

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Temecula
41000 Main Street
Temecula, CA 92590
Attention: City Clerk

Exempt from Recording Fees pursuant to Government Code Section 27383
(Space above for Recorder's use)
APN:

**WATER QUALITY MANAGEMENT PLAN STORMWATER
COMPLIANCE AGREEMENT BETWEEN CITY OF TEMECULA AND
_____ TO RUN WITH THE LAND**

THIS AGREEMENT is made and entered into as of _____, 20__ between the City of Temecula, a municipal corporation ("City") and _____, a California corporation ("Owner"). In consideration of the foregoing recitals of fact and the mutual covenants set forth in this Agreement, the parties agree as follows:

1. Recitals. The parties hereto acknowledge and agree that this Agreement is made with respect to the following facts and purposes that each agrees to be true and correct.

A. Owner is the owner of the described and depicted on Exhibit A, Description of Property ("Property").

B. On _____, 20__, the Planning Commission/City Council approved the Owner's project entitled "_____" and adopted Resolution Nos. _____, _____, and _____ approving the land use entitlements for the project on the Property ("Project"). The Project generally consists of _____ residential units, _____ square feet of commercial space, and _____ parking spaces. Condition No. _____ for the Project requires the Owner to construct certain off-site public improvements.

C. The City is a co-permittee of the National Pollutant Discharge Elimination System (NPDES) and waste discharge requirements for discharges from the municipal separate storm sewer systems ("MS4s") draining the watersheds within the San Diego region; Order No. R9-2013-001, as amended by order Nos. R9-2015-0001 and R9-2015-0100; NPDES No. CAS0109266 ("MS4 Permit.")

D. Pursuant to the City's MS4 Permit, the City of Temecula BMP Design Manual and Municipal Code require the Owner to construct and install certain source control, site design, and structural "best management practices" improvements on the Property to manage storm water ("BMPs"). The City Engineer has reviewed and analyzed the Water Quality Management Plan and the proposed BMPs for the Project. The City Engineer has determined, however, that the Project Structural BMPs, including the BMPs for the off-site public improvements, are not feasible. The description of the Project Structural BMPs and the reasons why they are infeasible are set forth on Exhibit B., Project Structural BMPs; Infeasibility Analysis.

E. Owner has, therefore, requested that the City consider Stormwater Compliance options to meet its MS4 Permit obligations. The Regional MS4 Permit Provision E.3.c(3)(a)-(e) specifies requirements for Alternative Compliance options.

1) The City currently has a program in place to design and construct Stormwater Compliance Projects ("SWCPs"). Priority Development Projects ("PDP") applicants may pay an in-lieu fee to fund or partially fund City SWPs and the City will assign the funded portion of City SWPs to the PDP. The City Engineer and PDP applicant must agree to the appropriate fee, which must be paid by the PDP applicant to the City prior to project approval. In-Lieu fees are subject to availability of City SWPs and the discretion of the City Engineer.

2) Stormwater compliance refers to off-site compliance activities conducted by choice or by necessity, or both, when the full Pollutant Control and Hydromodification Performance Standards are not met through Structural BMPs implemented within the PDP site or the off-site public improvement site. Section F of the Temecula Project Specific WQMP generally represents two potential pathways for participating in Stormwater compliance (i.e. offsite projects that supplement the PDPs onsite BMP obligations).

3) SWCPs typically consist of implementing off-site projects in combination with the use of on-site "flow-thru" treatment control BMPs in lieu of some or all on-site Structural BMPs such that there is equal or greater benefit to water quality.

