**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

**Pearsons** **Ministries International, a Texas non-profit corporation** (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

subdivision/land use to be known as **Legacy Church**; 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 two (2) 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 B attached hereto and incorporated herein by this reference, [insert number of

basins/BMPs] detention basin/BMP(s). Developer shall not commence construction of the

detention basin/BMP(s) until the El Paso County Development Services Department (DSD) 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 DSD. 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 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 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 nonexclusive

perpetual easement upon and across that portion of the Property described in Exhibit

B. 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 Development Services Department

and/or El Paso County Public Services Department: 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 Public Services

Department. 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 Public Services Department.

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:

Pearson Ministries International, a Texas non-profit corporation

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 Developer’s

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County Clerk and Recorder

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

The Northeast quarter of the Southeast quarter of Section 5, Township 13 South, Range 68 West of the 6th P.M., El Paso County, Colorado, together with a non-exclusive right of way for ingress and egress over and across the Northerly and Westerly 30 feet of the Northeast quarter of the Northwest quarter of the Southeast quarter of said Section 5, and over the Easterly 30 feet of the Northwest quarter of the Northwest quarter of the Southeast quarter of said Section 5;

Together with a non-exclusive right of way for ingress and egress over and across those easements described in Deeds recorded September 5, 1972 in Book 2520 at Page 472 and in Book 2520 at Page 470, and over that portion of the Southeast quarter of the Northwest quarter of the Southeast quarter of said Section 5 described in the last paragraph of Deed recorded March 6, 1975 in Book 2737 at Page 29;

Together with a non-exclusive right of way for ingress and egress over and across the Easterly and Northerly 30 feet of the Southeast quarter of the Northwest quarter of the Southeast quarter of Section 5, Township 13 South, Range 68 West of the 6th P.M., as set forth in Deed recorded June 3, 1976 in Book 2833 at Page 712;

Together with a non-exclusive right of way for ingress and egress over and across the Easterly and Southerly 30 feet of the Northeast quarter of the Northwest quarter of the Southeast quarter of Section 5, Township 13 South, Range 68 West of the 6th P.M., as set forth in Deed recorded June 3, 1976 in Book 2833 at Page 713;

Together with a private and exclusive easement as described in Easement Agreement recorded October 20, 1981 in Book 3493 at Page 230,

County of El Paso,

State of Colorado

and

The Southwest Quarter of the Southwest Quarter of Section 4; The Southeast Quarter of the Southeast Quarter of Section 5; that portion of the East Half of the Northeast Quarter of Section 8 lying Northerly of the North line of Highway 24, all in Township 13 South, Range 68 West of the 6th P.M.,

County of El Paso,

State of Colorado