

**STORMWATER FACILITY MAINTENANCE
AGREEMENT**

This Stormwater Maintenance Agreement is entered into this _____ day of _____, 20___, by and between Pueblo, a municipal corporation (“the City”) and _____ (the “Owner”), and collectively referred to as the “Parties”.

RECITALS

WHEREAS, Owner owns certain real property located in the City of Pueblo legally described as follows:

and more commonly known as _____ (the “Property”); and

WHEREAS, a Drainage Report and Plan (“Plan”) for the Property has been approved by the City subject to and conditioned upon faithful performance by Owner of all duties created by this Agreement; and

WHEREAS, said Plan provides for stormwater management facilities including such facilities intended to reduce, detain, convey, and manage stormwater runoff and also water quality facilities (collectively referred to as “Facilities”); and

WHEREAS, the Facilities shown on the Plan shall be constructed and adequately maintained by the Owner; and

WHEREAS, the City requires that the Owners submit an Operation and Maintenance Manual (“O & M Manual”) as specified by the City.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

AGREEMENT

1. The Owner shall maintain the Facilities as described in the Plan to ensure that such Facilities are and will remain in proper working condition in accordance with the approved O & M Manual and other applicable legal requirements. Maintenance shall include, but not be limited to, routine landscaping, sediment removal, repair, reconstruction, or replacement of the Facilities as necessary to meet the requirements of this Agreement.
2. The maintenance of the Facilities shall be performed in accordance with the O & M Manual for the Facilities.

3. The Owner shall cause the inspections of the Facilities to be conducted as follows:
 - a. The Owner agrees to cause inspections of the Facilities, at the Owner's expense at least once every calendar year.
 - b. An inspection report for the facilities shall be submitted in writing to the City for each calendar year by no later than April 1st of the following year. The inspection report shall be in accordance with the requirement set forth in the O & M Manual.
 - c. The Owner agrees to perform promptly all needed maintenance and repairs and report such activity to the City pursuant to the O & M Manual.
4. The Owner, hereby, grants, bargains and conveys to the City, officers, agents, and employees an easement over the Property for access from public rights-of-way, abutting private roadways, and/or private driveways, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing the Facilities to the extent that the Owner fails to do so and as necessary to ensure their proper working condition as provided in paragraphs one and two above.
5. In the event the Owner fails to inspect, report, or properly maintain the Facilities within thirty (30) 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 or repair the Facilities and bill the owner for such expense plus an administrative charge of 15%. However, if the Owner's failure to properly maintain the facilities could cause damage to property, loss of life or violation of a NPDES MS-4 Permit, the City may take immediate action, without notice to the Owner, to maintain or repair the Facilities. 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.
6. 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 a covenant providing that a proportional share of the cost of maintenance and other costs associated with any other of the obligations and duties contained herein runs with each subdivided or conveyed part of the original Property.
7. In an event of emergency involving the Facilities, the City, its officers, agents, and employees 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 time period. 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, its officers, agents, and employees may enter immediately upon the emergency.
8. 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.

9. In the event the City, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or repair of the Facilities, including labor, equipment, supplies and materials, the Owner agrees to reimburse the City within thirty (30) days after the City gives the Owner written notice of such expense. If the Owner or its successors or assigns fail to make timely payment as required herein, interest on such payment shall accrue at the rate of 1.5% per month until paid in full.
10. Any amount owed to the City and not paid within thirty (30) days of notification shall be the joint and several obligation of any owner of record of the Property or any portions thereof served by the Facilities and any successors in interest to such owner on the date such maintenance or repair was performed. The City shall have the right to take any legal action necessary to collect said amounts, and any such owner shall be responsible for all reasonable costs of collection, including attorney's fees, and accrued interest. The City's rights and remedies hereunder shall be in addition to any rights, remedies or enforcement authority under applicable law and City Ordinance including but not limited to §16-12-10, PMC.
11. The Owner, its successors, and assigns shall indemnify and hold harmless the City, its officers, 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 of maintenance or use of the Facilities. The Owner shall notify the City when the Owner transfers its interest in the Property or any portion thereof. The Owner shall provide the City with a copy of any such deed.
12. 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 or any portion thereof served by the Facilities.
13. The Owner acknowledges that any future site plan, master plan, drainage plan or other process determined by the City to be a final plan, shall include the following language (or similar language approved in writing by the City): "The property owner, its successors, and assigns shall be responsible for maintenance of the Stormwater Facilities pursuant to the Operations and Maintenance (O & M) Manual and all permanent Best Management Practices (BMPs). Requirements include, but are not limited to, installing the specified BMPs contained in the Drainage Report and Plan and maintaining the Facilities as shown in the O & M Manual as approved by the City. If the Facilities are not properly maintained, the City may provide necessary maintenance and assess the cost to the Owner of the property in accordance with the Stormwater Facility Maintenance Agreement approved by the City and recorded at the Pueblo County Clerk and Recorder's Office."
14. This Agreement shall be recorded at the Pueblo County Clerk and Recorder's Office.
15. In the event either of the Parties hereto files a lawsuit to enforce the terms of the Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

IN WITNESS WHEREOF, the City and the Owner have executed this Agreement on the date set forth above.

CITY:

By: _____
Director of Stormwater, City of Pueblo, Colorado (§16-12-10(d), P.M.C.)

Approved as to Form:

City Attorney, City of Pueblo, Colorado

OWNER:

_____, a _____ (corp/llc, indicate)

By: _____
, as

Or (if non corporate entity)

(The Acknowledgement (notarization) will vary for Owner depending on if Owner is an individual, corporation, partnership, etc. Also, where there is a mortgage on the property, the mortgage holder must sign the Subordination section of this Agreement) An Affidavit of Authority/Incumbency to execute shall be supplied for any entity.

ACKNOWLEDGEMENT

(For an individual acting as principal by an attorney in fact)

State of _____)
_____)ss
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____
_____ as attorney in fact on behalf of _____.

[seal]

Notary Public
My Commission Expires:

ACKNOWLEDGMENT

(By any public officer, trustee, or personal representative)

State of _____)
_____)ss
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____
_____ as _____ for the Owner, _____
_____.

[seal]

Notary Public
My Commission Expires:
