

[To Be Used for projects
not involving land
subdivisions]

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Building Official
City of Tustin
300 Centennial Way
Tustin, CA 92780-3767

Space Above This Line For Recorder's Use Only

**COVENANT AND AGREEMENT REGARDING O & M PLAN TO FUND AND
MAINTAIN WATER QUALITY BMPS, CONSENT TO INSPECT, AND
INDEMNIFICATION**

This Agreement Regarding O&M Plan to Fund and Maintain Water Quality BMPs, Consent to Inspect, and Indemnification and Covenant Running With the Land ("Agreement") is made on this ___ day of _____, 20__, by and between The City of Tustin, a California municipal corporation ("Covenantee" or "City") and the undersigned property owner(s) ("Covenantor").

RECITALS

A. Covenantor is the owner of the following real property ("Property")
[Provide Address, Legal Description and APN Number]:

B. The City is the owner of interests in that certain real property within the City of Tustin, County of Orange, State of California, containing storm drains, pipelines, and related appurtenances constituting the City's municipal separate storm sewer system (the City's "Storm Drain System").

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

D. As a condition for said approval by the City, City required Covenantor, and Covenantor desires to, restrict the use of Property according to the conditions,

covenants, equitable servitudes, and restrictions contained herein for the express benefit of the City's Storm Drain System.

NOW, THEREFORE, incorporating the foregoing Recitals and in consideration thereof, 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:

AGREEMENT

1. Operation and Maintenance ("O&M") Plan for Best Management Practices ("BMPs")

Covenantor, and each successive owner of an interest in all or any part of the Property ("Owner(s)") shall, throughout the period of their respective ownership, implement, and fund implementation of, the O&M Plan for the Property, which was approved by the City as part of the Water Quality Management Plan ("WQMP") required for development of the Property, and shall operate, inspect, maintain, repair, and replace the Best Management Practices ("BMPs") described in the O&M Plan for the Property, which includes:

- a. Description of all post-construction BMPs (non-structural and structural),
- b. Description of the Property owner's(s') responsibilities and required training of persons performing BMP implementation, operation, maintenance, and inspection,
- c. Implementation frequency and operating schedule,
- d. Inspection/maintenance frequency and schedule,
- e. Specific BMP implementation, maintenance, and inspection activities,
- f. Description of all permits required for the implementation, operation, and maintenance of BMPs,
- g. Forms to be used in documenting implementation, operation, maintenance, and inspection of BMPs,
- h. Recordkeeping requirements.

A copy of the approved O&M Plan is described in the current WQMP for the project, as it may be amended from time to time according to its terms, which is on file with the City of Tustin Community Development Department, and is incorporated herein by this reference.

2. Compliance with Tustin City Code and Consent to Inspect

Owners shall use and maintain the Property in full compliance with the provisions of the O&M Plan and the Tustin City Code section 4900 et seq., as it may be amended from time to time. Owners hereby consent to inspection of the Property by an inspector authorized by the City Manager, or his or her designee, for the purpose for verifying compliance with the provisions of this Agreement.

3. Indemnification

Owners agree 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 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 its elected officers, employees, agents, or contractors.

4. Rights and Obligations Run With the Land

Unless terminated in accordance with Paragraph 5, below, or by law, the rights and obligations of the parties hereunder shall constitute covenants, benefits, burdens, conditions, equitable servitudes, and restrictions which run with the land in perpetuity and which shall be binding upon, and inure to the benefit of, each Owner during its respective period of ownership of all or any part of the Property. No Owner shall be bound by, or entitled to the benefit of, said rights and obligations, upon transfer by the Owner of its entire interest in the Property, in fee, to a successor in interest to the Property.

5. Termination of Agreement Upon Termination of WQMP

This Agreement and the conditions, covenants, equitable servitudes, and restrictions set forth herein shall terminate upon termination of the WQMP applicable to the Property in accordance with its terms. Upon termination of the WQMP applicable to the Property, the Owner may request that the City execute a recordable document approved by the City approving and acknowledging termination of this Agreement. A recorded document duly executed and acknowledged by the Director of Community Development of City, or his or her designee, approving termination of this Agreement shall be conclusive evidence of such termination.

7. Enforcement

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 violation or to recover damages.

8. Entire Agreement.

This Agreement constitutes the entire agreement and understanding between the parties with respect of 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.

9. Severability.

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 of 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. The parties declare that they intend and desire that the remaining parts of this Agreement continue to be effective without any part or parts that have been declared invalid.

10. Counterparts.

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.

11. Attorneys' Fees.

If any party files an action or brings any proceeding against the other arising from this Agreement, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorneys' fees and costs to be fixed by the court. A party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be included in calculating the amount of a judgment for purposes of deciding whether a party is entitled to its costs or attorneys' fees.

12. Amendment.

No modification, amendment, addition to, or alteration of the terms of this Agreement whether written or verbal, shall be valid unless made in writing, formally approved and executed by the City and the current Owner(s) of the Property, and duly recorded.

13. Authority of Signatories to Agreement.

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement on behalf of the parties for which execution is made. Each party represents and warrants to the other that the execution of this Agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**“CITY” / “COVENANTEE”
CITY OF TUSTIN**

Dana L. Ogdon, AICP
Assistant Director of Community
Development

ATTEST:

Erica N. Yasuda, City Clerk

APPROVED AS TO FORM:

David Kendig, City Attorney

“COVENANTOR”

Name of Covenantor

Signature

Title

Signature

Title

[Signatures to be Notarized]

ACKNOWLEDGMENT

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)

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)**