

When Recorded, Return to:
CITY OF TACOMA
Center for Urban Waters
326 East D Street
Tacoma, WA 98421-1801

Attention:
Environmental Programs Group

DOCUMENT TITLE: VOLUNTARY AGREEMENT AND COVENANT
Grantor: CITY OF TACOMA, a Municipal Corporation
Grantee: Type Name of Property Owner Here
Legal Description (abbreviated): ****Example**** Northeast Quarter of Section 27, Township 20 North, Range 3, Quarter 12 See Page x, Exhibit "B" for Complete Legal Description
Assessor's Tax Parcel ID: Type Parcel No(s) Here

CITY OF TACOMA VOLUNTARY AGREEMENT REGARDING PAYMENT IN-LIEU OF CONSTRUCTION

This voluntary agreement ("**Agreement**") is, for reference purposes only, dated the ____ day of ____, 20____, and is entered into by and between the undersigned owner of the benefitted premises referred to as the "Applicant" and the City of Tacoma, a municipal corporation operating under the laws of the state of Washington as a first class city, herein referred to as the "City."

Commented [HM1]: Date the document is recorded – fill this in before recording.

RECITALS

WHEREAS, the City has established a Payment In-Lieu-of Construction Program codified at Section 12.08.870 of the Tacoma Municipal Code ("**TMC**"), and

WHEREAS, the program is available for qualified new development and redevelopment projects required to mitigate for stormwater impacts to apply to the Director of Environmental Services to pay a system development charge in-lieu-of constructing required water quality treatment best management practices on the project site, and

WHEREAS, under the program the available capacity of the regional stormwater facilities to provide water quality treatment for mitigation of stormwater impacts will be allocated to qualifying benefitted premises; provided that, a system development charge will be assessed to reimburse the City for the Applicant's equitable share of the historic capital costs to construct or expand regional stormwater facilities to provide mitigation capacity for projects approved under the Program, and

WHEREAS the system development charge is based upon the weighted average present worth of capital costs for each of the three designated regional stormwater facilities, and

WHEREAS, benefitted premises accepted into the Payment In-Lieu-of Construction Program may be subject to assessment of a maintenance surcharge to recover the additional cost of maintenance, operation, and repair of regional stormwater facilities providing specific benefit to the benefitted premises, and

WHEREAS, the applicant has applied for acceptance of its Project and Benefitted Premises into the Payment In-Lieu-of Construction Program, and

WHEREAS, the Environmental Services Director has reviewed the application and determined that the proposed project is a qualified project under TMC 12.08.870, and

WHEREAS, the Applicant and City now desire to enter into an agreement setting forth the terms and conditions pursuant to which the applicant agrees to pay a system development charge in consideration for the City's covenant to make mitigation capacity available to mitigate stormwater impacts associated with new development or redevelopment of the benefitted premises as described herein;

NOW THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, and payments to be performed and made, the Parties hereto agree as follows:

1. Definitions.

For the purposes of this Agreement and the Exhibits attached hereto, where capitalized the terms, phrases, words and their derivations as used herein shall have the meanings given herein. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, municipal code, regulation or rule referred to herein be renumbered, re-codified, and/or amended, then the reference shall be read to refer to the renumbered provision, re-codified, and/or amended provision.

"Applicant" shall mean and refer to the owner of the benefitted premises. The owner of the Benefitted Premises is: (insert Name of Owner(s)).

"Benefitted Premises" shall mean and refer to the specific parcel(s), tract(s), or lot(s), or portions thereof (the "**Property**"), the new development or redevelopment of which has been approved under the Program for mitigation of associated stormwater impacts in-lieu-of constructing individual water quality treatment and/or flow control best management practices on the project site. Such benefitted premises, and associated improvements, are depicted in Exhibit "A" attached hereto and incorporated by this reference as though fully set forth herein. The Property is legally described in Exhibit "B" attached hereto and incorporated by this reference as though fully set forth herein.

"Director" shall mean and refer to the Director of Environmental Services or successor Department, and designee.

"Maintenance Surcharge" shall mean and refer to the maintenance surcharge authorized pursuant to TMC 12.08.870 and established for the Foss Regional Stormwater Facilities pursuant to Ordinance No.28521 as a monthly surcharge on the property owner's surface water bill of \$0.02 per square foot of area requiring mitigation. Such maintenance surcharge is depicted in Exhibit "C" attached hereto and incorporated by this reference as though fully set forth herein.

"Mitigation Capacity" shall mean the available capacity of the regional stormwater facilities to provide water quality treatment for mitigation of stormwater impacts.

"Program" shall mean and refer to the Payment In-Lieu-of Construction Program codified at TMC 12.08.870.

"Project" shall mean and refer to the land altering activities and improvements as submitted to the City by the Applicant for project permit approval.

"Regional Stormwater Facility" shall mean and refer to the Foss Regional Stormwater Facilities which are designated by the Director to be utilized under the Program to provide mitigation capacity.

“System development charge” shall mean and refer to the system development charge authorized pursuant to TMC 12.08.870 and established for the Foss Regional Stormwater Facilities pursuant to Ordinance No. 28521 as \$1.87 per square foot of surface area of the Benefitted Premises requiring stormwater mitigation in accordance with Minimum Requirement #6 – Water Quality Treatment. Such system development charge is depicted in Exhibit “C” attached hereto and incorporated by this reference as though fully set forth herein.

