

**CITY OF GRAND JUNCTION
POST-CONSTRUCTION STORMWATER CONTROLS AND
BEST MANAGEMENT PRACTICES
OPERATIONS AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this 11th day of September, 2006 by and between DEAN VAN GUNDY, (hereinafter the "Landowner"), and the City of Grand Junction, Colorado (hereinafter "Municipality");
WITNESSETH

RECITALS

The Landowner is the owner of certain real property described as Van Gundy North Subdivision, a subdivision of the City of Grand Junction, Colorado;

The Landowner is developing the Property;

The Municipality, and the Landowner, his successors and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site stormwater Best Management Practices be constructed and maintained on the Property.

For the purposes of this agreement, the following definition shall apply:

BMP – "Best Management Practice;" activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Municipal Stormwater Pollution Prevention Ordinance, including but not limited to infiltration trenches, seepage pits, filter strips, bioretention, wet ponds, permeable paving, grassed swales, forested buffers, sand filters and detention basins.

The Municipality requires, through the implementation of this Agreement, that Post-Construction Storm Water Management BMPs as required by the Final Grading Plan and the Municipal Stormwater Pollution Prevention Ordinance be constructed and adequately operated and maintained by the Landowner, his successors and assigns;

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein and the following terms and conditions, the parties hereto agree as follows:

1. The BMPs shall be constructed by the Landowner in accordance with the plans and specifications shown and described in the Final Grading Plan.
2. The Landowner shall operate and maintain the BMP(s) as shown and described on the Final Grading Plan in good working order acceptable to the Municipality and in accordance with the specific maintenance requirements noted on the Final Grading Plan. Inspections of the BMP(s) shall be performed on an annual basis to ensure good working order with the inspection results sent to the Municipality.

3. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. The Municipality shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMP(s) as shown and described on the Final Grading Plan in good working order acceptable to the Municipality, the Municipality or its representatives may, upon the giving of fifteen (15) business days' written notice and upon the failure of Landowner to maintain and operate the BMP(s) as shown on the Final Grading Plan, enter upon the Property and take such reasonable action is deemed necessary to maintain and/or reconstruct said BMP(s). This provision shall not be construed to allow the Municipality to erect any permanent structure on the land of the Landowner. It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.
5. In the event the Municipality (after giving reasonable notice to Landowner and after Landowner's failure to reasonably comply with the terms hereof), pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all reasonable expenses (direct but not indirect) incurred within thirty (30) days of receipt of invoice from the Municipality.
6. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
7. Except regarding act or failure to act of the the Municipality and/or its employees, officers and/or agents, the Landowner, its administrators, assigns, and other successors in interests, shall release the Municipality's employees and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner..
8. The Municipality shall endeavor to inspect the BMP(s) at a minimum of once every year to ensure their continued functioning.

This Agreement shall be recorded in the Mesa County, Colorado land records and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)



For the City of Grand Junction:

[Handwritten signature]

(SEAL)

For the Landowner:

Dean H. Van Gundy

ATTEST:

Stephanie Turner (City of Grand Junction)

County of Mesa, Colorado

I, *Susan M. Mueller*, a Notary Public in and for the County and State aforesaid, whose commission expires on the 30th day of June, 2010, do hereby certify that Dean Van Gundy, whose name(s) is/are signed to the foregoing Agreement bearing date of the 11th day of September, 2006, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS 12th day of September, 2006

Susan M. Mueller

NOTARY PUBLIC

(SEAL)

