

RECORDING REQUESTED BY:

City of Santee, CA

AFTER RECORDING MAIL TO:

City Clerk
City of Santee
10601 Magnolia Avenue
Santee, CA 92071-1266

ABOVE SPACE FOR RECORDER'S USE

**AGREEMENT TO PERFORM STORM WATER
FACILITIES MAINTENANCE**

NO RECORDATION FEE REQUIRED; THIS DOCUMENT IS
EXEMPT FROM RECORDING FEES PURSUANT
TO CALIFORNIA GOVERNMENT CODE SECTIONS 27383 AND 27388.1

DOCUMENTARY TRANSFER TAX DUE \$ 0

Assessor's Parcel No. _____

Project No. _____

This AGREEMENT for the maintenance and repair of certain Storm Water Management Facilities is entered into between _____ (hereinafter referred to as "Owner") and the City of Santee (hereinafter referred to as "City") for the benefit of the City, the successors in interest to the City, and the public generally.

RECITALS

A. Owner is the owner of certain real property located in the City of Santee, California, more particularly described in **Exhibit "A"** hereto (hereinafter referred to as the "Property"), and has proposed that the Property be developed as

_____(insert brief description of type of project, e.g., “a 100 unit residential subdivision”)_____ in accordance with applications for Tentative Map No. _____, Development Review No. _____, Conditional Use Permit No. _____, Grading Permit No. _____ which are on file with the City. This Agreement is required as a condition of approval for such development as set forth in Resolution Nos. _____.

B. In accordance with the City of Santee’s Storm Water Management and Discharge Control Ordinance, (Santee Municipal Code, Chapter 9.06), the City of Santee Subdivision Ordinance, the City of Santee Zoning Ordinance, the City of Santee Grading Ordinance and/or other ordinances or regulations of the City which regulate land development and urban runoff, Owner has prepared and submitted to the City, a site specific Storm Water Quality Management Plan (hereinafter the SWQMP), prepared by _____ and dated _____ as it currently exists or may hereafter be amended and which is on file with the City’s Department of Development Services. The SWQMP proposes that storm water runoff from the Property be treated by the use of various storm water management facilities which are identified in the SWQMP as “Best Management Practices” or “BMP’s”:

The precise location and extent of the BMP’s are described and shown in the SWQMP. The SWQMP specifies the frequency, manner, and standards by which the BMP’s must be repaired and maintained in order to retain their effectiveness, as set forth in the Operation and Maintenance Section included in the SWQMP.

C. The information contained in the SWQMP and the Owner’s representation that the BMP’s will be maintained pursuant to the SWQMP have been relied upon by City in approving Owner’s development applications. It is the purpose of this Agreement to assure that the BMP’s are maintained in perpetuity, by creating obligations which are enforceable against the Owner and the Owner’s successors in interest in the Property. It is intended that these obligations be enforceable notwithstanding other provisions related to BMP maintenance which are provided by law.

AGREEMENT

NOW, THEREFORE, for consideration of City’s approval of the above development applications and the mutual covenants set forth herein, IT IS HEREBY AGREED AS FOLLOWS:

1. Maintenance of Storm Water Management Facilities. Owner agrees, for itself and its successors in interest, to all or any portion of the Property, to comply in all respects with the requirements of the Storm Water Management and Discharge Control Ordinance and the SWQMP with regard to the maintenance of all BMP's as designated in the SWQMP, and in particular agrees to perform, at its sole cost, expense and liability, the following "Maintenance Activities": all inspections, cleaning, repairs, servicing, maintenance and other actions specified in the SWQMP, with respect to all of the BMP's listed at Recital "B" above, at the times and in the manner specified in the SWQMP as it currently exists or may be amended or modified as provided herein. Owner shall initiate, perform and complete all Maintenance Activities at the required time, without request or demand from City or any other agency. Owner further agrees that "Maintenance Activities" shall include replacement or modification of the BMP's in the event that the BMP fails to provide the necessary water quality treatment, it is found that the BMP was not installed correctly, or in the event that the BMP is not functioning as intended. Replacement shall be with an identical type, size and model of BMP, except that:

(a) The City Engineer may authorize substitution of an alternative BMP if he or she determines that it will function as good or better than the failed BMP. The City requires that proposed modifications be submitted for review and approval prior to making any changes in the field, and that the Storm Water Quality Management Plan be revised or amended and resubmitted for approval; and

(b) Pursuant to Section 9.06.110 of the Storm Water Management and Discharge Control Ordinance, any discharge that would result in or contribute to a violation of the City's NPDES Permit and any amendment, revision or re-issuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the owner(s) causing or responsible for the discharge. Owner agrees that if the BMP, in the judgment of the Director of Development Services, is inappropriate or inadequate to the circumstances and has or may result in a violation of water quality standards, the BMP must be modified or replaced with an upgraded BMP to prevent any actual or potential violation.

2. Annual Inspection and Certification by Owner

Owner agrees to provide documentation of BMP maintenance as required for the City to ensure that all storm water BMPs are properly maintained and are functioning as intended, in compliance with the site specific Storm Water Quality Management Plan. Owner shall provide annual certification that BMPs have been

properly maintained for the time period of *September 1 to August 31, each year.*

This documentation is due to the City prior to September 15th of each year.

Structural BMPs for which annual certification is required includes, but is not limited to: drainage inserts; detention basins; hydrodynamic separators; swales; filters; bioretention facilities; and Low Impact Development Integrated Management Practices (LID IMPs).

3. **Notices.** Owner further agrees that it shall, prior to transferring ownership of any land on which any of the above BMP's are located, and also prior to transferring ownership of any such BMP, provide clear written notice of the above maintenance obligations associated with that BMP to the transferee. The Storm Water Quality Management Plan and all associated records must also be provided to all subsequent owners upon transfer of property title.

4. **City's Right to Perform Maintenance.** It is agreed that City shall have the right, but not the obligation, to elect to perform any or all of the Maintenance Activities if, in the City's sole judgment, Owner has failed to perform the same. It is recognized and understood that the City makes no representation that it intends to or will perform any of the Maintenance Activities, and any election by the City to perform any of the Maintenance Activities, shall in no way relieve Owner of its continuing maintenance obligations under this agreement. If the City elects to perform any of the Maintenance Activities, it is understood that the City shall be deemed to be acting as the agent of the Owner and said work shall be without warranty or representation by City as to safety or effectiveness, shall be deemed to be accepted by Owner "as is", and shall be covered by Owner's indemnity provisions below.

If the City performs any of the Maintenance Activities, after City has served written notice to the Owner to perform the same, and the Owner has failed to do so within a reasonable time stated in the City's written notice, then Owner shall pay all of the City's costs incurred in performing the Maintenance Activities within sixty days of receipt of an invoice for those costs.

5. **Right of Entry and Inspection by City.** Owner hereby grants to City a perpetual right of entry over, under and across Owner's Property, for purposes of accessing the BMP's and performing inspection of the BMP's or any of the Maintenance Activities related to maintenance of the BMP's. City shall have the right, at any time and without prior notice to Owner, to enter upon any part of said area as may be necessary or convenient for such purposes. Owner shall at all times maintain the Property so as to make the City's access clear and unobstructed. City is required to perform periodic inspection of Structural BMPs.

Owner agrees to pay reasonable fees levied by the City on Owners of BMPs for the costs of managing the BMP inspection and maintenance tracking program.

6. **Administration of Agreement for City.** City hereby designates its Department of Development Services with responsibility and authority to administer this Agreement on behalf of City. Any notice or communication related to the implementation of this Agreement desired or required to be delivered to City shall be addressed to:

Director of Engineering / City Engineer
City of Santee
10601 Magnolia Avenue
Santee, CA 92071

The City Engineer is also granted authority to enter into appropriate amendments to this Agreement on behalf of City, provided that the amendment is consistent with the purposes of this Agreement as set forth above.

7. **Defense and Indemnity.** City shall not be liable for, and Owner and its successors in interest shall defend and indemnify City and the employees and agents of City, against any and all claims, demands, liability, judgments, awards, fines, mechanic's liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "CLAIMS"), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Owner, Owner's successors, or their contractors, licensees, agents, servants or employees, including, without limitation, claims caused by the concurrent negligent act, error or omission, whether active or passive of City. Owner shall have no obligation, however, to defend or indemnify City from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of City. Nothing in this Agreement, in the City's approval of the subdivision or other applications or plans and specifications, or inspection of the work, is intended to acknowledge responsibility for any such matter, and City shall have absolutely no responsibility or liability therefore unless otherwise provided by applicable law.

