

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Desert Hot Springs
Attn: City Clerk
11999 Palm Drive
Desert Hot Springs, CA 92240

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**COVENANT AND AGREEMENT REGARDING WATER QUALITY MANAGEMENT
PLAN BMP, CONSENT TO INSPECT, MAINTENANCE AND INDEMNIFICATION**

APN(S): _____ **PERMIT NO.** _____
PROJECT NAME/NO. _____
OWNER(S): _____
PROPERTY ADDRESS/LOCATION: _____
LEGAL DESCRIPTION: _____

THIS AGREEMENT is made and entered into in Desert Hot Springs, California, this ____ day of _____ Year _____, by and between _____ (hereinafter referred to as “Covenantor” or “Owner”) and the CITY OF DESERT HOT SPRINGS, a California municipal corporation (hereinafter referred to as “City”).

RECITALS

WHEREAS, the Covenantor owns real property (“Property”) in the City of Desert Hot Springs, State of California, more specifically described in Exhibit “A” and depicted in Exhibit “B”, each of these exhibits is attached, and incorporated herein by this reference;

WHEREAS, the City is the owner of interests in that certain real property within the City of Desert Hot Springs, State of California, containing storm drain, pipelines, and related appurtenances constituting the City’s municipal separate storm sewer system (the City’s “MS4”);

WHEREAS, Covenantor intends to develop, improve, and/or use the Property in such a way that approval by the City for such development, improvement, and/or use is required pursuant to applicable laws;

WHEREAS, as a condition for said approval by the City, City requires Covenantor, and Covenantor desires to, restrict the use of the Property according to the conditions, covenants, equitable servitudes, and restrictions contained herein for the express benefit of the City’s MS4, which include requirements that the Property incorporate post construction on-site stormwater quality control measures;

WHEREAS, The Covenantor/Owner has chosen to install one or more _____ hereinafter referred to as “Device”, as the on-site control measure to minimize pollutants in urban runoff;

WHEREAS, the said Device has been installed in accordance with plans and specifications accepted by the City;

WHEREAS, said Device, with installation on private property is a private facility with all maintenance or replacement, therefore, the sole responsibility of the Covenantor/Owner in accordance with the terms of this Agreement;

WHEREAS, the Covenantor/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 Device 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, incorporating the foregoing Recitals and in consideration of the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and expressly for the benefit of, and to bind, their successors in interest, the parties hereto agree as follows:

1. Covenantor/Owner hereby provides the City or City's designee complete access to the Device and its immediate vicinity and such access onto the property to permit access to the device at any time, upon twenty-four (24) hour advance notice in writing, of any duration for the purpose of inspection, sampling and testing of the Device. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.
2. Covenantor/Owner shall use its best efforts diligently to maintain the Device in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of material(s) from the Device 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/Regional Water Quality Control Board (RWQCB), the Owner shall provide the RWQCB with documentation identifying the material(s) removed, the quantity, and disposal destination.
3. In the event Covenantor/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 Owner's successors or assigns, including administrative costs and interest thereon at the maximum rate authorized by the Civil Code from the date of notice of expense until paid in full.
4. The City may require the Covenantor/Owner to post security in a form and for a time period satisfactory to the County to guarantee the performance of the obligations stated herein. Should the Owner fail to perform the obligations under this Agreement, the County may, in the case of a cash deposit, certificate of deposit or letter of credit, act for the Owner using the

proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of the Agreement.

5. The City may, but shall not be obligated to, enforce this Agreement by a proceeding at law or in equity against any person or persons violating or attempting to violate any condition, covenant, equitable servitude, or restriction provided for herein, either to restrain such a violation or to recover damages.
6. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings with respect to the subject matter hereof, whether oral or written.
7. If any part of this Agreement is declared by a final decision of a court of competent jurisdiction to be invalid for any reason, such shall not affect the validity for the rest of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part(s). The parties declare that they intend and desire that the remaining parts of this Agreement continue to be effective without any part(s) that have been declared invalid.
8. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.
9. This Agreement shall be recorded in the Office of the Recorder of Riverside County, California and shall constitute notice to all successors and assigns of the title to said Property of the obligation set forth.
10. In the event of legal action occasioned by any default or action of the Covenantor/Owner, or its successor or assigns, then the Covenant/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.
11. Covenantor/Owner agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and contractors from and against any and all liability, expense, including costs and reasonable legal fees, and claims of damage of any nature whatsoever including, but not limited to, death, bodily injury, personal injury, or property damage arising from or connected with the City inspection of the Property except where such liability, expense, or claim for damage results from the sole negligence or willful misconduct of the City.
12. 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 thereon against.

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

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

15. 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.

COVENANT OWNER:

CITY:

Desert Hot Springs
Attn: Public Works
11999 Palm Drive
Desert Hot Springs, CA 92240

[SIGNATURES ON FOLLOWING PAGE – MUST BE NOTARIZED]

**SIGNATURE PAGE TO
CITY OF DESERT HOT SPRINGS
WATER QUALITY MANAGEMENT PLAN AND STORMWATER BMP OPERATION
AND MAINTENANCE AGREEMENT WITH _____**

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF DESERT HOT SPRINGS
a California Municipal Corporation

By: _____
Jilleen Ferris
City Engineer

a _____

By: _____
Signature

Name (Print)

Title (Print)

By: Signature

Attest:

Name (Print)

City Clerk

Title (Print)