

**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 CHEROKEE 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, Metro District is the owner of certain real property located in El Paso County, Colorado, which "Property" is legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

B. WHEREAS, Metro District desires to develop on the Property additional water treatment facilities; and

C. WHEREAS, the additional improvements on this Property may substantially increase the volume of water runoff and may decrease the quality of the stormwater runoff from the Property, and, therefore, it is in the best interest of the public health, safety and welfare for the County to condition approval of the site development plan on Metro District's promise to construct adequate drainage, water runoff control facilities, and stormwater quality structure Best Management Practices ("BMPs") for the Property; and

D. 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; and

E. WHEREAS, Metro District has determined it is in the best interest of public health, safety and welfare of its constituents to improve an existing detention basin and install additional drainage improvements BMP(s) ("detention basin/BMP(s)" or "Project") 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 detention basin/BMP(s); and

F. WHEREAS, Metro District shall be charged with the duty of constructing, operating, maintaining and repairing the detention basin/BMP(s) on the portion of the Property as described in Exhibit B, which is attached hereto and incorporated herein by this reference; and

G. WHEREAS, the County conditions approval of the site development plan on the Metro District's promise to so construct the detention basin/BMP(s), 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 maintain and/or repair the detention basin/BMP(s); and

H. WHEREAS, the County could condition site development plan approval on the Metro District'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 the Metro District's promises contained herein; and

I. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of the site development plan upon the Metro District'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

J. 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:** Metro District 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 as the Property, and that this entire Agreement and the performance thereof shall be binding upon themselves, their respective successors and assigns.

3. **Construction:** Metro District shall construct on that portion of the Property described in Exhibit B the detention basin/BMP(s), including improvements to an existing detention pond, a grass swale, and two culverts. Metro District 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. Metro District 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 erosion and stormwater quality control permit (ESQCP) is issued.

In the event construction is not substantially completed within the one (1) year period, then the County may exercise its discretion to complete the detention basin/BMPs and shall have the right to seek reimbursement from the Metro District 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 Metro District 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:** Metro District hereby grants the County a non-exclusive 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 Metro District 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 Metro District agrees and covenants for itself and 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 Site Development Plan Approval:** Metro District's execution of this Agreement is a condition of site development plan and ESQCP approval.

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, Metro District agrees, for itself and 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 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 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 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 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 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. Entire Agreement: This Agreement represents the entire Agreement between the County and the Metro District regarding this subject matter. It shall supersede all prior agreements, discussions and negotiations between the parties. This Agreement shall not be amended or modified unless in writing, executed by both parties.

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this 2nd day of March, 2021, by:

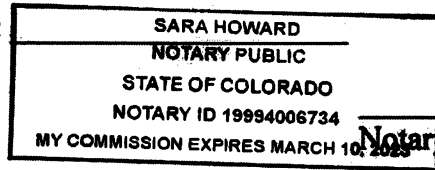
CHEROKEE METROPOLITAN DISTRICT


By: 
Amy Lathen, General Manager

The foregoing instrument was acknowledged before me this 2nd day of March, 2021, by Amy Lathen, General Manager of Cherokee Metropolitan District.

Witness my hand and official seal.

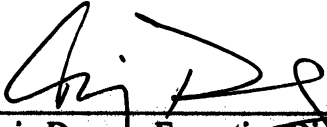
My commission expires:




Notary Public

Executed this 19TH day of April, 2021, 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


Attest:

Chuck Broerman
County Clerk and Recorder

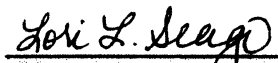
The foregoing instrument was acknowledged before me this 19 day of April, 2021, by Craig Dossey, Executive Director, El Paso County Planning and Community Development Department, as attested to by Chuck Broerman, El Paso County Clerk and Recorder.

Witness my hand and official seal.

My commission expires: 9-16-2022


Notary Public

Approved as to form:


County Attorney's Office

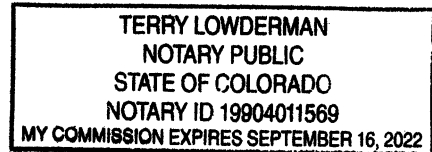


Exhibit A

LEGAL DESCRIPTION

**SOUTHWEST ¼, SECTION 8, TOWNSHIP 15 SOUTH, RANGE 63 WEST, EL PASO COUNTY
RECORDED NOVEMBER 19, 2004 AT RECEPTION NO. 204195581 BY WARRANTY DEED,
COUNTY OF EL
PASO, STATE OF COLORADO.**