8. **Common Interest Developments.** If the Property is developed as a "Common Interest Development" as defined in Civil Code section 4100 which will include membership in or ownership of an "Association" as defined in Civil Code section 4080, then the following provisions of this Paragraph 7 shall apply during such time as the Property is encumbered by a "Declaration" as defined in Civil

Code section 4135, and the Common Area, as "Common Area" is defined in Civil Code section 4095, of the Property is managed and controlled by the Association:

(a) The Association, through its Board of Directors, shall assume full responsibility to perform the MAINTENANCE ACTIVITIES pursuant to this Agreement, and shall undertake all actions and efforts necessary to accomplish the MAINTENANCE ACTIVITIES, including but not limited to, levying regular or special assessments against each member of the Association sufficient to provide funding for the MAINTENANCE ACTIVITIES, conducting a vote of the membership related to such assessments if required by law. In the event insufficient votes have been obtained to authorize an assessment, the Association shall seek authority from a court of competent jurisdiction for a reduced percentage of affirmative votes necessary to authorize the assessment, re-conducting the vote of the membership in order to obtain the votes necessary to authorize an assessment, and the Association shall take all action authorized by the Declaration or California law to collect delinquent assessments, including but not limited to, the recording and foreclosure of assessment liens.

(b) No provision of the Declaration, nor any other governing document of the Association or grant of authority to its members, shall grant or recognize a right of any member or other person to alter, improve, maintain or repair any of the Property in any manner which would impair the functioning of the BMP's to manage drainage or storm water runoff as described in the SWQMP. In the event of any conflict between the terms of this Agreement and the Declaration or other Association governing documents, the provisions of this Agreement shall prevail.

9. **Agreement Binds Successors and Runs With the Property.** It is understood and agreed that the terms, covenants and conditions herein contained shall constitute covenants running with the land and shall be binding upon the heirs, executors, administrators, successors and assigns of Owner and City, shall be deemed to be for the benefit of all persons owning any interest in the Property (including the interest of City or its successors in the easement granted herein). It is the intent of the parties hereto that this Agreement shall be recorded and shall be binding upon all persons purchasing or otherwise acquiring all or any lot, unit or other portion of the Property, who shall be deemed to have consented to and become bound by all the provisions hereof.

10. **Owner's Continuing Responsibilities Where Work Commenced or Permit Obtained.** Notwithstanding any other provision of this Agreement, no transfer or conveyance of the Property or any portion thereof shall in any way

relieve Owner of or otherwise affect Owner's responsibilities for installation or maintenance of BMP's which may have arisen under the ordinances or regulations of City referred to in Recital B above, or other federal, state or local laws, on account of Owner having obtained a permit which creates such obligations or having commenced grading, construction or other land disturbance work.

11. **Amendment and Release.** The terms of this Agreement may be modified only by a written amendment approved and signed by the Director of Development Services and by the Owner or Owner's successor(s) in interest. This Agreement may be terminated and Owner and the Property released from the covenants set forth herein, by a Release which City may execute if it determines that another mechanism will assure the ongoing maintenance of the BMP's or that it is no longer necessary to assure such maintenance.

12. **Agreement is Intended to Supplement Not Supersede.** This Agreement is intended to supplement and not supersede the requirements of the Chapter 13.42 of the Santee Municipal Code – Storm Water Management and Discharge Control. The requirements listed herein are in addition to the requirements set forth in the Code including Civil Actions and Enforcement Powers established under the Code.

13. **Governing Law and Severability.** This Agreement shall be governed by the laws of the State of California. Venue in any action related to this Agreement shall be in the Superior Court of the State of California, County of San Diego, East County Division. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the
_____ day of _____, 20__.

CITY OF SANTEE:

By: _____
Carl Schmitz
City Engineer

OWNERS: _____

By: _____
(sign here)

(print name here)

(title of signatory)

By: _____
(sign here)

(print name here)

(title of signatory)

(All OWNERS must sign)

(Proper notary acknowledgment of execution by OWNER must be attached.)

(President or vice-president **and** secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering that officer to bind the corporation.)

**CITY OF SANTEE
CERTIFICATE OF ACCEPTANCE
FOR
AGREEMENT TO PERFORM STORM WATER FACILITIES MAINTENANCE**

This AGREEMENT by and between the City of Santee, a municipal corporation, and _____ is accepted for recording by the undersigned officers on behalf of the City of Santee pursuant to authority granted by Resolution No. 148-89 of the Santee City Council adopted on August 9, 1989.

Date: _____

By: _____
Carl Schmitz
City Engineer

PROVIDE NOTARY

EXHIBIT 'A'

