

**PRIVATE WATER QUALITY FACILITY /
STORMWATER QUALITY BEST MANAGEMENT PRACTICE
MAINTENANCE AGREEMENT AND EASEMENT**

This PRIVATE WATER QUALITY FACILITY / 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 GTL DEVELOPMENT, INC. (“Developer”) and MERIDIAN SERVICE METROPOLITAN DISTRICT (“Metro District”), a quasi-municipal corporation and political subdivision of the State of Colorado. The above may occasionally be referred to herein singularly as “Party” and collectively as “Parties.”

Recitals

A. WHEREAS, the Metro District provides various municipal services to certain real property in El Paso County, Colorado referred to as Meridian Ranch; and

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

C. WHEREAS, Developer desires to plat and develop on the Property a subdivision to be known as Rolling Hills Ranch North Filing No. 1 at Meridian Ranch (the “Subdivision”); and

D. WHEREAS, the development of the Property will 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 the Subdivision on Developer’s promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices (“BMPs”) for the Subdivision; and

E. 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

F. 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

G. 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

H. 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

I. WHEREAS, Developer desires to construct for the Subdivision one Water Quality Facility (the “Water Quality Facility”) as the means for providing adequate drainage and stormwater runoff control and to meet requirements of the County’s MS4 Permit, and to provide for operating, cleaning, maintaining and repairing such Water Quality Facility; and

J. WHEREAS, Developer desires to construct the Water Quality Facility; and

K. WHEREAS, Developer shall be charged with the duty of constructing the Water Quality Facility and the Metro District shall be charged with the duties of operating, maintaining and repairing the Water Quality Facility on the property to be platted as Tract A, Rolling Hills Ranch North Filing No. 1 at Meridian Ranch, as depicted in Exhibit B (the “WQF Property”); and

L. 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 such water quality facilities, and that such water quality facilities, when not so properly cleaned, maintained, and repaired, threaten the public health, safety and welfare; and

M. 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 such water quality facilities 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 Water Quality Facility serving this Subdivision due to the Developer’s or the Metro District’s failure to meet its obligations to do the same; and

N. WHEREAS, the County conditions approval of this Subdivision on the Developer’s promise to so construct the Water Quality Facility, and further conditions approval on the Metro District’s promise to reimburse the County in the event the burden falls upon the County to so clean, maintain and/or repair the Water Quality Facility serving this Subdivision; and

O.

P. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Subdivision 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, request the Metro District to repair or maintain, if necessary, and, when so necessary due to the Metro District’s failure to repair or maintain, to clean, maintain and/or repair the Water Quality Facility; and

Q. WHEREAS, Pursuant to Colorado Constitution, Article XIV, Section 18(2) and Section 29-1-203, Colorado Revised Statutes, governmental entities may cooperate and contract with each other to provide any function, services, or facilities lawfully authorized to each.

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 and the Metro District agree that this entire Agreement and the performance thereof shall become a covenant running with the Property, and that this entire Agreement and the performance thereof shall be binding upon themselves, their respective successors and assigns.
3. Construction: Developer shall construct on that portion of the Property described in Exhibit B one Water Quality Facility. Developer shall not commence construction of the Water Quality Facility until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the Water Quality Facility and this Agreement has been signed by all Parties and returned to the PCD. Developer shall complete construction of the Water Quality Facility in substantial compliance with the County-approved plans and specifications for the Water Quality Facility. 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 Water Quality Facility 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. Rough grading of the Water Quality Facility must be completed and inspected by the El Paso County Development Services 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 construction of the Water Quality Facility in accordance with the County-approved plans and specifications and shall have the right to seek reimbursement from the Developer and its respective 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 complete construction. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce this paragraph 3, 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 Metro District agrees for itself and its successors and assigns, that it will regularly and routinely inspect, clean and maintain the Water Quality Facility, 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 Water Quality Facility shall be planted or allowed to grow on the Water Quality Facility.

5. Creation of Easement: Developer hereby grants the County and the Metro District a non-exclusive, perpetual easement upon and across the WQF Property to construct, re-construct, access, inspect, clean, repair and maintain the Water Quality Facility (the "Easement"); however, the creation of the Easement does not expressly or implicitly impose on the County a duty to so construct, reconstruct, inspect, clean, repair or maintain the Water Quality Facility.

6. County's Rights and Obligations: Any time the County determines, in the sole and reasonable exercise of its discretion, that the Water Quality Facility is not properly constructed, reconstructed, cleaned, maintained and/or otherwise kept in good repair, the County shall give notice to

the Developer, and/or the Metro District and their respective successors and assigns, that the Water Quality Facility needs to be constructed, reconstructed, cleaned, maintained and/or otherwise repaired. This notice shall provide a reasonable time to correct the problem(s) identified in the notice. Should the Developer and/or the Metro District fail to correct the problem(s) identified in the notice, the County may enter upon the WQF Property to so correct such problem(s). Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the Water Quality Facility.

7. Reimbursement of County's Costs / Covenant Running With the Land: The Developer and the Metro District agree and covenant, for themselves, their respective successors and assigns, that they will reimburse the County for its costs and expenses incurred in the process of completing construction of, cleaning, maintaining, and/or repairing the Water Quality Facility pursuant to paragraph 6.

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.. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce paragraphs 6 and 7, 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. Conditions of Subdivision Approval: Developer's and the Metro District's execution of this Agreement is a condition of approval of the Subdivision. Additional conditions of approval of the Subdivision include, but are not limited to, the following:

- a. Subsequent to completion of construction of the Water Quality Facility, conveyance of the WQF Property from the Developer to the Metro District (subject to the Easement in favor of the County provided in paragraph 5 hereof), and recording of the Deed for the same; and
- b. A copy of the Covenants of the Subdivision, if applicable, establishing that the Metro District is obligated to inspect, clean, maintain, and repair the Water Quality Facility after the Metro District has accepted the construction of and the maintenance of the Water Quality Facility from the Developer shall be provided to the County or will be recorded.

The County shall have the right, in the sole and reasonable exercise of its discretion, to approve or disapprove any documentation submitted to it under the conditions of this paragraph 8, 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 Development Services 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 Development Services 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 Development Services 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 and the Metro District agree, for themselves, their respective successors and assigns, that they 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 their respective intentional or negligent acts, errors or omissions or that of their 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 Water Quality Facility. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County or the Metro District 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, the Metro District, 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 Water Quality Facility be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as “hazardous materials”), the Developer and/or the Metro District 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 and/or the Metro District, 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.

15. Limitation on Developer’s Obligation and Liability: The obligations and liability of the Developer hereunder shall only continue until such time as the Final Plat of the Subdivision is recorded and the Developer completes construction of the Water Quality Facility and conveys the WQF Property to the Metro District. By execution of this agreement, the Metro District agrees to accept all responsibilities and to perform all duties assigned to it, including those of the Developer, as specified herein, upon transfer of the WQF Property and the Water Quality Facility from Developer to the Metro District.

16. Notices. All notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by certified or registered mail, postage prepaid and return receipt requested, addressed as follows:

To County: _____

To Metro District: Jim Nikkel
Meridian Ranch Metropolitan District
11886 Stapleton Dr
Falcon, CO 80831
(719) 495-6567

To Developer: Raul Guzman
GTL Development, Inc.
3575 Kenyon St., Suite 2011
San Diego, CA 92110
(619) 223-1663

or at such other address as either party hereto may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered given when personally delivered or mailed and shall be considered received on the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is given.

17. Liens. Developer shall not create or permit any liens to be placed upon the WQF Property as a result of the construction of the Water Quality Facility, and in the event any such a lien is placed upon such WQF Property, Developer will remove the same within thirty (30) days thereafter.

18. No Waiver of Governmental Immunity. The parties hereto understand and agree that the County and the Metro District are relying on and do not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, et seq., as from time to time amended, or otherwise available to the County and/or Metro District..

IN WITNESS WHEREOF, the Parties affix their signatures below.

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

GTL Development, Inc.

By: _____
Raul Guzman, Vice President

STATE OF California)
 SS:
COUNTY OF San Diego)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by Raul Guzman, Vice President, GTL Development, Inc.

Witness my hand and official seal.

My commission expires: _____

Notary Public

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

MERIDIAN SERVICE METROPOLITAN DISTRICT

By: _____
Milton Gabrielski, President

Attest:

By: _____
Wayne Reorda, Secretary

STATE OF Colorado)
 SS:
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by Milton Gabrielski, President, and Wayne Reorda, Secretary, MERIDIAN SERVICE
METROPOLITAN DISTRICT

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: _____

Planning and Community Development Department
Authorized signatory pursuant to LDC

Attest:

County Clerk and Recorder

STATE OF Colorado)
 SS:
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, Chair of the Board of County Commissioners of El Paso County,
Colorado, as Attested to by _____, County Clerk and Recorder.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Approved as to Content and Form:

Assistant County Attorney

EXHIBIT A

LEGAL DESCRIPTION OF SUBDIVISION:

KNOW ALL MEN BY THESE PRESENTS:

THAT GTL, INC. DBA GTL DEVELOPMENT, INC., THEODORE TCHANG, PRESIDENT BEING THE OWNER OF THE FOLLOWING DESCRIBED TRACT OF LAND: A PARCEL OF LAND LOCATED IN A PORTION OF SECTION 20, IN TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY OF ESTATE RIDGE DRIVE AS-DEDICATED IN THE ESTATES AT ROLLING HILLS RANCH FILING NO. 2, RECORDED WITH RECEPTION NO. 222714944 IN THE RECORDS OF EL PASO COUNTY, POINT ALSO BEING ON THE MOST NORTHERLY POINT OF TRACT A OF THE SANCTUARY FILING NO. 1 AT MERIDIAN RANCH RECORDED WITH RECEPTION NO. 223715140 IN THE RECORDS OF EL PASO COUNTY, POINT BEING ON THE EASTERN BOUNDARY LINE OF SAID THE ESTATES AT ROLLING HILLS RANCH FILING NO. 2;

