

# PERFORMANCE BOND AGREEMENT

State of Colorado

## **STORMWATER AGREEMENT**

This Agreement, made and entered into as of this 14<sup>th</sup> day of March, 1997, by and among the Town of XXXX, a municipal corporation of the State of Colorado (hereinafter the “Town”), XXXX, Inc., a not for profit membership corporation of the State of Colorado (hereinafter “NFP”), XXXX Company, a mutual ditch and reservoir company of the State of Colorado (hereinafter “DRC1”). The XXXX Company, a Colorado mutual ditch and reservoir company (hereinafter “DRC2”), the XXXX Company, LLC, a Colorado limited liability company, (hereinafter “LLC”), and XXXX District, a quasi municipal corporation of the State of Colorado (hereinafter the “District”).

### **WITNESSETH**

WHEREAS, LLC is in the process of developing approximately 67 acres of residential property in the XX of Section XX, Township X South, Range XX West of the 6<sup>th</sup> P.M. in the City and County of XXXX, described as subbasin F in the “Final Regional and Site Drainage Study for the Villages at XXX Creek” by XXX, Inc., revised March, 1995, (hereinafter the “LLC Property”), the stormwater surface runoff from which has historically drained in the form of sheet runoff onto and across portions of two parcels of land in the N/2 of said Section 13 owned by the Town and NFP; and

WHEREAS, the District proposes to dispose of the post-development stormwater runoff expected to occur on the LLC Property through sheet runoff from certain developed lots on the northern portion of the LLC Property and in and through a storm drainage system, and to discharge the concentrated storm runoff from the drainage system onto and across portions of two parcels of land in the N/2 of said Section 13 owned by the Town and NFP and then into the ABCD Ditch and the XXXX Reservoir (the “Reservoir”), which are owned and operated respectively by DRC2 and DRC1 for the carriage and storage of water belonging to their shareholders and which Reservoir has been classified by the Colorado Water Quality Control Commission as a Class 1 Recreational, Class 1 Warm Water Aquatic and Agricultural Water; and

WHEREAS, the District seeks to secure the right to discharge that concentrated stormwater onto the lands of the Town and NFP, into the ABCD Ditch and ultimately into the Reservoir; and

WHEREAS, the Town, NFP, DRC1, DRC2 are willing to grant the District the necessary easements to permit their property to be thus burdened for a consideration to which all parties have agreed, and under such terms and conditions that their property not be damaged by that discharge, and that the quality of the water thus discharged into either the ABCD Ditch or the Reservoir meet certain performance standards to which all of the parties have also agreed.

All parties hereto recognize that the creation and use of the Wetland Pond portion of the Water Quality Control Facility is compatible with the use of the property of the Town and NFP as a wildlife preserve and refuge as well as a bird sanctuary.

NOW THEREFORE, for and in consideration of the premises and the mutual promises hereinafter contained the parties hereto mutually agree as follows:

1. Upon execution of this Agreement, the Town and NFP shall grant to the District a nonexclusive perpetual easement for the construction, operation, repair, maintenance and replacement of certain stormwater facilities on lands owned by the Town and NFP and for the discharge of concentrated stormwater (including surface runoff and the discharge of groundwater from an underdrain system) from the LLC property onto and across the property of the Town and NFP. In addition the Town agrees to grant LLC a temporary grading easement and a perpetual non exclusive slope, or grading easement along the boundary of the Town's property as depicted on Exhibit "C" to Exhibit "A-1" to this Agreement. At the same time DRC1 and DRC2 shall grant to the District a nonexclusive perpetual license for the delivery of that discharge into the ABCD Ditch, the Reservoir and other facilities of DRC1 and DRC2 below the Reservoir. NFP, as the owner of the underlying fee that is burdened by the existing easements for the ABCD Ditch and the Reservoir agrees to grant the District a non exclusive easement to use those facilities and to ratify the creation of such additional servitudes on its land by confirming the actions of DRC1 and DRC2 in granting those licenses. The grants of those easements and licenses (the "Drainage Easements and Licenses") shall be evidenced by the deliver to the District of instruments in the forms depicted in Exhibits "A-1" through "A-4" hereto.

