Stormwater Maintenance Agreement between the City of Aurora, acting by and through its Utility Enterprise and

_____

This Stormwater Maintenance Agreement ("Agreement"), effective _____, 20___, is made by and between the City of Aurora ("City"), acting by and through its Utility Enterprise and _____ ("Owner"). The City and Owner shall be referred to herein as "Party", and collectively as "Parties". The City and Owner agree as follows:

Paragraph 1. The Owner owns or will own certain property and public improvements, including stormwater and drainage improvements on the parcel of land known as Lot ___, Block ___, Filing _____, _____ Subdivision, County of _____, State of Colorado ("Property"). The Owner has installed, or caused to be installed, upon the Property the permanent stormwater Best Management Practices (BMPs). Certain inspections and maintenance of those BMPs are required under the Owner's Inspection and Maintenance Plan, also referred to as the Operations and Maintenance Manual dated _____, and approved by the City of Aurora (Inspection and Maintenance Plan (IM Plan)) which is attached, and made a part of this Stormwater Maintenance Agreement as Exhibit A. The Owner agrees, at the Owner's sole expense, to inspect, maintain, and to ensure proper functioning of the BMPs, in accord with and as set out in the IM Plan, as set forth herein below. If the Owner conveys the Property, Owner shall provide a copy of the IM Plan along with a copy of this Agreement to the Grantee. Upon conveyance, Owner shall thereafter be relieved of its obligations under this Agreement. However, such obligations shall run with the Property and become the obligation of Grantee.

Paragraph 2. In accordance with the City of Aurora Municipal Code 138-442.5, the Owner has submitted an IM Plan (Exhibit A). That IM Plan was approved by the City _____, 20___. The Owner has also submitted the Drainage Plan. That Drainage Plan was approved the City on _____, 20__.

Paragraph 3. The Owner shall inspect the BMPs at least once every calendar year, and shall submit written inspection reports to Aurora Water prior to May 31 of that calendar year. The City is under no obligation whatsoever pursuant to this Agreement to notify the Owner of any failure to submit inspection reports.

Paragraph 4. The Owner shall promptly perform all maintenance, and shall report maintenance activities to Aurora Water in accordance with the requirements set forth in the IM Plan.

Paragraph 5. Subject to the notice and Owner's right to cure requirements of City of Aurora Municipal Code Section 138-442.5, in the event that the Owner fails to inspect, maintain, or repair any BMP, Owner agrees that the City, at the City's sole discretion, shall have the right to enter upon the Property without warrant or further process of law and may make whatever inspection. Following the City's compliance with the notice requirements of 138-442.5, and Owner's right to cure any deficiencies noted, if the Owner fails to timely cure such deficiencies, the City shall have the right to enter upon the Property without warrant or further process of law and may complete whatever maintenance or repair may be needed, all at the Owner's sole cost. The City shall bill the Owner by invoice for any costs incurred by the City, including but not limited to personnel, contracting, labor, or materials, and the Owner shall pay those costs within thirty (30) City business days of the invoice date.

Paragraph 6**.** This Agreement shall be binding upon the Owner and the Owner's heirs, successors, and assigns. This Agreement shall be recorded at the Clerk and Recorder's Office. The benefits and burdens of this Agreement shall run with the land.

Paragraph 7. Governing Law. This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, ordinances, rules, and regulations of the City of Aurora. The Parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in the City of Aurora, Colorado.

Paragraph 8. Appropriation and availability of funds. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Agreement is expressly subject to appropriation of funds by the City Council and the availability of those funds for expenditure.

Paragraph 9. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on this Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

Paragraph 10. Amendments. This Agreement may be amended only by prior writing executed by duly authorized representatives of the Property Owner and the City, and recorded in the records of the Clerk and Recorder's Office.

Paragraph 11. Headings. The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Paragraph 12. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

Paragraph 13. Non-waiver of Rights. No waiver of default by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Owner shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the Owner.

Paragraph 14. Waiver. This Agreement is for the benefit of the Owner. The Owner does hereby waive, remise, and release any claim, right, or cause of action the Owner may have or which may accrue in the future, whether under theories of contract or any other cause of action whatsoever, against the City arising in whole or in part from this Agreement.

City of Aurora, Colorado,
Acting by and through its
Utility Enterprise

_____ _____
Vernon A. Adam Date
Engineering Services Manager

Approve as to form for Aurora:

_____ _____
Christine McKenney Date
Client Group Manager
City Attorney Office

State of Colorado)
) ss
County of Arapahoe)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Vernon A. Adam, Engineering Services Manager, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

Acknowledgement
(For an individual acting in his or her own right)

For the Owner:

_____	_____	_____
Print Name	Signature	Date

_____
Title

State of _____)
) ss
County of _____)

The foregoing instrument was subscribed and affirmed before me this _____day of _____, 20__, by _____.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

(The Acknowledgement (notarization) will vary for Owner depending on if Owner is an individual, corporation or partnership. Also, where there is mortgage on the property, the mortgage holder must sign the Subordination section of this Agreement.)

Acknowledgement
(For a Corporation)

_____	_____	_____
Print Name	Signature	Date

_____
Title

State of _____)
) ss
County of _____)

The foregoing instrument was subscribed and affirmed before me this _____day of _____, 20__, by _____ of _____, a _____ corporation, on behalf of the corporation.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

Acknowledgement
(For a Partnership)

_____	_____	_____
Print Name	Signature	Date

_____
Title

State of _____)
) ss
County of _____)

The foregoing instrument was subscribed and affirmed before me this _____day of _____, 20__, by _____, as _____, on behalf of _____, a partnership.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

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

_____	_____	_____
Print Name	Signature	Date

_____
Title

State of _____)
) ss
County of _____)

The foregoing instrument was subscribed and affirmed before me this _____day of _____, 20__, by _____, as an attorney in fact on behalf of _____.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

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

_____	_____	_____
Print Name	Signature	Date

_____
Title

State of _____)
) ss
County of _____)

The foregoing instrument was subscribed and affirmed before me this _____day of _____, 20__, by _____, as _____.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

Subordination

_____, as holder of a mortgage or other lien or interest described as _____upon the parcel of land known as Lot _____, block _____, _____ Subdivision, Parcel Number _____, hereby intentionally and unconditionally subordinates that mortgage or other lien or interest in favor of this Stormwater Maintenance Agreement.

_____	_____	_____
Print Name	Signature	Date

_____
Title

State of _____)
) ss
County of _____)

The foregoing Subordination was acknowledged before me this _____ day of _____, 20__, by _____ as the Authorized Agent of _____ on behalf of _____ _____.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)