4) Section E.3.c(3)(a)-(e) of the MS4 Permit specifies requirements for Alternative Compliance options, including the use of approved Water Quality Equivalency calculations, WMAA Candidate Projects, and Project Applicant-Proposed Stormwater Compliance Projects. The MS4 Permit also specifies requirements for development and implementation of an In-Lieu Fee Structure and a Water Quality Credit System for transfer, accounting, and verification of fees and credits for Stormwater Compliance Projects. Additionally, this pathway is subject to all of the following criteria:

a) A voluntary agreement to implement the SWP must include reliable sources of funding for operation and maintenance of the applicant-proposed project.

b) The PDP applicant must provide adequate documentation in its Project Water Quality Management Plan, consistent with the Water Quality Equivalency Guidance Document and acceptable to the City, demonstrating that that pollutant control and/or hydromodification management within the proposed SWP are sufficient to mitigate for impacts caused by not implementing Structural BMPs fully on-site.

c) The SWP must satisfy all applicable trading area restrictions outlined in the MS4 Permit, the Water Quality Equivalency Guidance Document, and as required by the City Engineer.

d) Design of the SWCP must be conducted under the direction of an appropriately qualified and licensed engineer, and competent and proficient in the fields pertinent to the candidate project design.

e) The SWCP must be completed (constructed) prior to or concurrent with the first proposed PDP that will rely on it such that the SWP is operational prior to the certificate of occupancy of the first proposed PDP.

F. The City has designed and is constructing and installing an Stormwater Compliance Project consisting of _____, located at _____ and is more fully described on Exhibit C (“SWCP No. _____”), which includes the documentation of the SWP No. _____ compliance with the requirements of the MS4 Permit obligations described in Paragraph 1.E.

1) SWCP No. _____ serves the watershed that includes the Project.

2) SWCP No. _____ will provide a greater overall water quality benefit for the Watershed Management Area than fully complying with the performance requirements of Provisions E.3.c.(1) and E.3.c.(2)(a) of the MS4 Permit onsite.

3) The City agrees to maintain SWCP No. _____ following final inspection and acceptance by the Director of Public Works of SWCP No. _____.

2. Obligations of Owner

A. In lieu of constructing the BMPs for the Project, including the BMPs for the Project’s off-site public improvements, Owner shall pay to the City a fee of _____ dollars (\$ _____) (the “In Lieu Fee”). The In Lieu Fee shall be paid to the City or placed in an approved escrow account prior to the issuance of a grading permit for the Project. If the Owner elects to use an escrow account to hold the In Lieu Fee, the City Manager and Owner shall enter into an escrow agreement in substantially the form attached as Exhibit D.

B. Owner and City further acknowledge and agree that:

1) The fee represents the Owner’s fair share of the costs of construction, installation and maintenance of SWCP No. _____ with respect to the watershed in which the property is located.

2) Owner shall construct, install, and maintain, at its sole cost and expense, in perpetuity the on-site Source Control, Site Design, and Flow-Thru BMPs identified in the Project WQMP, but will not be required to construct and install the Structural BMPs set forth on Exhibit B., Project Structural BMPs; Infeasibility Analysis.

C. Prior to City granting occupancy, or intended use of any portion of the Project, or both: (1) SWCP No. _____ shall be completed; (2) the In Lieu Fee shall have been paid to the City or released from Escrow to the City; and (3) the on-site improvements described in Paragraph 2.B.2) shall be installed. If these requirements are not fulfilled to the satisfaction of the City Engineer, the City shall be under no obligation to issue a certificate of occupancy or other final approval allowing use of the Project.

3. **General**

A. Exhibits. The following Exhibits are attached to this Agreement and incorporated herein as though set forth in full:

- 1) Exhibit A Property Description
- 2) Exhibit B. Project BMPs; Infeasibility Analysis
- 3) Exhibit C. Description of SWCP No. _____
- 4) Exhibit D Escrow Agreement
- 5) Exhibit E Lender's Consent

B. Notices. Any and all notices, requests or other communications required or permitted to be given under this Agreement or by reason of this Agreement shall be in writing and shall be deemed to have been given when: (i) delivered in person or by courier or overnight delivery service; or (ii) three (3) business days after mailing, by certified or registered mail, to the parties at the following addresses or any such other address or addresses as the parties may, from time to time, designate in writing in the manner herein specified:

CITY: CITY OF TEMECULA
41000 Main Street
Temecula, CA 92590
Attention: City Manager

With a copy to:

RICHARDS, WATSON & GERSHON
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Attention: Mr. Peter M. Thorson, City Attorney

OWNER:

C. Valid and Binding Agreement. Each party has participated in the development and drafting of this Agreement. Each party has had the opportunity to consult with technical experts and legal counsel as to the content of this Agreement. Each party agrees that this Agreement is legal, valid and binding against the party.