2. In consideration for the grants from the Town, NFP, DRC1 and DRC2 of the Drainage Easements and License Agreements described in paragraph 1 hereof, the District agrees as follows:

2.1 The District agrees to pay NFP the sum of One Hundred Thousand Dollars (\$100,000.00) at the time of the execution of this Agreement.

2.2 The District agrees, at its expense, to construct or cause to be constructed a boundary line fence on the common boundary between the LLC Property and the properties of the Town, of NFP and that parcel of land nominally held in the name of The National Audubon Society by deed recorded under Reception No. 80047794 in the public records of Jefferson County, Colorado. The fence shall be constructed in accordance with the fencing details which are set forth in Exhibit "B" hereto, provided that the upright members of the fence located on the common boundary line between the LLC Filing No. 8 property and the property of the Town shall extend above the upper horizontal member of that

fence by at least 4 inches; such fencing details have been approved by the Town and NFP. Any amendments or modifications of those fencing details must be approved by the Town and NFP prior to construction. Within sixty (60) days from the recordation of the final plat for each of the three tracts comprising the LLC Property, but no later than June 30, 1997, the portion of the fence along the boundary of each such tract shall be completed. The District shall be responsible for maintenance and repair of the fence. Within thirty (30) days of the completion of the boundary line fence in accordance with those approved fencing details, the Town shall pay the District the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00).

2.3 The District agrees to construct by June 30, 1997 (the “Completion Date”), at its expense, a stormwater and water quality control facility comprised of three stormwater detention ponds on the LLC Property (the “Detention Ponds”) and an artificial wetland pond (the “Water Quality Control Facility”) on that portion of the property of the Town and NFP located between the boundary line fence and the line of the ABCD Ditch or the shore of the Reservoir. The final design and specifications of the Detention Ponds and the Water Quality Control Facility are attached as Exhibit “C”. By their execution of this Agreement, the Town, NFP, and DRC1, hereby approve of, and consent to the construction of the Detention Ponds and the Water Quality Control Facility in accordance with Exhibit “C”. Upon 24-hour written notice to the District, NFP and DRC1 shall have the right to inspect the construction of the Detention Ponds and the Water Quality Control Facility to assure compliance with the design specifications. Once constructed, the facility shall be operated, maintained, rehabilitated, replaced or upgraded to assure that it will function in accordance with the criteria, terms and conditions, including the remedies hereinafter set forth in paragraph no. 3.

2.3.1. If the work on construction of the Water Quality Control Facility is directly affected and delayed by fire, earthquake, inclement weather conditions, or other acts of God, strike, riot, insurrection, or governmental regulation (each a “force majeure event”), the District shall notify the NFP in writing within five calendar days after the event occurs which causes such delay. So long as the District is not otherwise in default under this Agreement, the Completion Date shall be extended for a period of time equal to the period of the delay but in no event shall the aggregate amount of extensions of the Completion Date be extended more than 30 calendar days.

2.4 The District agrees to design and install the Detention Ponds and Water Quality Control

Facility to control the storm runoff from the LLC Property to meet the following criteria:

2.4.1 The concentrated stormwater from the LLC Property resulting from a two-hour, 10-year storm event shall be discharged from the Water Quality Control Facility to the lands of the Town and NFP, and to the ABCD Ditch at a rate not to exceed 17 c.f.s.

2.4.2. The combined active storage capacity of the Detention Ponds shall not be less than 6.4 acre feet and an additional 0.6 acre foot of flood detention storage shall be provided in the Water Quality Control Facility. They shall be maintained at least that capacity so long as they are used for the purposes for which they shall have been constructed.

2.5 By these presents, LLC to NFP grants all of its right, title and interest in and to that certain Boathouse building presently located on LLC property near the Northeast corner of Filing No. 8, together with the right to enter on the LLC property to take possession thereof and remove it from the LLC property upon condition that this grant shall be null and void and title to said building shall revert to LLC if NFP shall not have removed the building from the LLC property by April 11, 1997. In making this grant LLC makes no warranties to NFP with respect to that building of any kind, express or implied. In accepting this grant, NFP agrees to indemnify and hold LLC harmless from any and all claims, demands, damages, liabilities or causes of action of any kind arising out of activities by NFP or any one on its behalf taken in connection with the removal of said Boathouse.