THE FOLLOWING FIVE (5) COURSES ARE ON SAID BOUNDARY LINE:

1. THENCE N07°26'02"E A DISTANCE OF 616.00 FEET;
2. THENCE N52°26'02"E A DISTANCE OF 31.11 FEET;
3. THENCE N07°26'02"E A DISTANCE OF 60.00 FEET;
4. THENCE S82°33'58"E A DISTANCE OF 168.00 FEET;
5. THENCE N07°26'02"E A DISTANCE OF 120.00 FEET;
6. THENCE S82°33'58"E A DISTANCE OF 1005.00 FEET;
7. THENCE N83°02'50"E A DISTANCE OF 125.64 FEET;
8. THENCE N76°59'35"E A DISTANCE OF 60.00 FEET TO A NON-TANGENT CURVE TO THE RIGHT;
9. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 430.00 FEET, A DELTA ANGLE OF 20°26'26", AN ARC LENGTH OF 153.41 FEET, WHOSE LONG CHORD BEARS S02°47'11"E A DISTANCE OF 152.59 FEET;
10. THENCE S37°33'58"E A DISTANCE OF 31.11 FEET TO A NON-TANGENT CURVE TO THE LEFT;
11. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 320.00 FEET, A DELTA ANGLE OF 29°52'23", AN ARC LENGTH OF 166.84 FEET, WHOSE LONG CHORD BEARS N82°29'50"E A DISTANCE OF 164.96 FEET;
12. THENCE N67°33'39"E A DISTANCE OF 278.06 FEET;
13. THENCE N22°33'39"E A DISTANCE OF 31.11 FEET;
14. THENCE N22°26'21"W A DISTANCE OF 103.00 FEET;
15. THENCE N67°33'39"E A DISTANCE OF 230.00 FEET;
16. THENCE N64°41'54"E A DISTANCE OF 100.12 FEET;
17. THENCE N67°33'39"E A DISTANCE OF 215.00 FEET;
18. THENCE N69°55'18"E A DISTANCE OF 97.94 FEET;
19. THENCE N77°08'32"E A DISTANCE OF 97.44 FEET;
20. THENCE N87°17'03"E A DISTANCE OF 98.28 FEET;
21. THENCE N89°46'57"E A DISTANCE OF 225.24 FEET;
22. THENCE S00°13'03"E A DISTANCE OF 99.94 FEET;
23. THENCE N89°46'57"E A DISTANCE OF 160.00 FEET TO A POINT ON THE WESTERN BOUNDARY OF FALCON REGIONAL PARK RECORDED WITH RECEPTION NO. 214093227;
24. THENCE S00°13'03"E ON SAID BOUNDARY LINE A DISTANCE OF 769.32 FEET TO A NON-TANGENT CURVE TO THE LEFT, POINT BEING ON THE NORTHERN BOUNDARY OF SAID SANCTUARY FILING NO. 1 AT MERIDIAN RANCH;

THE FOLLOWING NINE (9) COURSES ARE ON THE BOUNDARY LINE OF SAID THE SANCTUARY FILING NO. 1 AT MERIDIAN RANCH:

25. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 2050.00 FEET, A DELTA ANGLE OF 05°02'20", AN ARC LENGTH OF 180.29 FEET, WHOSE LONG CHORD BEARS S75°52'06"W A DISTANCE OF 180.23 FEET;
26. THENCE N62°31'53"W A DISTANCE OF 31.42 FEET;
27. THENCE S71°53'44"W A DISTANCE OF 60.00 FEET;
28. THENCE S26°19'21"W A DISTANCE OF 31.42 FEET TO A NON-TANGENT CURVE TO THE LEFT;
29. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 2050.00 FEET, A DELTA ANGLE OF 02°03'13", AN ARC LENGTH OF 73.48 FEET, WHOSE LONG CHORD BEARS S69°24'55"W A DISTANCE OF 73.48 FEET;
30. THENCE S68°23'18"W A DISTANCE OF 399.50 FEET TO A POINT OF CURVE TO THE RIGHT;
31. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 1930.00 FEET, A DELTA ANGLE OF 29°02'43", AN ARC LENGTH OF 978.39 FEET, WHOSE LONG CHORD BEARS S82°54'40"W A DISTANCE OF 967.95 FEET;
32. THENCE N82°33'58"W A DISTANCE OF 1387.37 FEET;
33. THENCE N37°33'58"W A DISTANCE OF 31.11 FEET TO THE POINT OF BEGINNING.

THE ABOVE PARCEL OF LAND CONTAINS 60.700 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE SOUTH LINE OF THE SW ¼ OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M., ASSUMED TO BEAR S89°25'42"E FROM THE SOUTHWEST CORNER OF SAID SECTION 29 (A STONE W/SCRIBED "X") TO THE SOUTH QUARTER CORNER OF SAID SECTION 29 (3.25" ALUM. CAP LS #30087).

EXHIBIT B

INSERT EXHIBIT B PDF



Please provide
maintenance agreement
attachment.