2. Purpose.

A. The Applicant has applied for City of Tacoma permits for the Project which will require the square footage of mitigation capacity as depicted in Exhibit “C” attached hereto and incorporated by this reference as though fully set forth herein.

B. The City and the Applicant agree that the proposed Project creates an impact to the downstream stormwater system and receiving waters. These impacts are required by Tacoma Municipal Code (TMC) 12.08 to be mitigated by the use of stormwater facilities. Under the City of Tacoma Stormwater Management Manual (SWMM), this Project requires the use of a water quality treatment facility to manage stormwater runoff. The City agrees that the use of a regional stormwater facility will appropriately mitigate for the impacts created by the project.

C. To mitigate for impacts caused by the proposed Project, and in consideration for the covenant by the City as set forth herein, the Applicant shall pay a System Development Charge in lieu of constructing onsite water quality treatment for stormwater mitigation. The Applicant's System Development Charge will be calculated and paid before Permit closeout for the Project, based upon the square feet of surface area requiring stormwater mitigation as set forth above. A System Development Charge of \$xxxx- to be completed by the City of Tacoma is due and payable to the City as a condition of closeout of City of Tacoma Permit No xx – to be completed by the City of Tacoma.

D. To mitigate for impacts caused by the proposed Project, and in consideration for the covenant by the City as set forth herein, the Applicant shall pay a maintenance surcharge to mitigate for operation and maintenance costs of the regional stormwater facilities. A maintenance surcharge of \$xxx-to be completed by City of Tacoma per month will be placed on the surface water bill for the property. The maintenance surcharge may be adjusted at any time based upon adjustments made to operation and maintenance costs of the regional stormwater facilities.

3. Satisfaction of Flow Control and/or Water Quality Treatment Facility Requirements.

Upon execution of this Agreement and actual payment of the System Development Charge to the City, the Applicant shall be deemed to have satisfied the stormwater mitigation requirement for the Project as permitted. Additional impacts created on the Benefitted Premises at a later date shall be required to mitigate for those impacts as required by those laws in affect at the time of permit application.

4. City's Covenant.

Upon receipt of payment of the System Development Charge by Applicant and receipt of the original of this Agreement fully executed by the Applicant, the City covenants that it shall

allocate mitigation capacity within the Regional Stormwater Facilities for impacts resulting from the Project as permitted that are required by Tacoma Municipal Code (TMC) 12.08 to be mitigated by the use of stormwater facilities.

5. Miscellaneous Provisions.

A. **Governing Law and Venue.** Washington law shall govern the interpretation of this License Agreement. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Agreement.

B. **Successors in Interest.** This Agreement and the covenants, restrictions and servitudes set forth herein touch and concern the land, shall run with the land, shall be binding on all owners of the Benefitted Premises, or any interest therein, and shall inure to the benefit of, and be enforceable by, the Applicant, its successors and assigns.

C. **No Third Party Beneficiaries.** This Agreement shall be for the sole benefit of the Parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

D. **Waiver.** A waiver or failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this License Agreement.

E. **Entire Agreement.** This Agreement contains the entire agreement between the Parties. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Agreement are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

G. **Modification.** No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.

H. **Authority to enter into this Agreement.** The undersigned Applicant, or representative of Applicant, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Agreement for and on behalf of Applicant.

I. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together, shall be deemed to be one and the same instrument. A facsimile or electronic signature of Licensee shall be sufficient to bind Licensee.

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(Use this page if owner is a corporation, firm, limited liability company, association, partnership, the state or political subdivision of the state – delete other page not used.)

CITY OF TACOMA

OWNER

Michael P. Slevin III, P.E. (Date)
Environmental Services Director

Name
Title
Business Address
Business Address
Federal Tax ID No.

Andrew Cherullo (Date)
Finance Director

Approved as to Form:

Chris Bacha (Date)
Chief Deputy City Attorney

STATE OF WASHINGTON)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared before me _____ (name), known to be the _____ (officer) of the corporation and purported owner of the Benefitted Premises that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that she/he was authorized to execute the said instrument.

Given under my hand and official seal this ____ day of _____, 20____.

NOTARY PUBLIC in and for the State of
Washington, residing in _____
Print Name: _____
My commission expires: _____

(Use this page if owner is an individual or marital community – delete other page not used.)

CITY OF TACOMA

OWNER(S)

Michael P. Slevin III, P.E. (Date)
Environmental Services Director

Owner Name
Address
Address

Andrew Cherullo (Date)
Finance Director

Chris Bacha (Date)
Chief Deputy City Attorney

STATE OF **WASHINGTON**)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared before me _____ (name(s)), known to be the purported owner(s) of the herein described Benefitted Premises that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that she/he was authorized to execute the said instrument.

Given under my hand and official seal this ____ day of _____, 20____.

NOTARY PUBLIC in and for the State of
Washington, residing in _____
Print Name: _____
My commission expires: _____

EXHIBIT "A"

(Depiction of Benefitted Premises and Permitted Project Improvements)

EXHIBIT "B"

(Legal Description of Property)

****EXAMPLE****

Beginning *****feet East of the Southwest Corner of the Northwest Quarter of the Northeast Quarter of Section ***** , Township *****North, Range 3 East of the Willamette Meridian, records of Pierce county Auditor.
THENCE South 0 degrees 11 minutes East 93 feet to the point of beginning.

Situate in the City of Tacoma of Pierce County, State of Washington

EXHIBIT "C"

(Application for Payment In-Lieu-Of Construction Program – To Be Inserted by City of Tacoma)