2.6 LLC shall reimburse DRC2 for its actual reasonable legal fees and other expenses incurred in reviewing and approving this Agreement and granting the license contemplated hereby.

3. The District agrees that the quality of the baseflow and stormwater runoff being discharged from the Water Quality Control Facility to the ABCD Ditch and into the Reservoir shall meet the performance standards contained in paragraph 3.2 below and shall not impair the

to the Reservoir, as they may be revised from time to time. As a condition of invoking remedies under this Agreement to address a claimed breach by the District of narrative or numeric Reservoir ambient water quality standards or of any claimed impairment of Reservoir uses, it shall be the burden of the Town, NFP, and/or DRC1 to: establish and implement a water quality sampling and laboratory analyses program for the Reservoir adequate to accurately identify baseline water quality conditions in the Reservoir as of the date of this Agreement and to accurately monitor changes in Reservoir water quality, for the parameters for which the District is required to test under this Agreement; deliver to the District copies of all sampling protocol and laboratory water quality analyses for the Reservoir; and show the extent to which the total contribution of constituent loading by the District, when compared with the total contribution of such constituents from other sources for the same time period or stormwater event, or the extent to which the acute concentration of such constituents contributed by the District, when compared with the acute concentrations thereof contributed from other sources for the same time period or stormwater event, has caused an impairment of the existing uses of the Reservoir or violation of the water quality standards applicable to the Reservoir. Such proof shall include a demonstration that reducing the contribution of contaminants in the stormwater from the LLC property will remediate in whole or in part, the claimed impairment of existing Reservoir uses or violation of Reservoir water quality standards. The current set of water quality standards applicable to the Reservoir is set forth on Exhibit "D" to this Agreement; and the District agrees not to disapprove of the development by the Town, NFP or DRC1 of programs for the management of their properties to maintain or improve the quality of the water in the Reservoir to meet those performance standards, so long as such programs do not adversely affect the District's ability to perform its statutory functions. In the performance of its continuing obligation, the District agrees, at its sole expense, to:

3.1. Institute, not later than July 1, 1998, and thereafter maintain on an ongoing basis, a program to monitor the quantity and quality of the baseflow and stormwater discharges from the Water Quality Control Facility so as to determine the effectiveness of the water quality control practices undertaken by the District. At a minimum, the currently acceptable program must include:

3.1.1. The installation, maintenance, repair and replacement of three area-velocity flow meters, similar or superior in accuracy and performance to the ISCO Model 4250 equipped with continuous recorders to measure the rate of flow of water entering the Detention Ponds controlling the runoff from the LLC Property and to measure the rate of flow of water being discharged from the Water Quality Control Facility.

3.1.2. The installation, maintenance, repair and replacement of three multiplexing sequential/composite water samplers similar or superior in performance to the

ISCO Model 3700 at the locations of the meters required by paragraph 3.1.1. hereof, to sample the quality of the baseflow and stormwater runoff discharging into the Detention Ponds controlling the runoff from the LLC Property and to sample the quality of the water being discharged from the Water Quality Control Facility.

- 3.1.3. Commencing on July 1, 1998 and using the equipment thus installed, water quality samples from all three sampling sites shall be taken under the supervision of an appropriately-trained individual and tested by use of protocols and methods capable of measuring at least the practical quantification limits set forth for each of the constituents listed on Exhibit "E" by a qualified laboratory mutually acceptable to the District, NFP and DRC1, during the period from March 1 through September 30 of each year (the Sampling Season) with the following frequency:
  - 3.1.3.1. Samples from four storm events per year (two in the spring and two in the summer) of at least 0.10 of an inch of precipitation but not more than 0.5 of an inch of precipitation. Three samples shall be taken at each sampling site at times during the course of each storm event to assure that they will be representative of the quality of the flow occurring throughout the entire hydrograph of that event.
  - 3.1.3.2. Samples from four dry weather flows (base flows) to be taken from water discharging from the Water Quality Control Facility, if any, and if not, from the water impounded in that facility (two in the spring and two in the summer).
- 3.1.4. Each sample taken shall be stored and transmitted to the testing laboratory following generally accepted practices prescribed by that laboratory which shall test the samples thus delivered to it and

provide original copies of the results of those tests as soon as they are finished to the water quality consultant designated by NFP and DRC1. A flow-

weighted mean concentration shall be determined for each constituent tested from each storm event. A simple grab sample shall be taken for base flow events. The water quality constituents to be tested for by the laboratory shall include:

- 3.1.4.1. For each stormwater sample delivered to it, total suspended solids, chemical oxygen demand, fecal coliform and the nutrients listed on Exhibit "E". For each base flow sample delivered to it, the nutrients listed on Exhibit "E".
- 3.1.4.2. For the samples from one spring storm event (March through June), one summer storm event (July through September), and one summer base flow event, the constituents listed for such events on the supplement to Exhibit "E".
- 3.1.4.3. Using the data from those tests, the consultant shall develop two sets of flow-weighted Sampling Season Average Concentrations for each constituent listed on Exhibit "E". One set shall be for storm events and one set shall be for dry season flows (base flows). The initial average shall be developed from the data produced by the first four sets of samples tested. Thereafter, as each new set of samples is tested, the average shall be revised to include the data from it and the data from the last preceding three sets of samples tested and excluding the data from any samples prior thereto.
- 3.1.4.4. The sampling and testing program required hereby shall continue for a period of five years after the LLC property shall have been fully developed, after which, the frequency of sampling may be changed and the suite of herbicides and pesticides and other constituents contained on Exhibit "E" may be changed from time to time with the mutual consent of the District, NFP and DRC1.

3.2 The District agrees to operate and maintain the Detention Ponds and Water Quality Control Facility, so that the flow-weighted sampling Season Average Concentration of



each constituent either achieves the percent of removal standard applicable to that constituent as set forth on Exhibit “E” or does not exceed the applicable average numeric standard for that constituent as set forth in Exhibit “E”, and so that the concentration of constituents discharging from that facility which are found to be in any single sample (whether from a storm event or a dry season flow) do not exceed the numeric performance standards for the maximum allowable concentrations set forth on exhibit “E”. The percent of removal standard is the percent by which the concentration of a constituent discharging from the water quality control facility is required to be reduced from the concentration of that constituent entering the Detention Ponds.

3.2.1. If the quality of the water discharging from the Water Quality Control Facility fails to meet the applicable numeric performance standards or percent of reduction performance standards required by paragraph 3.2. above, or if the discharge from the Water Quality Control Facility fails to meet the performance standards of the preceding paragraph 3, then the District shall, in the company or with the consultation of the water quality consultant designated by NFP and DRC1 and within 30 days after the discovery of such failure, take one or more of the following steps in order to correct the deficiencies in an expeditious and timely manner.

3.2.1.1. Inspect each component of the system to determine whether it is malfunctioning because of improper maintenance. The inspection should include an examination of inlet and outlet structures for clogging and scour, and check the Water Quality Control Facility for short circuiting. Maintenance records shall be examined to determine whether regular maintenance has been performed and if not, the District shall correct any deficiencies in maintenance and continue to monitor the condition of the facilities.

3.2.1.2. Evaluate whether the hydraulic design appears adequate. This may require observation under storm conditions and checking for underdesign as indicated by scour and erosion.

3.2.1.3. Perform an analysis to identify whether the design of each system component could be improved by reviewing the sizing of all inlet/outlet structures, the sizing of the basins to determine whether

flow is short circuiting through the system, adding or replacing plant material, modifying the grading of the wetlands or expanding the wetlands.

