Property Owner**" and "**Property Owners**" shall mean _____ and all heirs, successors, executors, administrators and assigns of _____ in the real property shown on the Map, it being the intent of the parties hereto that the obligations undertaken in this Agreement, as provided in Civil Code section 1468, run with the Lots shown on the Map and constitute a lien against the Lots.

Property: The term "**Property**" shall mean that real property shown on the Map.

Plan: The term "**Plan**" or "**Operation and Maintenance Plan**" means the City-approved Stormwater Control Operation and Maintenance Plan prepared by _____ and approved by the City Engineer in writing, which may be subsequently modified from time to time with City Engineer's written approval.

Stormwater Facility: The term "**Stormwater Facility**" means the permanent stormwater management facilities located and constructed on Parcel A of the Property. All of Parcel A is part of the Stormwater Facility.

RECITALS

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

- A.** The Property Owner is the owner of the real property shown on the Map and more particularly described on the attached Exhibit A.
- B.** The City is the owner of _____ Street and its storm drains that are adjacent to the Property, and the City is required to ensure that stormwater run-off from the Property into its storm drains meets the requirements of its NPDES Permit.
- C.** To meet its obligations under its NPDES Permit the City has required the Property Owner to construct the Stormwater Facility on Parcel A of the Property.
- D.** To meet its obligations under its NPDES Permit the City has approved the Property Owner's Operation and Maintenance Plan for the Stormwater Facility.
- E.** To meet its obligations under its NPDES Permit the City's Ordinance requires proper operation and maintenance in perpetuity of the Stormwater Facility constructed on the Property.
- F.** The Plan includes an annual inspection and reporting requirement for the Stormwater Facility constructed on the Property.
- G.** This Agreement memorializes the Property Owners' maintenance, operations, and inspection obligations under the City's Ordinance, the City's NPDES Permit and the Plan.

AGREEMENT

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: No portion of the Stormwater Facility (Parcel A) may be altered, in any way, by a Property Owner without the prior written consent of the City Engineer

of the City of _____. The Property Owners of Lots _ through _, inclusive, shall contribute equally to the costs to Maintain the Stormwater Facility (Parcel A) in first class operating condition, and in compliance with all applicable state, county and city laws and regulations except that all costs of Maintaining the Stormwater Facility which are the result of the negligent act or willful action of a Property Owner or the Property Owners invitees shall be borne by that Property Owner. Applicable regulations include, but are not limited to, the City-approved Stormwater Control Operation and Maintenance Plan, and the provisions of the Ordinance, as they may be amended from time to time.

A Property Owner who causes the Stormwater Facility to be Maintained is entitled to and has a right of contribution from the other Property Owners of the other Lots which shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Property Owner entitled to contribution. No Property Owner may Maintain the Stormwater Facility without first obtaining the written consent of the Property Owners of at least ____ () other Lots. Such consent shall not be unreasonably withheld. In the absence of such an agreement by ____ () of the Lot Owners on the Property Owner who will Maintain the Stormwater Facility, the Stormwater Facility shall be Maintained by the Property Owner of Lot _.

The Property Owner shall engage a landscape contractor or other licensed contractor to maintain the Stormwater Facility. The City Engineer, in her or his sole absolute discretion, may approve an alternate method for the maintenance of the Stormwater Facility. The City Engineer, also in her or his sole absolute discretion, may revoke the approval of a previously approved alternate method for the maintenance of the Stormwater Facility.

If a dispute should arise between the Property Owners of the Lots as with respect to the necessity for or standard of maintenance for the Stormwater Facility, the contractor(s) to be engaged to perform any repair or maintenance work, or any other matters pertaining to the operation or maintenance of the Stormwater Facility the dispute shall be submitted to the City Engineer for arbitration, and the decision of the City Engineer shall be final. If any Property Owner refuses to comply with the decision of the City Engineer, the other Property Owners may proceed to enforce the decision in an action at law.

SECTION 2

Inspection by Property Owner: The Property Owners shall cause their contractor to conduct annual inspections during the month of _____ of each year. The annual inspection report shall include completion of the checklist described in the approved Operation and Maintenance Plan. The Property Owners or their contractor must submit the inspection report to the City Engineer within 30 days after the annual inspection. A Management and/or Inspection fee established in the City's standard fee schedule shall accompany the annual inspection report.

SECTION 3

Right of Entry and Stormwater Facility Inspection by the City: The Property Owners hereby grant 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 Parcel A, and to inspect the Stormwater Facility whenever any of the forgoing entities deems

necessary to enforce provisions of the City's Ordinance. These entities may enter the premises at any reasonable time to inspect the Stormwater Facility's operation and maintenance, to inspect and copy records related to compliance with stormwater regulations, and to collect samples and take measurements. Whenever possible, these entities will provide notice prior to entry.

SECTION 4

Failure to Perform Required Stormwater Facility Repairs or Maintenance by the Property

Owner: If the Property Owners or their successors fail to Maintain the Stormwater Facility in good working order and in accordance with the approved Plan and the City's Ordinance, the City, with prior notice, may enter the Parcel A to return the Stormwater Facility to good working order. The City is under no obligation to Maintain or repair the Stormwater Facility, 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 Stormwater Facility to good working order, the Property Owners shall reimburse the City for all the costs incurred by the City, including administrative costs. The City will provide the Property Owners with an itemized invoice of the City's costs and the Property Owners will have 30 days to pay the invoice. If the Property Owners fails to pay the invoice within 30 days, the City may secure a lien against the real property of the Property Owners 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 Stormwater Facility 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 Owners.

SECTION 5

Indemnity: The Property Owners agree to defend, indemnify and holds harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences, claims, penalties or fines 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 Stormwater Facility by the Property Owners, 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 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 _____ Street 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 _____:

City Engineer

Mayor

Reviewed by:

Attest:

City Attorney

City Clerk

Property Owners:

Owner's Name

Owner's Name

Attachments: Acknowledgements
Exhibit A

EXHIBIT A
Legal description