D. Further Cooperation. Each party to this Agreement agrees to cooperate by performing any further acts and by executing and delivering any and all additional monies, items, or documents which may be reasonably necessary to carry out the terms and provisions of this Agreement, and each party to this Agreement agrees that it will not act in any manner whatsoever which would hinder, impede, interfere or prohibit or make more onerous or difficult the performance of the other party hereto under this Agreement.

E. Amendment. No amendment to this Agreement shall be effective unless first provided in writing and executed by the parties hereto.

F. No Agency or Joint Venture. The terms and provisions of this Agreement shall not cause the parties hereto or any of each parties' agents, consultants, contractors or other providers of professional services to be construed in any manner whatsoever as partners, joint venturers or agents of each other in the performance of their respective duties and obligations under this Agreement, or subject either party to this Agreement to any obligation, loss, charge or expense of the other party to this Agreement.

G. Time of Essence. Time is expressly made of the essence of each and every provision of this Agreement.

B Owner's Authority. Owner is entitled to enter into this Agreement and that all other persons, including without limitation, lenders, who may have some interests with respect to the Property have approved this Agreement as may be required by applicable law or agreements to which the Owner or its predecessors may be a party, and that by entering into this Agreement the Owner is not in violation or breach of any other agreement to which such Owner may be a party.

C Lender's Consent. All persons who hold a deed of trust or other security interest on the Property have duly executed the Lender's Consent in the form of Exhibit D and said Lender's Consents are attached to this Agreement.

H. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assignees.

I. Remedies. No remedy or election hereunder shall be deemed to be exclusive but shall, wherever possible, be cumulative with all other remedies at or in equity.

J. Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue for any action arising directly or indirectly under this Agreement shall be in the Superior Court of Riverside County, California.

IN WITNESS WHEREOF, the parties hereof have executed and entered into this Agreement as of the date set forth above.

OWNER

Name:
Title:

Name:
Title:

[SIGNATURES OF TWO CORPORATE OFFICERS OR CORPORATE AUTHORITY
RESOLUTION REQUIRED]

CITY OF TEMECULA, a municipal corporation

Aaron Adams
City Manager

Attest:

Randi Johl, JD, MMC
City Clerk

Approved as to form:

Peter M. Thorson
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A.
PROPERTY DESCRIPTION

EXHIBIT B.
PROJECT BMPS; INFEASIBILITY ANALYSIS

EXHIBIT C
DESCRIPTION OF SWCP NO. ____-

EXHIBIT D
ESCROW AGREEMENT

**EXHIBIT E
LENDER'S CONSENT**

**LENDER'S CONSENT AND SUBORDINATION TO AGREEMENT
FOR PAYMENT OF WATER QUALITY MANAGEMENT PLAN
STORMWATER COMPLIANCE**

1. _____ ("Lender") holds a security interest in a portion of the Property described in the **"WATER QUALITY MANAGEMENT PLAN STORMWATER COMPLIANCE AGREEMENT BETWEEN CITY OF TEMECULA AND _____ TO RUN WITH THE LAND"** ("Agreement") set forth above between _____, a California corporation, and _____, a California _____ ("Owner"), and the City Of Temecula, a municipal corporation ("City"), dated as of _____.

2. Lender acknowledges that the Agreement is an integral parts of the Owner's land use entitlements for the Property and provide significant benefits to the Owner and to the Property.

3. In consideration of the rights and benefits conferred upon the Owner by the terms of the Agreement and in recognition of the accrual of those benefits to the Lender in the event Lender takes possession of the Property, Lender hereby consents to the Agreement, its recordation and further agrees that Lender's interests in the Property are subject to, and made subordinate to, the rights and interests of the City as set forth in the Agreement.

4. The City agrees to provide notice of any default to Lender pursuant to Section 10 of the Agreement at the following address:

5. The individuals who have signed this document on behalf of Lender have the legal power, right, and authority approve this Consent and bind the Lender.

IN WITNESS WHEREOF the Lender has executed this Consent and Subordination as
of _____, _____.

▪
▪

Name:
Title:

Name:
Title:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)