- 3.2.1.4. Identify additional best management practices that could be built within the existing system. If nothing can be done to improve the original design of either the Detention Ponds or the Water Quality Control Facility or the grass swale inlet to the Water Quality Control Facility, potential additional best management practices for stormwater management may be needed, such as the installation of water quality inlets to remove sediment and oil/grease prior to discharge into the detention ponds, or the employment of additional or newly developed stormwater management technologies designed to enhance the Water Quality Control Facility, but not replace the facility with a complete mechanical water treatment facility.
- 3.2.2. If the District fails to complete construction to specifications of all facilities required hereunder by June 30, 1997, or if, within thirty(30) days after written notice from NFP and DRC1, the District fails to commence work reasonably designed to maintain or repair the Detention Ponds or Water Quality Control Facility or, having commenced such work, fails to complete it within 90 days after such notice so as to attain the performance standards set forth in paragraph 3.2. in the water discharging from the Water Quality Control Facility required by this Agreement and satisfactorily comply with the remedial measures specified in the preceding paragraphs 3.2.1. through 3.2.1.4., NFP and DRC1 shall, without liability to the District, have the right to enter the Detention Ponds and Water Quality Control Facility to complete construction of, manage, operate, maintain, modify, replace, or revise the facilities and their operations to meet the requirements of this Agreement and to be reimbursed for the cost thereof by the District in the manner contemplated by paragraph 3.4.2. hereof. The Town

shall have a similar right to enter, cure and be reimbursed therefor with respect to the maintenance, repair or replacement of the fence provided for by

paragraph 2.2. hereof. Any dispute over the appropriateness of such remediation or over the amount of reimbursement due from the District shall be settled through arbitration in XXXX, Colorado, in accordance with the rules of the American Arbitration Association by a board of arbitrators. Their awards shall be binding on the parties.

- 3.3. Obtain in a timely manner the necessary permits for the construction, rehabilitation, replacement and operation of the Detention Ponds and the Water Quality Control Facility and complete the construction of those facilities by June 30, 1997. That Facility and the Detention Ponds on the LLC Property shall be operated and maintained in accordance with the best management practices applicable for the use of such facilities which shall include the annual harvesting of wetland vegetation, as needed to stimulate the annual regrowth. The present standard for such maintenance is set forth in the Urban Storm Drainage Criterial Manual (“UFDCM”) Volume 3–Best Management Practices, and the District agrees to adhere to its requirements as they may be revised over time.
- 3.4. On or before execution of this Agreement:
  - 3.4.1. The District shall demonstrate that it has the financial resources to timely construct the Detention Ponds and Water Quality Control Facility, and, if necessary, a water supply pipeline to deliver water from the ABCD Ditch or from XXXX Reservoir seepage to that facility, and
  - 3.4.2. In order to assure its performance its obligations under paragraph 3.2.2. hereof, the District shall post a bond or other cash equivalent as follows:
    - 3.4.2.1. In order to assure the timely construction to specification of the Water Quality Control Facility, the District shall post a bond or other cash equivalent in the amount of One Hundred Thirty One Thousand Eight Hundred Four Dollars (\$131,804), which is the estimated construction cost for

the Water Quality Control Facility (“Construction Security”). If the actual construction contract price, which amount shall be based upon the construction contract awarded by the District is more than the estimated construction costs, the District shall arrange for the posting of additional security to make up the difference. If the actual construction contract price is less than the estimated construction contract, the District shall be allowed to a release of the differential. Upon receipt of an engineer’s certification that the facilities are complete and operational, the Construction Security shall be released. The instrument by which the Construction Security is created shall give DRC1 and NFP the right to receive payment directly from those sources for work performed by them under paragraph 3.2.2 here of.

- 3.4.2.2. The District shall reimburse DRC1 and/or NFP for the purposes of managing, operating, maintaining, modifying, replacing or revising the Water Quality Control Facility under Section 3.2.2 upon receipt by the District of invoices evidencing the costs thus incurred up to a total cumulative maximum of One Hundred Thousand Dollars (\$100,000). Commencing on the fifth anniversary of this Agreement and thereafter that amount (\$100,000) shall increase annually based upon the CPI-U. For the purposes hereof, the CPI-U referred to hereinabove shall be that which is presently designated as the All Urban Consumer Average (CPI-U) with a base period equaling One Hundred (100) in 1982-84, and specifically that portion of the CPI-U relating to XXXX, Colorado, published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event the statistics are not available from said Index relating to XXXX, Colorado, in which such statistics are available shall be used. In the event that publication of the said Consumer

Price Index is modified or discontinued in its entirety, the adjustment provided for herein shall be made on the basis of changes in the most comparable and recognized index of the purchasing power of the United States consumer dollar published by the U.S. Department of Labor or other governmental agency, if said Department of Labor ceases to publish such index. In the event that such index contemplated herein is not reported for the months set forth in the fraction above, the parties agree to utilize the index reported for the month nearest to the date for which said index is required by the terms of this paragraph.

