

**RECORDING REQUESTED BY:**

CITY OF MENIFEE

**AND WHEN RECORDED MAIL TO:**

CITY OF MENIFEE  
CITY CLERK  
29844 HAUN ROAD  
MENIFEE, CA 92586-6540

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**WATER QUALITY MANAGEMENT PLAN AND STORMWATER BEST  
MANAGEMENT PRACTICES OPERATION, TRANSFER, MAINTENANCE AND  
RIGHT OF ENTRY AGREEMENT**

**PROJECT NAME:**

\_\_\_\_\_

**PROPERTY OWNER NAME:**

\_\_\_\_\_

**PROPERTY ADDRESS:**

\_\_\_\_\_

\_\_\_\_\_

**APN:**

\_\_\_\_\_

**THIS AGREEMENT** is made and entered into in

\_\_\_\_\_, California, this \_\_\_\_\_ day of

\_\_\_\_\_, 201\_\_\_\_, by and between

\_\_\_\_\_, herein after

referred to as "Owner", and the CITY OF MENIFEE, a municipal corporation, located in the County of Riverside, State of California hereinafter referred to as "CITY";

**WHEREAS**, the City is a Co-Permittee for discharging stormwater from its MS4 facilities pursuant to the Santa Ana Regional Water Quality Control Board Order No. R8-2010-0033, MS4 NPDES Permit No. CAS 618033. Under the terms of the permit the City is required to enforce the provisions of the permit within its jurisdiction. The requirements contained in this agreement are intended to achieve the goals of the MS4 permit;

**WHEREAS**, the Owner owns real property ("Property) in the City of Menifee, County of Riverside, State of California, more specifically described in Exhibit "A" and depicted in Exhibit "B", each of which exhibits is attached hereto and incorporated herein by this reference;

**WHEREAS**, at the time of initial approval of 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 runoff;

**WHEREAS**, 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," to minimize pollutants in urban runoff and to minimize other adverse impacts of urban runoff;

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

**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. Right of Access: Owner hereby provides the City of Menifee 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 the City's Engineer, no advance notice, for the purpose of inspection, sampling, testing of the Device, and in case of emergency to direct all necessary repairs or other preventative measures at owner's expense in accordance with the procedures set forth in paragraph 3 below. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.
2. Responsibility for Operation and Maintenance of BMPs: 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 Owner and 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. City Maintenance at Owner's Expense: In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this

Agreement, the City may cause such maintenance to be conducted on Owner's Property at Owner's expense if Owner does not commence and diligently work to perform the maintenance within five (5) days of receiving written notice from the City, in accordance with paragraph 10 below, of Owner's failure to comply with the terms of this Agreement. The City may charge the entire cost and expense of any maintenance undertaken by the City, whether performed as a response to an emergency situation or following five (5) day written notice by the City, to the Owner or Owner's successors or assigns, including administrative costs, attorney's fees and interest thereon at the maximum rate authorized by the Civil Code from the Date of the notice of expense until paid in full. The City, at its sole election, may take these costs to be a lien upon the property that may be collected at the same time and in the same manner as ordinary municipal taxes as provided in Government Code section 38773.5. Nothing in this section or this Agreement creates an obligation by the City to maintain or repair any BMP, nor does this section prohibit the City from pursuing other legal recourse against Owner.

4. Surety Bond: The City may require the owner to post security in 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 the Agreement, the City may, in the case of a cash bond, 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. As an additional remedy, the City's Engineer may withdraw any previous stormwater-related approval with respect to the property on which BMPs have been installed and/or implemented until such time as Owner repays to City its reasonable costs incurred in accordance with paragraph 3 above.
5. Recording: This agreement shall be recorded in the Office of the Recorder of Riverside 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. Attorney's Fees: 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. Covenant: 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 there against.
8. Binding on Successors: 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. 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.
9. Time of the Essence: Time is of the essence in the performance of this Agreement.

10. Notice: 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.

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

**IF TO CITY:**

City of Menifee  
29844 Haun Road  
Menifee, CA 92586-6540

**IF TO OWNER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY:**

By: \_\_\_\_\_  
Armando G. Villa,  
City Manager

**OWNER:**

By: \_\_\_\_\_  
NAME  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jeffery T. Melching, City Attorney

**OWNER:**

By: \_\_\_\_\_  
NAME  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sarah A. Manwaring, City Clerk

**NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGE**

**EXHIBIT A**  
**(Legal Description)**

**EXHIBIT B**  
**(Map/Illustration)**