Update project description and ensure the contents of the new PCM MA matches the work under PPR2628

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 CSMS Management, LLC (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) 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 stockpile to be known as Beacon Lite Stockpile; 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 stockpile on Developer's promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices ("BMPs") for the stockpile; 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 stockpile~~ three two detention basin/stormwater quality BMP's ("detention basin/BMP") 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; and

I. WHEREAS, Developer desires to construct the detention basin/BMP's on the Property legally described in Exhibit A; and

J. WHEREAS, Developer shall be charged with the duties of constructing, operating, maintaining and repairing the detention basin/BMP 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 serving this stockpile due to the Developer's failure to meet its obligations to do the same; and

M. WHEREAS, the County conditions approval of this stockpile under Planning and Community Development File No. CDR261 on the Developer's promise to construct the detention basin/BMP and to reimburse the County in the event the burden falls upon the County to clean, maintain and/or repair the detention basin/BMP serving this Property; and

N. WHEREAS, the County could condition stockpile 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's promises contained herein; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this stockpile upon the Developer's grant herein of a perpetual Easement over 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.

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 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 the Property described in Exhibit A attached hereto and incorporated herein by this reference, one detention basin/BMP. Developer shall not commence construction of the detention basin/BMP until the El Paso County Planning and Community Development Services Department (PCD) has approved in writing the plans and specifications for the detention basin/BMP and this Agreement has been signed by all Parties and returned to the PCD. Developer shall complete construction of the detention basin/BMP in substantial compliance with the County-approved plans and specifications for the detention basin/BMP. 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 shall be substantially completed within one (1) year (defined as 365 days), which 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 must be completed and inspected by the PCD 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 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 agrees, for itself and its successors and assigns, that it will regularly and routinely inspect, clean and maintain the detention basin/BMP in compliance with the County-reviewed Operation and Maintenance Manual, attached hereto as Exhibit B and incorporated herein by reference, 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 shall be planted or allowed to grow on the detention basin/BMP.

5. Creation of Easement: Developer hereby grants the County a non-exclusive perpetual easement upon and across 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; 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.

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the detention basin/BMP is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developer and its successors and assigns, that the detention basin/BMP needs to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problems. Should the responsible parties fail to correct the

specified problems, the County may enter upon the Property to so correct the specified problems. 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.

7. Reimbursement of County's Costs / Covenant Running with the Land: The Developer 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 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'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: Developer 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, 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, 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 be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as "hazardous materials"), the Developer 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, 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 September 2026, by:

By: _____
CSMS Management, LLC; _____, Manager

The foregoing instrument was acknowledged before me this _____ day of September 2026, by _____, CSMS Management, LLC

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

Executed this _____ day of September, 2026, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Christina Prete, P.E., Stormwater Operations & Compliance Manager
Engineering Division, Department of Public Works
Designee of Joshua J. Palmer, P.E., County Engineer
Authorized signatory pursuant to Resolution No. 24-145

The foregoing instrument was acknowledged before me this _____ day of March 2026, by _____, Stormwater Operations & Compliance Manager, El Paso County Department of Public Works.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

Approved as to Content and Form:

_____
Assistant County Attorney

EXHIBIT A

Tax ID numbers 7102200014 & 7102200016

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 2 LYING WEST OF INTERSTATE HIGHWAY NO. 25 AND THAT PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 2 AND OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 3 IN TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE WESTERLY LINE OF SAID SECTION 2 THAT IS 30 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SECTION 2;
THENCE ON A LINE THAT IS PARALLEL TO AND 30 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 2, NORTH 89° 12' EAST 584.4 FEET (NORTH 89°14'16" EAST, 615.88 FEET RECORD);
THENCE SOUTH 84° 20' EAST (SOUTH 83°37'13" EAST RECORD) A LONG THE RIGHT OF WAY OF INTERSTATE HIGHWAY NO. 25, 132.10 FEET (96.56 FEET RECORD);
THENCE CONTINUE ON SAID RIGHT OF WAY LINE SOUTH 44° 27' 30" EAST, 76.8 FEET (SOUTH 43°49'07" EAST, 76.72 FEET RECORD);
THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 4°36' EAST, 930.13 FEET (SOUTH 03°54'06" EAST, 930.13 FEET MEASURED;
THENCE CONTINUING ALONG SAID RIGHT OF WAY SOUTH 6° 42' WEST, 457.05 FEET (SOUTH 07°23'54" WEST, 547.05 MEASURED), TO THE SOUTH LINE OF THE NORTHWEST OF THE NORTHWEST QUARTER OF SAID SECTION 2;
THENCE ALONG SAID SOUTH LINE, NORTH 89° 30' WEST, 766.91 FEET (SOUTH 88°46'17" WEST, 766.91 FEET MEASURED, TO THE SOUTHWEST CORNER OF SAID NORTHWEST OF THE NORTHWEST QUARTER OF SAID SECTION 2;
THENCE NORTH (NORTH 00°06'22" WEST, 1428.85 FEET RECORD) ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 2 TO THE POINT OF BEGINNING AND EXCEPTING ANY PORTION LYING WITHIN THE COUNTY ROAD KNOWN AS BEACON LITE ROAD, COUNTY OF ELPASO, STATE OF COLORADO,
EXCEPT
A RIGHT-OF-WAY PARCEL LOCATED WITHIN A PARCEL OF LAND AS DESCRIBED BY QUIT CLAIM DEED, RECEPTION NUMBER 001696697, IN THE EL PASO COUNTY CLERK AND RECORDER'S OFFICE AND LOCATED IN THE NORTHWEST 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SECTION 2, (A 3 INCH ALUMINUM CAP STAMPED PLS 17 496) TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO; THENCE S45°29'03"E, A DISTANCE OF 42.14 FEET TO THE NORTHWEST CORNER OF SAID PROPERTY, ALSO TO THE POINT OF BEGINNING;
1. THENCE N89°07'53"E ALONG THE SOUTH RIGHT-OF-WAY LINE OF COUNTY LINE ROAD, A DISTANCE OF 362.93 FEET; MORE OR LESS, TO A POINT ON THE EAST PROPERTY LINE;

2. THENCE S00°04'29"E ALONG SAID PROPERTY LINE, A DISTANCE OF 18. 15 FEET;
3. THENCE N88°53'31"W, A DISTANCE OF 307.11 FEET;
4. THENCE S42°19'34"W, A DISTANCE OF 48.48 FEET;
5. THENCE S00°15'23"W, A DISTANCE OF 203.28 FEET;
6. THENCE S04°32'17"W, A DISTANCE OF 160.73 FEET;
7. THENCE S00°15'23"W, A DISTANCE OF 188.22 FEET
8. THENCE N89°44'37"W, A DISTANCE OF 7.75 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF BEACON LITE ROAD, ALSO BEING THE WEST PROPERTY LINE OF SAID PARCEL;
9. THENCE N00°05'45"W ALONG THE EAST RIGHT-OF-WAY LINE OF BEACON LITE ROAD, A DISTANCE OF 594.25 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

EXCEPT A PARCEL OF LAND DESCRIBED AS RW-118 IN OFFER LETTER FOR PROJECT 128558 BEACON LITE ROAD IMPROVEMENTS DATED JUNE 7, 2023 DESCRIBED AS FOLLOWS:

A RIGHT OF WAY PARCEL LOCATED WITHIN A PARCEL OF LAND AS DESCRIBED BY WARRANTY DEED, RECEPTION NUMBER 222106819, IN THE EL PASO COUNTY CLERK AND RECORDER'S OFFICE AND LOCATED IN THE NORTHWEST 1/4 OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

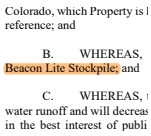
COMMENCING AT THE EAST 1/4 CORNER OF SECTION 3, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO; THENCE N 00°50'09" E, A DISTANCE OF 1844.95 FEET, TO A POINT OF THE EAST RIGHT OF WAY LINE OF BEACON LITE ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING;

1. THENCE N 00°05'45" W, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 298.57 FEET;
2. THENCE S 89°47'07 E, A DISTANCE OF 7.75 FEET;
3. THENCE S 00°15'23" W, A DISTANCE OF 298.57 FEET;
4. THENCE N 89°44'37" W, A DISTANCE OF 5.91 FEET TO THE POINT OF BEGINNING;

CONTAINING 24.81 ACRES MORE OR LESS.

V1_PCM Maintenance Agreement.pdf Markup Summary

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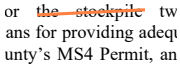
Beacon Lite Stockpile;



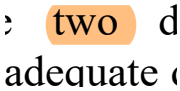
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Update project description and ensure the contents of the new PCM MA matches the work under PPR2628

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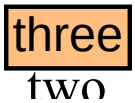


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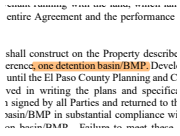
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3 (2)



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, one detention basin/BMP.



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