4. To the extent that a water supply may be needed to maintain the Water Quality Control Facility when it is not otherwise filled with stormwater runoff, NFP agrees to make available from water flowing in the ABCD Ditch or from XXXX Reservoir seepage, water which would otherwise be storable under the water rights held by NFP, for the use of LLC and the District an average flow rate of 2 gallons per minute or a cumulative total volume of 2 acre feet per year of the water to which NFP is entitled to by reason of its ownership of a portion of the water rights decreed to the DRC1 system. If the District chooses to use one of those sources of supply, it shall, by not later than June 30, 1997, pay NFP the sum of \$10,000.00 for the right to the use of that water. If the District chooses to provide that flow from some other source, it must first secure the approval of that source from the Town, NFP and DRC1. LLC and the District shall construct, operate and maintain the pipeline facilities required to deliver that water to the water quality control facility from the ABCD Ditch, or other facility, provided that the operation of the lateral turnout from the ABCD Ditch into the pipeline, if that system is used, shall be under the control of DRC1 and its authorized ditch rider at all times. The instruments of conveyance provided for in paragraph 1 hereof shall also include a grant of the right to use of Town property to the extent needed for the pipeline facility carrying water from the ABCD Ditch or other source to the water control facility.

5. LLC agrees to implement and administer the Erosion Control Program described on Exhibit "F" hereto commencing on the date first above-written and extending, for that portion of the LLC property to be controlled by the permanent storm drainage system, until July 1, 1998, and for that portion of the LLC property not to be controlled by that storm drainage system, until all of such property shall have been stabilized with permanent landscaping, including sod. Proper implementation of such a program includes an initial inspection by LLC of each best management practice to insure it has been installed correctly, coupled with regular inspections

thereafter to insure that they are being maintained as specified by the Erosion Control Program. LLC agrees to be liable to NFP, DRC1 and DRC2 for any damage to the ABCD Ditch or the Reservoir caused by the discharge from the LLC property of silt-laden runoff. The Erosion Control Program shall be operated to:

- 5.1. Determine the amount of settleable solids contained in any stormwater runoff discharging from the runoff discharging from the LLC property through the delivery system provided for by paragraph 5.4 (the “Delivered Water”) hereof by means of the Imhoff Cone Test. Diagnostic samples of the Delivered Water shall be measured. Additional samples shall be taken from water flowing in the ABCD Ditch at two points: 1) at the point where it runs under the XXXX Water Board boundary fence and, 2) at the point where it emerges from the concrete culvert under the old XXXX Water Board road. Such additional samples shall also be measured by the Imhoff Cone Test and the data thus generated shall be used to assist in the design of any remedial action required under paragraph 5.5 hereof. If the samples of the Delivered Water are in excess of the 2.5 ml/L/hr settleable solids standard, LLC shall inspect its erosion control measures and immediately make repairs or perform maintenance required to ensure that they are properly functioning and are consistent with the Erosion Control Program. If such samples exceed 2.5 ml/L/hr of settleable solids and if the Delivered Water is entering the ABCD Ditch, LLC shall determine the difference between the two measurements in the ABCD Ditch. If the difference between the two measurements exceed the 2.5 ml/L/hr standard, remedial action provided in paragraph 5.5 shall be taken.
  
- 5.2. Prevent the discharge of Delivered Water into the ABCD Ditch in excess of the differential standard and measured under paragraph 5.1 and the discharge of other runoff from the LLC Property onto property of the Town, NFP and DRC1 (other than at the site of the Delivered Water) containing more than 2.5 ml/L/hr of total settleable solids.
  
