

## **STORMWATER FACILITY MAINTENANCE AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ by and between the CITY OF WHEAT RIDGE, COLORADO, a home rule municipal corporation (the "City"), and \_\_\_\_\_, (the "Developer"), together referred to as the "Parties".

### **RECITALS:**

The Developer is the owner of certain real property located in the City of Wheat Ridge, which is more particularly described in **Exhibit A** and made a part hereof (the "Property"), commonly known as \_\_\_\_\_.

On \_\_\_\_\_, \_\_\_\_\_ the City of Wheat Ridge approved a Final Drainage Report and Plan (the "Report") defining the stormwater drainage facilities intended to reduce, detain, convey, and otherwise manage stormwater runoff ("drainage facilities") and facilities intended to provide stormwater quality enhancement or benefits ("water quality facilities") for the Property. Said drainage facilities and water quality facilities collectively will hereinafter be referred to as the "Facilities".

THE City requires that the Facilities shall be constructed and function as defined in the approved Report and related civil construction plans, and be properly and adequately maintained by the Property Owner(s), Successors, Heirs, and Assigns.

THE CITY requires the Owner(s) to submit an Operation and Maintenance Manual as specified in THE CITY's Stormwater Management Manual, hereinafter referred to as the "O&M Manual,"

The approvals cited above are contingent upon the express condition that all duties created by this Agreement be faithfully performed by the Developer.

### **AGREEMENT**

NOW, therefore, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions necessary to ensure proper performance and maintenance of the Facilities by the Developer of the Property. All conditions contained herein are in addition to any and all requirements of the City of Wheat Ridge Charter, any and all state statutes, and any other sections of the City of Wheat Ridge Municipal Code and are not intended to supersede any requirements contained therein.

2. **Maintenance:** The Owner shall provide maintenance for all the facilities as described on the Plan to ensure that the Facilities are and remain in proper working condition in accordance with THE CITY's Stormwater Management Manual, and other applicable City approved standards, and applicable legal requirements. Maintenance shall include routine landscaping, sediment removal, repair, reconstruction, or replacement of the Facilities as necessary to meet the requirements of this Agreement.
3. **Performance:** The maintenance of the Facilities shall be performed in accordance with the O&M Manual for the specified facility. In the event that an O&M does not exist, the Owner will be required to prepare one in accordance with the specifications set forth in THE CITY's Chapter 20 Stormwater Quality Ordinance (Sec. 20-34 and Sec. 20-35), and submit to THE CITY for recommendation and approval.
4. **Inspections:** The Owner shall cause inspections on the facilities to be conducted as follows:
  - A. The Owner agrees to cause inspection of the facilities, at the Owner's expense, by a person experienced in the inspection of stormwater facilities. Inspections shall occur at least once every calendar year.
  - B. An inspection report shall be submitted in writing to THE CITY prior to January 15<sup>th</sup> of each year for the Facilities. The inspection report shall be in accordance with the requirements set forth in the O&M Manual.
  - C. The Owner agrees to perform promptly all needed maintenance and report maintenance activities in accordance with the requirements set forth in the O&M Manual.
5. **Easements:** In the event that no drainage easements exist or the existing easements are inadequate for proper maintenance of said Facilities, the Owner, hereby, grants, bargains and conveys to THE CITY and its agents easements over the property for access from public rights-of-way, abutting private roadway, and/or private driveway, to said Facilities for the sole purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing Facilities to the extent that the Owner fails to do so and as necessary to ensure their proper working condition as provided in paragraphs two and three above.
6. **Deficiencies.** In the event the Owner fails to inspect, report, or properly maintain the Facilities within fourteen (14) days after written notice by THE CITY of such deficiencies to the owner, THE CITY may enter upon the property and take whatever steps it deems necessary to maintain the Facilities. However, if the Owner's failures could cause damage to property, loss of life or a violation of a NPDES MS4 Permit, THE CITY may take immediate action, without notice to the Owner, to alleviate that failure. It is expressly understood and agreed that THE

CITY is under no obligation to maintain or repair the Facilities and in no event shall this Agreement be considered to impose any such obligation on THE CITY.

