

Appendix D. Long Term Agreements for Implementation and Maintenance

STANDARD CC&R PROVISION LANGUAGE FOR FUNDING AND MAINTENANCE OF O&M PLAN FOR WATER QUALITY BMPS

The CC&Rs applicable to the Property shall include the following provision (or a substantially similar provision approved by the City Attorney):

The homeowners association shall implement, and fund implementation of, the Operation and Maintenance (“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 and maintain 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 and maintenance,
- c. Implementation frequency and operating schedule,
- d. Inspection/maintenance frequency and schedule,
- e. Specific maintenance activities,
- f. Required permits from resource agencies, if any,
- g. Forms to be used in documenting implementation, operation and maintenance activities,
- 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. The homeowners association shall maintain a copy of the current WQMP at a location on the Property.

The Property shall be, and the homeowners association shall ensure that the Property is, used and maintained 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. The City shall have the right to inspect the Property for the purpose of verifying compliance with this provision. The homeowners association shall 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. The City shall be an intended third-party beneficiary to this

provision. The City shall have the right and authority, but not the obligation, to enforce this provision by any legal or equitable means, or by any method available to the homeowners association as provided elsewhere in the CC&Rs, against the Declarant, homeowners association, Owners, their successors and assigns, or other persons in possession of the Property. This provision shall not be amended or terminated without the written approval of the City of Tustin Community Development Department.

**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

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions ("Declaration") is made by the undersigned property owner(s) ("Declarant").

Recitals

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

WHEREAS, Declarant intends to establish a common plan for the improvement and development of the Property and to subject the Property to the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration, for the benefit of its future owners and their successors in interest in the Property.

NOW, THEREFORE, Declarant declares that the Property described above is held and will be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration, all of which are declared and agreed to be in furtherance of water quality requirements described below in this Declaration for the benefit of the City of Tustin's municipal separate storm drain system. All of the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration will run with the land and will be binding on all persons having or acquiring any right, title, or interest in the Property, or any part thereof, and will inure to the benefit of the City of Tustin ("City"). Each grantee of a conveyance or purchaser under a contract or agreement of sale covering any right, title, or interest in any part of the Property, by accepting a deed or contract of sale or agreement of purchase, accepts the document subject to, and agrees

to be bound by, any and all of the conditions, covenants, equitable servitudes and restrictions set forth in this Declaration.

Water Quality Requirements

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

Declarant 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 Operation and Maintenance (“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 and maintain 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 and maintenance,
- c. Implementation frequency and operating schedule,
- d. Inspection/maintenance frequency and schedule,
- e. Specific maintenance activities,
- f. Required permits from resource agencies, if any,
- g. Forms to be used in documenting implementation, operation and maintenance activities,
- 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 [City Municipal 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 consents 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 Declaration.

Indemnification

3. 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 during their respective period of ownership, except where such liability, expense, or claim for damage results from the sole negligence or willful misconduct of the City.

Term and Termination

4. Term

Unless terminated in accordance with Paragraph 5, below, or by law, the conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration shall run with the land in perpetuity, and shall be binding upon Declarant and each successive Owner during the ownership of all or any part of the Property and upon each person having any interest therein derived through the owner thereof. No Owner of all or any part of the Property shall be personally liable for any violation of any conditions, covenants, equitable servitudes, or restrictions set forth in this Declaration occurring before acquiring an interest in all or a part of the Property or after such interest is transferred, in fee, to another successor in interest to the Property. Each owner shall provide actual notice of this Declaration and its terms to its respective successor(s) in interest to the Property prior to transfer of said interest to such successor(s) in interest.

5. Termination of Declaration

The conditions, covenants, equitable servitudes, and restrictions set forth in this Declaration 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 Declaration. A recorded document duly executed and acknowledged by the Director of Community Development of City, or his or her designee, approving termination of this Declaration shall be conclusive evidence of such termination.

Enforcement by the City

6. The City of Tustin is benefited by this Declaration and shall be entitled to, but not obligated to, enforce this Declaration in an administrative proceeding or judicial proceeding at law or at equity against any person(s) violating or attempting to violate any condition, covenant, equitable servitude, or restriction either to restrain such violation or to recover damages.

Severability

7. Invalidation of any one of these conditions, covenants, equitable servitudes, or restrictions by judgment or court order will not affect any of the other provisions, which will remain in full force and effect.

Counterparts

8. This Declaration 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.

Attorneys' Fees

9. If the City or any Owner files an action or brings any proceeding against the other arising from this Declaration, 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.

Amendment

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

Authority of Signatories to Declaration

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first written below.

Print Name of Property Owner

Print Name of Property Owner

Signature of Property Owner

Signature of Property Owner

Title

Title

Dated this _____ day of _____, 200__.

*****Space Below This Line For Notary's Use*****

ALL-PURPOSE ACKNOWLEDGEMENT

State of California
County of _____

On _____ [date], before me, _____ [name and title of officer taking acknowledgement], personally appeared _____ [name(s) of person(s) signing instrument], _____ [personally known to me or proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s) _____ [is or are] subscribed to the within instrument and acknowledged to me that _____ [he or she or their] signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

[Seal]

*****Space Below This Line For City's Use*****

Approved for recording by:

H. Henry Huang, P.E. C.B.O.
Building Official

Date: _____

**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 _____, 200_, 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 and maintain 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 and maintenance,
- c. Implementation frequency and operating schedule,
- d. Inspection/maintenance frequency and schedule,
- e. Specific maintenance activities,
- f. Required permits from resource agencies, if any,
- g. Forms to be used in documenting implementation, operation and maintenance activities,
- 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.

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. Each Owner shall provide actual notice of this Agreement and its terms to its respective successor(s) in interest to the Property prior to transfer of said interest to such successor(s) in interest.

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 _____

H. Henry Huang, P.E., C.B.O.
Building Official

APPROVED AS TO FORM:

Douglas C. Holland,
City Attorney

“COVENANTOR”

Name of Covenantor

Signature

Title

Signature

Title

[Signatures to be Notarized]

ACKNOWLEDGEMENT

State of California
County of _____

On _____ [date], before me, _____ [name and title of officer taking acknowledgement], personally appeared _____ [name(s) of person(s) signing instrument], _____ [personally known to me or proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s) _____ [is or are] subscribed to the within instrument and acknowledged to me that _____ [he or she or their] signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

[Seal]

ACKNOWLEDGEMENT

State of California
County of _____

On _____ [date], before me, _____ [name and title of officer taking acknowledgement], personally appeared _____ [name(s) of person(s) signing instrument], _____ [personally known to me or proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s) _____ [is or are] subscribed to the within instrument and acknowledged to me that _____ [he or she or their] signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

[Seal]