- 5.3. Maintain a minimum active storage capacity in the temporary sedimentation basins as follows:

| <u>XXXX Filing</u> | <u>Minimum Active Capacity in Acre Ft.</u> |
|--------------------|--|
| #6 Pond            | 0.49                                       |
| #8 Pond            | 0.91                                       |
| #10 Pond           | <u>1.6</u>                                 |
| TOTAL              | 3.00                                       |

Such maintenance shall include the removal of accumulated sediment as necessary to restore those minimum storage capacities. Any sediment removed from those temporary sedimentation basins shall be disposed of on the LLC property in a manner to avoid its deposition on the lands of the Town or NFP or into the ABCD Ditch or the Reservoir. Such maintenance shall also include the pumping of water impounded in those temporary sedimentation basins through the delivery system provided for by paragraph 5.4 hereof as necessary to restore those storage capacities as soon as the delivery capacity of that system will permit.

5.4 Pump any runoff which would otherwise spill from the active storage capacity of the temporary sedimentation basins on the LLC property through a temporary delivery system so that it can be discharged through a perforated pipe, as though it were diffused surface runoff, onto non-wetland property of the Town located near the toe of the XXXX Reservoir south dike. The delivery capacity of such system shall be adequate to evacuate the active storage capacity of the sedimentation basins within a period of 3 days. The Town hereby grants LLC a license to place pipelines and make such a temporary discharge onto the Town property. LLC shall be solely responsible for securing any regulatory permits which may be lawfully required for such a temporary discharge.

5.5. If the total settleable solids in any stormwater runoff discharge from the LLC property causes an exceedance of 2.5 ml/L/hr: (a) in the ABCD Ditch as reflected by the difference in the two ABCD Ditch measurements taken pursuant to paragraph 5.1; or (b) in stormwater otherwise discharge onto the property of NFP or the Town (other than at the site of the Delivered Water), LLC shall take such remedial action, in cooperation with the Town and NFP as may be necessary to prevent its reoccurrence, including:

5.5.1. An evaluation of causes of the failure by a review of the Erosion Control Program, by inspections to determine compliance therewith and by evaluation of the adequacy of:

5.5.1.1. structure designs,

5.5.1.2. adequacy and number of structures, and

5.5.1.3. adequacy of maintenance.

5.5.2. Development of improved plans which may include the installation of

additional erosion control structures, modification of designs or implementation of new measures and maintenance schedules.

If, notwithstanding the implementation of the above-described measures, the total settleable solids in the runoff from the LLC property entering the ABCD Ditch or otherwise discharged onto property of the Town or NFP (at other than the Delivered Water), continue to exceed 2.5 ml/L/hr, then NFP and the Town may pursue the same remedies for the failure of the Erosion Control Program as it may pursue for the failure of the permanent Stormwater Control Program under paragraph 3.2.2. hereof.

6. In connection with the development of the Water Quality Control Facility, the District agrees to develop a dirt pathway, constructed to the specifications contained on the attached Exhibit "C", connecting existing paths on the Town's property and across the NFP property to the Audubon property for use by residents of the Town and by employees or agents of LLC or the District for the sole purpose of maintaining, rehabilitation or reconstructing the water quality control facility. No one other than Town residents or District employees shall be authorized to enter on that property and such prohibition shall be included in the District covenants.

7. LLC shall not remove certain trees in the vicinity of the water quality control facility as identified on the attached Exhibit "C".

8. LLC agrees to adopt the covenants attached as Exhibit "G", that include recommended wildlife protective measures, including but not limited to, reasonable provisions for domestic animal control, the implementation of water quality source controls such as collection of lawn clippings and their disposal away from the area of the storm drainage, and restrictions on the use, storage and disposal of fertilizers and pesticides so as to limit their introduction into the stormwater runoff, as well as restrictions on the wintertime use of sand, salt or other de-icing materials for snow and ice control. LLC agrees that not later than five days after it shall have recorded Exhibit "G" in the Public Records of the City and County of XXXX, it will assign all of its then remaining rights and obligations thereunder to the District, which assignment the District agrees to accept.

9. The District agrees to provide proper maintenance of all drainage facilities, including the water quality control facility, which will convey the storm drainage runoff from the LLC Property, including especially periodic sediment removal, trash removal, cleaning and maintaining inlet and outlet works, as well as vegetation management, including annual harvesting, of the water quality control facility to replace damaged vegetation and control weeds.