7. **Subdivision:** The Owner agrees that it will not at any time dedicate the Facilities to the public, to public use or to THE CITY without THE CITY's written consent, nor will it subdivide or convey the property without covenant providing that a proportionate share of the cost of maintenance and other costs associated with other of the obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.
8. **Emergencies.** In an event of emergency involving Facilities, THE CITY or its agents may enter immediately upon the Property and take whatever reasonable steps it deems necessary to meet the emergency. THE CITY shall notify the Owner of such emergency and entry as soon as possible but in no event later than twenty-four (24) hours after such entry. Alternatively, THE CITY may notify the Owner by phone to take whatever reasonable action is necessary within a specified period of time. Should the Owner fail to respond, or should the Owner inform THE CITY that it intends to not respond within the specified period of time, THE CITY or its agents may enter immediately upon emergency.
9. **Compensation.** THE CITY shall not pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Facilities, including access to the Facilities.
10. **Reimbursement.** In the event THE CITY, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or construction of the Facilities, including labor, equipment, supplies and materials, the Owner shall reimburse THE CITY within ten (10) days after THE CITY gives the Owner written notice of such expenditures.
11. **Obligations and Indemnification.**
  - A. The responsibilities and obligations of the Owner shall constitute a covenant running with the land, and shall be binding upon all present and subsequent owners, their administrators, executors, assigns, heirs, and any other successors in interest so long as they own an interest in the Property of any portion thereof served by the Facilities
  - B. The Owner agrees that it will not at any time dedicate the Facilities to the public, to public use or to THE CITY without THE CITY's written consent, nor will it subdivide or convey the property without covenant providing that a proportionate share of the cost of maintenance and other costs associated with other of the obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.
  - C. The Owner, its successors and assigns shall indemnify and hold harmless THE CITY, its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against

THE CITY arising out of or resulting from the construction, presence, existence maintenance or use of the Facility.

- D. The Owner shall notify THE CITY when the Owner transfers its interest in Property or any portion thereof. The Owner shall supply THE CITY with a duly executed copy of any document of transfer. The Owner agrees to notify THE CITY upon any change of legal address.

12. **Breach by the Developer; the City's Remedies.** The Owner recognizes that the executed Final Development Plan, Administrative Site Plan, Location and Extent, Use by Special Review, Engineering Case, or other case process determined by THE CITY to be a final plan, includes the following language: "The property owner shall be responsible for maintenance of all permanent Best Management Practices (BMP's) and Stormwater Facilities installed pursuant to the Subdivision Improvement Agreements and the Operations and Maintenance (O&M) Manual. Requirements include, but are not limited to, maintaining the specified BMP's contained in the O& M Manual recorded at **Development Case Number \_\_\_\_\_**, and the Stormwater Facilities shown in the approved Final Civil Drawings. The Owners of this Subdivision, their successors and/or assigns in interest, or some entity other than THE CITY, agree to the responsibility of maintaining all permanent BMP's and/or Stormwater Facilities associated with this development. If the permanent BMP's and Stormwater Facilities are not properly maintained, THE CITY may provide necessary maintenance and assess the maintenance cost to the owner of the property." Failure to abide by the note shall constitute a Zoning Violation, as defined in the City of Wheat Ridge Stormwater Quality Code (Chapter 20, Sec. 20-34) .

If the Owner or its successors or assigns fail to make timely payment as required herein, Owner hereby authorizes THE CITY to file a mechanic's lien on the Property in the amount of unpaid work, foreclose on that lien and request and be awarded its costs and attorney fees.

Any amounts owed to THE CITY and not paid within ten (10) days of the date of notification shall be the joint and several obligations of any owner of record of the Property or any portion thereof served by the Facilities, on the date the liability arose and all of the successors, heirs, or assigns of interest of such Owner(s).

In addition, any fines or assessments levied against THE CITY as a result of the Owners or its successors, heirs, or assigns failure to comply with the terms of this Agreement shall be the sole and absolute responsibility of the Owner or its successors or assigns.

13. **Agreement to be Recorded:** This Agreement shall be recorded in Jefferson County Clerk and Records Office.

