

LANDSCAPE MAINTENANCE AGREEMENT

THIS LANDSCAPE MAINTENANCE AGREEMENT (the "Agreement") is made this ____ day of _____, 20__, by and between the City of Fountain, Colorado, a home rule city and municipal corporation (the "City") and Corvallis Metropolitan District No. 1 (the "District"), For Landscape and Irrigation Improvements within Public Rights-of-Way adjacent to the development known as Corvallis Filing No. 1 (the "Property").

RECITALS:

WHEREAS, certain landscaping improvements including irrigation improvements have been constructed along: Rivers Blvd & Lorson Blvd (FILL IN LOCATIONS OF LANDSCAPING WITHIN THE ROW) of the Property as shown the Landscaping Plan attached to and made a part of this Agreement as Exhibit A, and as described in the legal description attached to and made a part of this Agreement as (the "Designated Area"); and

WHEREAS, the Property located within the Property and City will benefit from maintenance of the Designated Area by the District; and

WHEREAS, the District and the City desire to enter into an agreement under which the District will maintain landscaping in the Designated Area in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and conditions provided herein, the parties hereto agree as follows:

I. COVENANTS AND AGREEMENTS

A. Purpose of Agreement; Routine Maintenance. Under the terms of this Agreement, the District agrees to provide all required and necessary landscape and other maintenance services ("Routine Maintenance") to the Designated Area as set forth in this Agreement. The District shall either: (1) enter into a separate service contract with a service provider to provide routine maintenance to the Designated Area ("Service Provider"); or (2) provide such maintenance through members of the District. References in this Agreement to shall include the Service Provider. A copy of any service contract entered into by the District with a Service Provider shall be attached to this Agreement and shall include a provision satisfactory to the City that the Service Provider: (a) agrees to comply with the terms of this Agreement and (b) termination by the City of this Agreement constitutes termination of the authorization of the Service Provider to provide Routine Maintenance services in the Designated Area.

Routine Maintenance shall consist of picking up, carrying away and disposal of trash, watering and fertilizing trees, plants and shrubs, weeding, sweeping grass clippings and other debris from sidewalks, and trimming and edging vegetation along the sidewalk and fences. Routine Maintenance shall include green grass areas in order to maintain irrigated turf grass at two (2) to four (4) inches in height and non-irrigated native turf grasses at four (4) to six (6)

inches in height. Occasional mowing elsewhere will also be required to limit unwanted weeds and vegetation to a maximum height of nine (9) inches or less. Clean edging and sidewalk sweeping shall immediately follow any adjacent mowing. Turf mowing, occasional mowing elsewhere, and landscape maintenance as set forth in this Section shall occur every week commencing March 1st through October 31st.

Routine maintenance shall also include tree plant, and shrub trimming and watering. Trimming shall generally be limited to maintenance of uniform shape/ canopy with proper sight distance at intersections including 7-foot head clearance above sidewalks, 15-foot head clearance above streets and no side overhang along the edges of streets, sidewalks or trails. Sucker sprouts from base of trunks shall also be removed. Any other trimming shall only be permitted with the prior consent of the City's Street or Parks Superintendent or designee ("City Superintendent"). All trimmed tree branches shall be removed and properly disposed of by the District or its service provider.

The City Superintendent has the authority, at any time, to notify the District to adjust or stop any Routine Maintenance within the Designated Area if the City Superintendent believes that any of the services are not appropriate or necessary. (Example: During drought times where there is not active growth of vegetation to warrant mowing or where the frequency of plant watering may need to be adjusted due to weather conditions.) The City Superintendent shall have authority to direct and interpret how the Routine Maintenance set forth in this Agreement is to be performed.

B. License. The City hereby grants the District a revocable license to maintain the improvements within the Designated Area, which license includes the right of ingress and egress to and from the Designated Area, for the purpose of implementing this Agreement and for no other purpose. So long as the District is not in violation of this Agreement, the District's right to maintain the improvements within the Designated Area shall be an exclusive right of the District and any Service Provider selected by the District to maintain the Designated Area.

C. Safety Measures. In connection with the performance of any Routine Maintenance or any other activities in or about the Designated Area, the District shall observe all necessary safety measures, and shall be required to comply with any additional safety measures required to be obtained from the City.

D. Insurance. During the term of this Agreement, the District shall carry and maintain at the District's expense, liability insurance that covers any and all injury to any person or property on or in the Designated Area, in an amount not less than One Million dollars (\$1,000,000). This policy shall be kept in force at all times during the term of this Agreement. During the term of this Agreement, the District shall cause any Service Providers retained by the District to perform Routine Maintenance within the Designated Area to procure and maintain (1) comprehensive general and automobile liability insurance in the sum of not less than \$1,000,000 per occurrence and (2) workers' compensation and employer's liability insurance in amounts deemed satisfactory to the City. Except for the worker's compensation insurance, the City shall be named as an additional insured. The City Shall be provided a certificate of insurance setting

forth this insurance coverage and providing that the insurance coverage shall not be cancelled unless ten (10) days written notice to the City is provided.

E. Obligations Limited. Except as otherwise provided in this Agreement, the District's obligations under this Agreement are limited solely to providing Routine Maintenance to the Designated Area and shall not be construed to entail the assumption by the District of any other liabilities and/or responsibilities.

F. Water. The District, in fulfilling the obligations under this Agreement shall use water only from the meter pit installed and metered by the applicable Water District. This meter pit is located in Tract H, S of Rivers Blvd. No other water source will be used to irrigate this subdivision. Water used from this meter pit shall only be used by the District to fulfill the District's obligation under this Agreement and for no other purpose.

II. GENERAL PROVISIONS

A. Term. This Agreement shall remain in full force and effect for a period of one (1) year. Thereafter, the Agreement shall automatically renew each year unless terminated as set forth below.

B. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to constitute a waiver on the part of the City of any governmental immunity which it may enjoy under the Colorado Revised Statutes or other law.

C. Termination. This Agreement may be terminated on ten (10) days written notice by either party to the other party.

D. Notice. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing and shall be deemed delivered on the happening of either of the following: hand delivery to the parties at the addresses set forth below; or three (3) days following said written notice being sent certified mail, postage prepaid and return receipt requested, to the addresses set forth below:

City: City of Fountain
116 South Main Street
Fountain, CO 80817
Attn: Public Works Director

District: **Corvallis Metropolitan District No. 1**
2360 MARGAUX VALLEY WAY, COLORADO SPRINGS, CO 80921
Attn: Ed Houle

Each party shall have the right, by giving written notice to the other parties, to change the address at which its notices are to be received.

E. Amendment. Any amendments or modifications to this Agreement must be reduced to writing and executed by the parties hereto, or their successors or assigns to be valid and binding.

F. Severability Clause. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

G. Governing Law. The terms, covenants and provisions of this Agreement and the services performed under this Agreement shall be governed by and construed under the applicable laws of the State of Colorado, the Fountain Municipal Code, Ordinances of the City of Fountain and the City Charter.

H. Assignment. This Agreement shall be binding upon successors and assigns of the District. The District shall notify the City of the name and address of assignee upon assignment of this Agreement and shall notify the City of the name and address of a successor to the Property Owners. Such notification shall be in writing and made within ten days after such occurrence. Compliance by a Service Provider shall not be construed as an assignment of this Agreement.

I. Section Headings. The section headings contained herein are included for reference purposes only.

J. Enforcement of the Agreement. The Parties acknowledge and agree that this Agreement may be enforced in law or in equity by a decree of specific performance, damages, or such other legal and equitable relief as may be available to either party provided that in no event shall either Party be liable to the other Party under contract, tort, or any other legal theory for incidental, consequential, indirect, punitive, special losses or special damages of any kind.

K. Non-waiver of Rights. No failure by a party to insist upon the strict performance of any term, covenant or agreement contained in this Agreement, and no failure by a party to exercise any right or remedy under this Agreement, shall constitute a waiver of any such term, covenant or agreement, or a waiver of any such right or remedy.

L. Compensation. The District shall be responsible for paying all expenses necessary in carrying out this Agreement. No compensation will be paid by The City to the District or any service provider of the District.

M. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which will constitute an original agreement, but all of which together will constitute a single agreement. A facsimile transmitted copy of this Agreement executed by one

of the Parties hereto will be accepted as a copy of this Agreement originally executed by such Party.

N. Independent Contractor. In the performance of the District's obligations under this Agreement, it is understood, acknowledged and agreed between the parties that the District and the District's Service Provider are at all times acting and performing as an Independent Contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the District performs the District's obligations under this Agreement, except as otherwise stated within the terms of the Agreement.

O. Indemnification. The District and the District's Service Provider agree to indemnify, defend and hold harmless the City of Fountain, City Council, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the District's obligations or actions under this Agreement. The District and the service provider shall not be required to indemnify the City for any negligent acts of the City or its employees. In accord with the restrictions of the City Charter and Colorado Constitution, nothing in this Agreement shall be construed as, or is intended to create, any indemnification or holding harmless of the District by the City.

CITY:

CITY OF FOUNTAIN, a home rule city and
municipal corporation

By: _____

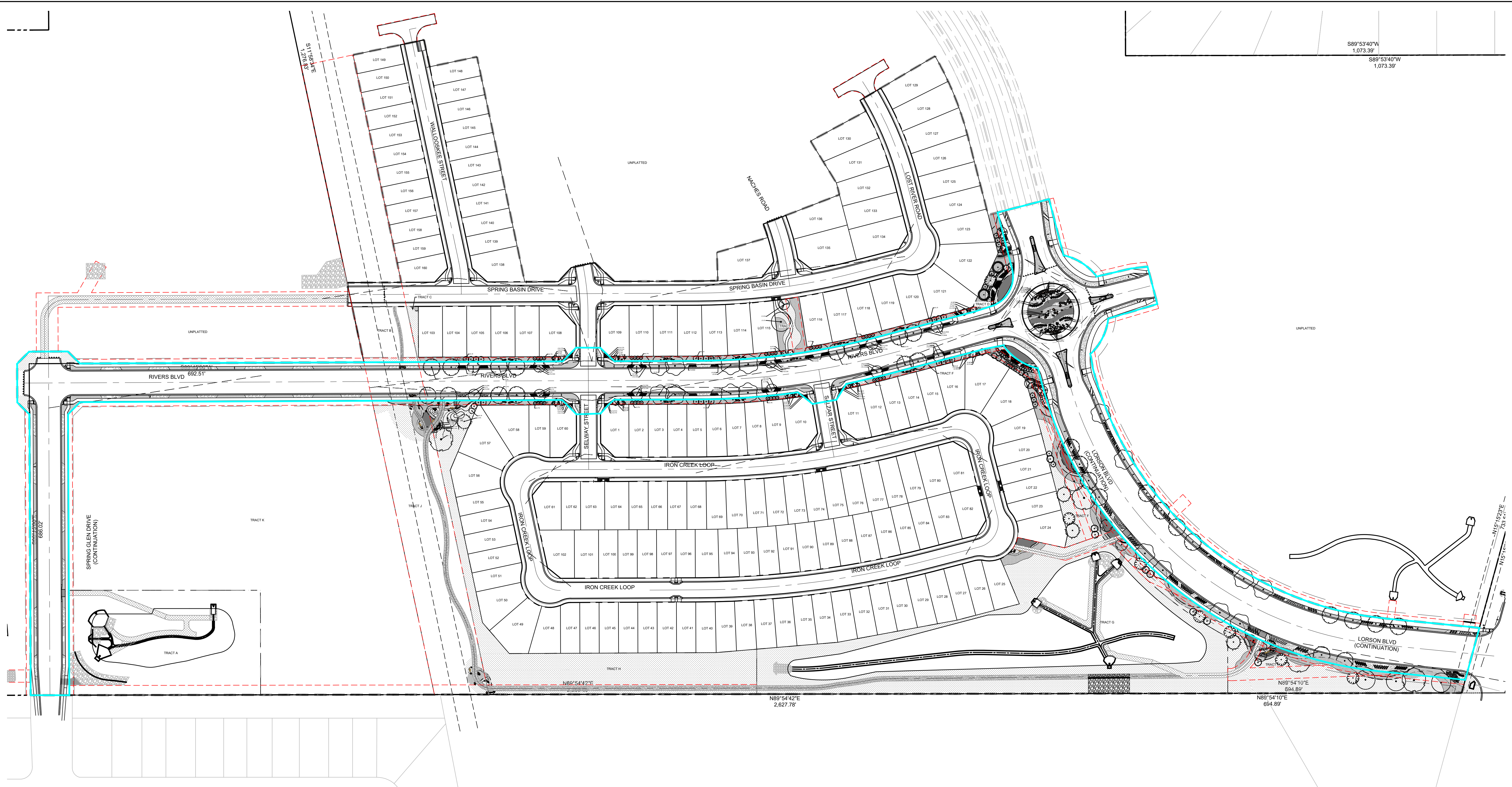
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ATTEST:

City Clerk

EXHIBIT A

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CORVALLIS FILING 1

Matrix
 Excellence by Design

2435 Research Parkway, Suite 300
 Colorado Springs, CO 80920
 Contact: Luke Bonner
 Phone: (719) 575-0100

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 Maintenance F1 ROW Extent

LANDSCAPE MAINTENANCE
 ROW EXTENT EXHIBIT

APRIL 8, 2026

