

City Clerk  
City of Montclair  
P.O. Box 2308  
Montclair, CA 91763

SPACE ABOVE THIS LINE FOR RECORDERS USE

**WATER QUALITY MANAGEMENT PLAN AND STORMWATER BMP TRANSFER, ACCESS AND MAINTENANCE AGREEMENT**

**CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Montclair, a municipal corporation, hereinafter referred to as CITY, and \_\_\_\_\_ hereinafter referred to as OWNER.

WHEREAS, the Owner is the legal property owner of the real property situated in the State of California, County of San Bernardino, located at \_\_\_\_\_ in the City of Montclair, more commonly referred to as San Bernardino Tax Assessor Parcel No. \_\_\_\_\_ and more particularly described in Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, at the time of initial approval of the development project known as \_\_\_\_\_ within the Property described herein, the City required the project to employ Best Management Practices, hereinafter referred to as "BMPs" to minimize pollutants in urban runoffs; and

WHEREAS, in order to minimize pollutants in urban runoff and to minimize other adverse impacts of urban runoff, the Owner has chosen to install and/or implement BMPs as described in the Water Quality Management Plan, on file with the City, hereinafter referred to as "WQMP", a copy of which is attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, said WQMP has been certified by the Owner and reviewed and approved by the City; and

WHEREAS, said BMPs, with installation and/or implementation on private property and draining only private property, are part of a private facility with all maintenance or replacement therefore, the sole responsibility of the Owner in accordance with the terms of this Agreement;

WHEREAS, the Owner is aware that periodic and continuous maintenance, including, but not necessarily limited to, filter material replacement and sediment removal, is required to assure peak performance of all BMPs in the WQMP and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal Laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs;

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. The Owner hereby provides the City or the City's designee complete access, of any duration, to the BMPs and their immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by City's Director of Public Works or designee, no advance notice for the purpose of inspection, sampling, testing of the Device, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner's expense as provided in paragraph 3 below. The City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.

2. The Owner shall use its best efforts diligently to maintain all BMPs in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by the Owner and the Owner's representative or contractor in the removal and extraction of any material(s) from the BMPs and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination.

3. In the event the Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) days of being given written notice by the City, the City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense to the Owner or the Owner's successors or assigns, including administrative costs, attorneys fees and interest thereon at the maximum rate authorized by the law from the date of the notice of expense until paid in full.

4. The City may require the Owner to post security in a form and for a time period satisfactory to the City to guarantee the performance of the obligations stated herein. Should the Owner fail to perform the obligations under this Agreement, the City may, in the case of a cash bond, act for the Owner using the cash proceeds, or in the case of a surety bond, require the sureties to perform the obligations of this Agreement. As an additional remedy, the Director may reasonably withdraw any previous stormwater-related approval with respect to the property on which BMPs have been improperly installed, modified without permission of the City and/or inadequately implemented and maintained until such time as the Owner repays to the City its reasonable costs incurred in accordance with paragraph 3 above.

5. This Agreement shall be recorded by the Owner in the Office of the Recorder of San Bernardino County, California, at the expense of the Owner and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.

6. In event of legal action occasioned by any default or action of the Owner, or its successors or assigns, then the Owner and its successors or assigns agree(s) to pay all costs incurred by the City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.

7. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien against the Property.

8. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. The Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. The Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. The Owner shall provide a copy of such notice to the City at the same time such notice is provided to the successor.

9. Time is of the essence in the performance of this Agreement.

10. Any notice to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

IF TO CITY:

City of Montclair

5111 Benito Street

Montclair, CA 91763

IF TO OWNER

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the first written above.

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Michael C. Hudson P.E.  
Public Works Director/City Engineer

OWNER:

By: \_\_\_\_\_

Owner: \_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_  
(Signature and Date)

Name: \_\_\_\_\_  
(Please Print or Type Name)

Title: \_\_\_\_\_  
(Please Print or Type Title)

ATTEST:

\_\_\_\_\_  
Andrea Phillips, Deputy City Clerk