10. To the extent permitted by law, the District agrees to indemnify and hold the Town and NFP harmless from any damage to their property resulting from the discharge of stormwater runoff from an event greater than the two hour, 10-year event from the LLC Property at an incremental rate of flow in excess of what would have run off that property prior to its development, except to the extent of any negligence or willful misconduct by either the Town or NFP, or their agents, employees, invitees, or representatives.

11. The District agrees that if, as a result of the development of the LLC Property and the use of the storm drainage system, the incremental increase in the rate of flow of the stormwater runoff from that property prior to its development is used as a basis for the issuance by the Office of the Colorado State Engineer of a lawful order requiring DRC1 and DRC2 to upgrade the spillway from the Reservoir or otherwise improve the carrying capacity or spillways of any of the rest of the facilities owned and operated by those two companies, to the extent permitted by law, it will indemnify and save those two companies harmless from the entire cost, including professional fees, they may incur in complying with such an order.

12. To the extent permitted by law, the District agrees to indemnify and save harmless DRC1 and DRC2 from the costs of repairing any damage to facilities they own or operate resulting from the discharge of stormwater runoff from an event greater than the two hour, 10-year event from the LLC Property at an incremental rate of flow in excess of what would have run off that property prior to its development except to the extent of any negligence or willful misconduct by DRC1 or DRC2, or their agents, employees, invitees, or representatives.

13. To the extent permitted by law, the District agrees to indemnify and save harmless DRC1 and DRC2 from any damages for which those companies may become liable on account of property damage, personal injury to, or death of third parties caused by water carried through the ditch and reservoir systems they own or operate resulting from the discharge of stormwater runoff from an event greater than the two hour, 10-year event from the LLC Property at an incremental rate of flow in excess of what would have run off that property prior to its development, except to the extent of any negligence or willful misconduct by either DRC1 or DRC2, or their agents, employees, invitees, or representatives.

14. The District agrees to assume the risk of all injuries, including deaths resulting therefrom, to anyone, and damage to or destruction of any property resulting from the performance by it, its contractors, employees or agents of any of the obligations required of it by this Agreement, and to indemnify the other parties hereto against any claims on account of the risks thus assumed, except to the extent of any negligence or willful misconduct by the other parties hereto. The District agrees to purchase and maintain general liability insurance in an amount not less than \$3,000,000 from and with a company or companies lawfully authorized to do business in the State of Colorado.

15. To the extent permitted by law, LLC and the District agree to indemnify the Town and NFP

against the enforcement of any lien or liens upon their property resulting from any work performed on their properties in the performance of any of the obligations required of LLC and the District by this Agreement. LLC and the District further agree to take whatever steps, including the payment of claims, which may be required to discharge any such lien and to secure appropriate lien waivers from those performing work, or supplying materials for work on the properties of the Town and NFP as payments are made for such supplies or work.

16. The ongoing obligations of the District in this Agreement shall survive its execution.

17. Notwithstanding their right to enter and maintain or repair the Detention Ponds and the Water Quality Control Facility under paragraphs 3.2.2. and 5 hereof, it is mutually agreed that NFP and DRC1, as well as the Town and DRC2, shall have a right to such other remedies, including money damages and specific performance without the requirement of showing irreparable damages, as may lawfully be available to them for any breach by LLC or the District of this Agreement, provided, however, such remedies shall not include termination of any perpetual easements or licenses granted pursuant to this Agreement.

18. The parties mutually agree that venue for any action relating to the performance or breach of this Agreement shall be in the District Court for the City and County of XXXX.

19. All of the exhibits attached to this Agreement are incorporated herein as though set forth at length herein.

20. This instrument evidences the entire agreement among the parties and any modification hereof shall be in writing and signed by all the parties.

21. This Agreement may be assigned by LLC only to the District and the District may not assign it to any other entity other than a municipal or quasi municipal corporation which shall have agreed to be a successor to the District in the assumption of all the obligations of the District which are created by this Agreement. It may be assigned by NFP, DRC1 and DRC2 only to their successors-in-interest as owners of the property burdened by the receipt of the stormwater runoff from the LLC Property or the ditch and reservoir facilities operated by DRC1 and DRC2.

22. Any notices required by this Agreement shall be in writing and shall be personally delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such address as may be specified by written notice: Notices to:

