

**PRIVATE DETENTION BASIN /
STORMWATER QUALITY BEST MANAGEMENT PRACTICE
MAINTENANCE AGREEMENT AND EASEMENT**

This PRIVATE DETENTION BASIN / STORMWATER QUALITY BEST MANAGEMENT PRACTICE MAINTENANCE AGREEMENT AND EASEMENT (Agreement) is made by and between EL PASO COUNTY by and through THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (Board or County) and Widefield School District 3. (Owner or Developer). The above may occasionally be referred to herein singularly as “Party” and collectively as “Parties.”

Recitals

A. WHEREAS, Developer is the owner of certain real estate (the Property or Subdivision) in El Paso County, Colorado, which Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

B. WHEREAS, Developer desires to develop on the Property a land use known as Widefield Parks and Recreation Facility Expansion; and

C. WHEREAS, the development of this Property will substantially increase the volume of water runoff and will decrease the quality of the stormwater runoff from the Property, and, therefore, it is in the best interest of public health, safety and welfare for the County to condition approval of this subdivision/land use on Developer’s promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices (“BMPs”) for the subdivision/land use; and

D. WHEREAS, Chapter 8, Section 8.4.5 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133(1), Colorado Revised Statutes (C.R.S.), requires the County to condition approval of all subdivisions on a developer’s promise to so construct adequate drainage, water runoff control facilities, and BMPs in subdivisions; and

E. WHEREAS, the Drainage Criteria Manual, Volume 2, as amended by Appendix I of the El Paso County Engineering Criteria Manual (ECM), as each may be periodically amended, promulgated pursuant to the County’s Colorado Discharge Permit System General Permit (MS4 Permit) as required by Phase II of the National Pollutant Discharge Elimination System (NPDES), which MS4 Permit requires that the County take measures to protect the quality of stormwater from sediment and other contaminants, requires subdividers, developers, landowners, and owners of facilities located in the County’s rights-of-way or easements to provide adequate permanent stormwater quality BMPs with new development or significant redevelopment; and

F. WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual provides for a developer’s promise to maintain a subdivision’s drainage facilities in the event the County does not assume such responsibility; and

G. WHEREAS, developers in El Paso County have historically chosen water runoff detention basins as a means to provide adequate drainage and water runoff control in subdivisions,

which basins, while effective, are less expensive for developers to construct than other methods of providing drainage and water runoff control; and

H. WHEREAS, Developer desires to construct for the subdivision/land use **one (1)** detention basin/stormwater quality BMP(s) (“detention basin/BMP(s)”) as the means for providing adequate drainage and stormwater runoff control and to meet requirements of the County’s MS4 Permit, and to operate, clean, maintain and repair such detention basin/BMP(s); and

I. WHEREAS, Developer desires to construct the detention basin/BMP(s) on property that is described in Exhibit A attached hereto; and

J. WHEREAS, Developer shall be charged with the duties of constructing, operating, maintaining and repairing the detention basin/BMP(s) on the Property described in Exhibit A; and

K. WHEREAS, it is the County’s experience that subdivision developers and property owners historically have not properly cleaned and otherwise not properly maintained and repaired these detention basins/BMPs, and that these detention basins/BMPs, when not so properly cleaned, maintained, and repaired, threaten the public health, safety and welfare; and

L. WHEREAS, the County, in order to protect the public health, safety and welfare, has historically expended valuable and limited public resources to so properly clean, maintain, and repair these detention basins/BMPs when developers and property owners have failed in their responsibilities, and therefore, the County desires the means to recover its costs incurred in the event the burden falls on the County to so clean, maintain and repair the detention basin/BMP(s) serving this subdivision/land use due to the Developer/Owner’s failure to meet its obligations to do the same; and

M. WHEREAS, the County conditions approval of this subdivision/land use on the Developer’s promise to so construct the detention basin/BMP(s), and conditions approval on the Owner’s promise to reimburse the County in the event the burden falls upon the County to so clean, maintain and/or repair the detention basin/BMP(s) serving this Subdivision; and

N. WHEREAS, the County could condition subdivision/land use approval on the Developer’s promise to construct a different and more expensive drainage, water runoff control system and BMPs than those proposed herein, which more expensive system would not create the possibility of the burden of cleaning, maintenance and repair expenses falling on the County; however, the County is willing to forego such right upon the performance of Developer/Owner’s promises contained herein; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this subdivision/land use upon the Developer’s grant herein of a perpetual Easement over a portion of the Property for the purpose of allowing the County to periodically access, inspect, and, when so necessary, to clean, maintain and/or repair the detention basin/BMP(s); and

Agreement

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the Recitals above into this Agreement.

2. Covenants Running with the Land: Developer/Owner agrees that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in [Exhibit A](#) attached hereto, and that this entire Agreement and the performance thereof shall be binding upon itself, its successors and assigns.

3. Construction: Developer shall construct on that portion of the Property described in [Exhibit A](#) attached hereto and incorporated herein by this reference, **one (1)** detention basin/BMP(s). Developer shall not commence construction of the detention basin/BMP(s) until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the detention basin/BMP(s) and this Agreement has been signed by all Parties and returned to the PCD. Developer shall complete construction of the detention basin/BMP(s) in substantial compliance with the County-approved plans and specifications for the detention basin/BMP(s). Failure to meet these requirements shall be a material breach of this Agreement, and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the detention basin/BMP(s) shall be substantially completed within one (1) year (defined as 365 days), which one year period will commence to run on the date the approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder. In cases where a subdivision is not required, the one year period will commence to run on the date the Erosion and Stormwater Quality Control Permit (ESQCP) is issued. Rough grading of the detention basin/BMP(s) must be completed and inspected by the El Paso County Planning and Community Development Department prior to commencing road construction.

In the event construction is not substantially completed within the one (1) year period, then the County may exercise its discretion to complete the project, and shall have the right to seek reimbursement from the Developer/Owner and its successors and assigns, for its actual costs and expenses incurred in the process of completing construction. The term actual costs and expenses shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tool and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the Provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

4. Maintenance: The Developer/Owner agrees for itself and its successors and assigns, that it will regularly and routinely inspect, clean and maintain the detention basin/BMP(s), and otherwise keep the same in good repair, all at its own cost and expense. No trees or shrubs that will impair the structural integrity of the detention basin/BMP(s) shall be planted or allowed to grow on the detention basin/BMP(s).

5. Creation of Easement: Developer/Owner hereby grants the County a non-exclusive perpetual easement upon and across that portion of the Property described in [Exhibit A](#). The purpose of the easement is to allow the County to access, inspect, clean, repair and maintain the detention basin/BMP(s); however, the creation of the easement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin/BMP(s).

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the detention basin/BMP(s) is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developer/Owner and its successors and assigns, that the detention basin/BMP(s) needs to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problem(s). Should the responsible parties fail to correct the specified problem(s), the County may enter upon the Property to so correct the specified problem(s). Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin/BMP(s).

7. Reimbursement of County's Costs / Covenant Running With the Land: The Developer/Owner agrees and covenants, for itself, its successors and assigns, that it will reimburse the County for its costs and expenses incurred in the process of completing construction of, cleaning, maintaining, and/or repairing the detention basin/BMP(s) pursuant to the provisions of this Agreement.

The term "actual costs and expenses" shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

8. Contingencies of Land Use/Land Disturbance Approval: Developer/Owner's execution of this Agreement is a condition of land use/land disturbance approval.

The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it under the conditions of this Paragraph, including but not limited to, any separate agreement or amendment, if applicable, identifying any specific maintenance responsibilities not addressed herein. The County's rejection of any documentation submitted hereunder shall mean that the appropriate condition of this Agreement has not been fulfilled.

9. Agreement Monitored by El Paso County Planning and Community Development Department and/or El Paso County Department of Public Works: Any and all actions and decisions to be made hereunder by the County shall be made by the Director of the El Paso County Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be submitted to and shall be made by the Director of the Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works.

10. Indemnification and Hold Harmless: To the extent authorized by law, Developer/Owner agrees, for itself, its successors and assigns, that it will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to its intentional or negligent acts, errors or omissions or that of its agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance,

and repair of the detention basin/BMP(s), and such obligation arising under this Paragraph shall be joint and several. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.* C.R.S., or as otherwise provided by law.

11. Severability: In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

12. Third Parties: This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either the County, the Developer/Owner, or their respective successors and assigns, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

13. Solid Waste or Hazardous Materials: Should any refuse from the detention basin/BMP(s) be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as “hazardous materials”), the Developer/Owner shall take all necessary and proper steps to characterize the solid waste or hazardous materials and properly dispose of it in accordance with applicable State and/or Federal environmental laws and regulations, including, but not limited to, the following: Solid Wastes Disposal Sites and Facilities Acts, §§ 30-20-100.5 – 30-20-119, C.R.S., Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, *et seq.*, Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, and Federal Solid Waste Regulations 40 CFR Ch. I. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid waste or hazardous materials. Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid waste or hazardous materials, the Developer/Owner, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

14. Applicable Law and Venue: The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid waste or hazardous materials. Venue shall be in the El Paso County District Court.

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this _____ day of _____, 20____, by:

Widfield School District 3

By: _____
[Insert name], [Insert title(President/Manager)]

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by [Insert name], [Insert title(President/Manager)], [Insert Company Name]

Witness my hand and official seal.

My commission expires: _____

Notary Public

Executed this _____ day of _____, 20____, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Craig Dossey, Executive Director
Planning and Community Development Department
Authorized signatory pursuant to LDC

The foregoing instrument was acknowledged before me this _____ day of _____,
2018, by _____, Executive Director of El Paso County Planning and Community
Development Department.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Approved as to Content and Form:

Assistant County Attorney

Exhibit A

LEGAL DESCRIPTIONS

PARCEL A – BOOK 3000, PAGE 506

A TRACT OF LAND LYING IN THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 12, THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 13, AND THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECURITY, COLORADO ADDITION NO. 5, EL PASO COUNTY, COLORADO AS SHOWN ON THE RECORDED PLAT THEREOF AS RECORDED IN PLAT BOOK V AT PAGE 64 OF THE RECORDS OF EL PASO COUNTY; THENCE, ALONG AND IDENTICAL WITH THE EASTERLY LINE OF ADDITION NO. 5 AS FOLLOWS:

NORTHWESTERLY, A DISTANCE OF 191.75 FEET; THENCE, ANGLE LEFT 15° 5' 15", A DISTANCE OF 152.95 FEET; THENCE, ANGLE LEFT 7° 33', A DISTANCE OF 197.36 FEET; THENCE ANGLE LEFT 12° 48', A DISTANCE OF 405.34 FEET; THENCE, ANGLE RIGHT 10° 14', A DISTANCE OF 220.29 FEET; THENCE, ANGLE RIGHT 43° 25' 30", A DISTANCE OF 209.81 FEET TO THE SOUTHEAST CORNER OF REFILE OF LOT 1, BLOCK 8; LOTS 1 AND 2, BLOCK 9, AND LOT 1, BLOCK 13, SECURITY, COLORADO ADDITION NO. 5 AS SHOWN ON THE RECORDED PLAT THEREOF AS RECORDED IN PLAT BOOK X AT PAGE 49 OF THE RECORDS OF EL PASO COUNTY;

THENCE, CONTINUING ALONG AND IDENTICAL WITH THE EASTERLY LINE OF SAID REFILE, ANGLE LEFT 6° 00' 45", A DISTANCE OF 108.89 FEET; THENCE, ANGLE LEFT 4° 50' 30", A DISTANCE OF 38.78 FEET; THENCE, ALONG A CURVE TO THE LEFT WHOSE RADIUS IS 132.55 FEET, WHOSE CENTRAL ANGLE IS 47° 43' 20", AND WHOSE TANGENT ANGLES RIGHT 62° 05' 25" AN ARC DISTANCE OF 110.40 FEET; THENCE, ALONG THE TANGENT PRODUCED, NORTHERLY, A DISTANCE OF 127.66 FEET; THENCE, ALONG A CURVE TO THE RIGHT WHOSE RADIUS IS 313.52 FEET AND WHOSE CENTRAL ANGLE IS 7° 39' 30", AN ARC DISTANCE OF 41.90 FEET; THENCE, ALONG THE TANGENT PRODUCED, NORTHERLY, A DISTANCE OF 160.49 FEET; THENCE, ALONG A CURVE TO THE RIGHT WHOSE RADIUS IS 266.08 FEET AND WHOSE CENTRAL ANGLE IS 17° 24' 15", AN ARC DISTANCE OF 81.01 FEET; THENCE, ALONG THE TANGENT PRODUCED, NORTHEASTERLY, A DISTANCE OF 110.27 FEET TO A POINT ON THE SOUTH LINE OF A TRACT OF LAND PREVIOUSLY CONVEYED BY ELMER C. SPROUL TO THE COLORADO DISTRICT – CHURCH OF THE NAZARENE,, A COLORADO CORPORATION BY A DEED DATED MAY 17, 1962 AND RECORDED IN BOOK 1911 AT PAGE 992 OF THE RECORDS OF EL PASO COUNTY;

THENCE, CONTINUED ALONG AND IDENTICAL WITH THE SOUTHEAST LINE OF THE AFORESAID TRACT, ANGLE RIGHT 2° 29' 28", A DISTANCE OF 232.99 FEET; THENCE, ANGLE RIGHT 30° 07' 32", A DISTANCE OF 180.38 FEET; THENCE, DEPARTING FROM SAID TRACT, ANGLE RIGHT 110° 15' 55", SOUTHERLY, A DISTANCE OF 2119.81 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM ANY PART THEREOF LYING WEST OF THE BOUNDARY LINE AS DELINEATED IN THE BOUNDARY AGREEMENT RECORDED DECEMBER 20, 1956 IN BOOK 1607 AT PAGE 387.

PARCEL B – BOOK 6560, PAGE 12

A TRACT OF LAND LOCATED IN THE NORTH ONE-HALF (1/2) OF SECTION 13, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS FOR THIS DESCRIPTION ARE BASED ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF WIDICK STREET, AS SHOWN ON THE RECORDED PLAT OF FOUNTAIN VALLEY RANCH SUBDIVISION FILING NO. 1, AS RECORDED IN PLAT BOOK Z-3, AT PAGE 40 OF THE RECORDS OF EL PASO COUNTY, COLORADO, BEING N 36°08'02" W, A DISTANCE OF 153.16 FEET.

BEGINNING AT THE NORTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN BOOK 5426 AT PAGE 118 OF SAID RECORDS, HEREAFTER BEING KNOWN AS TRACT 'A', SAID POINT BEING ALSO ON THE EAST LINE OF THAT PARCEL OF LAND DESCRIBED IN BOOK 2088 AT PAGE 22 OF SAID RECORDS; THENCE ALONG SAID EAST LINE N 11°57'34" W, A DISTANCE OF 204.34 FEET; THENCE N 89°51'58" E, A DISTANCE OF 876.92 FEET; THENCE S 00°08'02" E, A DISTANCE OF 200.00 FEET TO THE NORTH LINE OF SAID TRACT 'A'; THENCE ALONG SAID NORTH LINE S 89°51'58" W, A DISTANCE OF 835.05 FEET TO THE POINT OF BEGINNING, CONTAINING 3.93 ACRES, MORE OR LESS.

PARCEL C – BOOK 5426, PAGE 118

A TRACT OF LAND LOCATED IN SECTION 13, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO:

BEGINNING AT THE NORTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED IN BOOK 3939 AT PAGE 881 OF THE RECORDS OF SAID COUNTY; THENCE ALONG THE EASTERLY LINE OF THAT PARCEL DESCRIBED IN BOOK 2088 AT PAGE 22, NORTH 11°57'34" WEST A DISTANCE OF 363.59 FEET; THENCE NORTH 89°51'58" EAST A DISTANCE OF 891.31 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF PROPOSED WIDICK STREET, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE TO THE EAST, HAVING A CENTRAL ANGLE OF 20°28'54", A RADIUS OF 890.00 FEET, AND THE CHORD OF WHICH BEARS SOUTH 10°06'25" WEST A DISTANCE OF 316.46 FEET; THENCE ALONG THE ARC OF SAID CURVE, BEING SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 318.15 FEET; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 00°08'02" EAST A DISTANCE OF 44.45 FEET TO A POINT ON THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN BOOK 3939 AT PAGE 881 OF THE RECORDS OF SAID COUNTY; THENCE ALONG SAID NORTH LINE, SOUTH 89°51'58" WEST A DISTANCE OF 760.53 FEET TO THE POINT OF BEGINNING, CONTAINING 6.65 ACRES, MORE OR LESS.

PARCEL D – RECEPTION NO. 96087895 (Previous deed at Book 3939, Page 881)

A TRACT OF LAND LOCATED IN THE NORTH HALF OF SECTION 13, TOWNSHIP 15 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 47 IN BLOCK 14 OF SECURITY, COLORADO ADDITION NO. 5 AS RECORDED IN PLAT BOOK V AT PAGE 64 OF THE RECORDS OF SAID COUNTY:

- (1) THENCE N 89 DEGREES 51 MINUTES 58 SECONDS E, 600.00 FEET; (ALL BEARINGS IN THIS DESCRIPTION ARE RELATIVE TO THE SOUTH LINE OF LOTS 11-47 IN SAID BLOCK 14 WHICH WAS ASSUMED TO BE N 89 DEGREES 48 MINUTES 24 SECONDS E)
- (2) THENCE N 00 DEGREES 08 MINUTES 02 SECONDS W, 768.34 FEET;
- (3) THENCE S 89 DEGREES 51 MINUTES 58 SECONDS W, 760.87 FEET;
- (4) THENCE S 11 DEGREES 57 MINUTES 34 SECONDS E, 785.00 FEET; TO THE POINT OF BEGINNING.