

**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., whose address is P.O. Box 80036, San Diego, CA 92138 (“Developer”) and MERIDIAN SERVICE METROPOLITAN DISTRICT, whose address is 11886 Stapleton Dr., Falcon, CO 80831 (“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. 2 at Meridian Ranch (the “Subdivision”); and

D. WHEREAS, the development of the 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 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

When describing the RPA areas use the notation from the Drainage Report of areas A, B, and C

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 water quality improvements on portions of two separate tracts of land 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, as applicable, such water quality improvements; and

this is for 2 runoff reduction RPAs. Clearly identify that since it is not for a pond.

J. WHEREAS, Developer desires to construct a water quality pond to improve the water quality and reduce hydromodification of the storm water runoff ("Water Quality Pond") on a portion of the property that is or will be platted as Tract A, Rolling Hills Ranch North Filing No. 2, as indicated on the final plat of the Subdivision, and as more specifically described on Exhibit B attached hereto ("WQP Property"); and

K. WHEREAS, Developer desires to construct a receiving pervious area to allow for runoff infiltration ("Receiving Pervious Area") on a portion of the property that is or will be platted as Tract B, Rolling Hills Ranch North Filing No. 2, as indicated on the final plat of the Subdivision, and as set forth on Exhibit C attached hereto ("RPA Property"). Together the Water Quality Pond and the Receiving Pervious Area shall be referred to herein as the Water Quality Facilities; and

L. WHEREAS, Developer shall be charged with the duty of constructing the Water Quality Facilities and the Metro District shall be charged with the duties of operating, maintaining and repairing the Water Quality Facilities on the properties described in Exhibits B & C; and

M. 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

N. 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 Facilities serving this Subdivision due to the Developer's or the Metro District's failure to meet its obligations to do the same; and

O. WHEREAS, the County conditions approval of this Subdivision on the Developer's promise to so construct the Water Quality Facilities, 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 Facilities serving this Subdivision; and

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, and, when so necessary, to clean, maintain and/or repair the Water Quality Facilities; 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 land, which is legally described in Exhibit A and attached hereto, and that this entire Agreement and the performance thereof shall be binding upon themselves, their respective successors and assigns.

3. Construction: Developer shall construct the Water Quality Pond on the WQP Property described on Exhibit B and the Receiving Pervious Area on the RPA Property described on Exhibit C. Developer shall not commence construction of the Water Quality Facilities until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the Water Quality Facilities and this Agreement has been signed by all Parties and returned to the PCD. Developer shall complete construction of the Water Quality Facilities in substantial compliance with the County-approved plans and specifications for the Water Quality Facilities (the "Project"). 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 Facilities 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 Facilities must be completed and inspected by the El Paso County Development Services Department prior to commencing road construction.

In the event construction of the Project 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 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 correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions 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 Water Quality Facilities, 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 Pond shall be planted or allowed to grow on the WQP Property. The RPA Property will remain undisturbed and maintain a uniform vegetative cover density of at least 80%.

5. Creation of Easement: Developer hereby grants the County and the Metro District a non-exclusive, perpetual easement upon and across the WQP Property described in Exhibit B and the RPA

Property described in Exhibit C, for the purposes of allowing the County and the Metro District to access, construct, re-construct, inspect, clean, repair and maintain the Water Quality Facilities; however, the creation of this easement does not expressly or implicitly impose on the County a duty to so construct, reconstruct, inspect, clean, repair or maintain the Water Quality Facilities.

6. County's Rights and Obligations: Any time the County determines, in the sole and reasonable exercise of its discretion, that the Water Quality Facilities, or either of them, are not properly constructed, reconstructed, cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developer, and/or the Metro District and their respective successors and assigns, that the Water Quality Facilities, or either of them, need to be constructed, reconstructed, cleaned, maintained and/or otherwise repaired. This notice shall provide a reasonable time to correct the problem(s). Should the responsible party fail to correct the specified problem(s), the County may enter upon the property described in Exhibits B and C 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 Water Quality Facilities.

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 Facilities 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 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.

8. Conditions of Subdivision Approval: The Developer's and the Metro District's execution of this Agreement is a condition of Subdivision approval. Additional conditions of approval of the Subdivision include, but are not limited to, the following:

- a. Conveyance of Tracts A and B, as indicated on the final plat of the Subdivision, from the Developer to the Metro District (which will include a reservation of easement in favor of the County for purposes of accessing, inspecting, cleaning, maintaining, and repairing the Water Quality Facilities), and recording of the Deeds 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 Facilities.

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, the 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 Facilities and such obligation arising under this paragraph shall be joint and several, subject to paragraph 15 below. 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 Facilities 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 as described in

Paragraph C of the Recitals set forth above is recorded and the Developer completes the construction of the Water Quality Facilities and transfers all applicable maintenance and operation responsibilities 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 Tracts A & B, Rolling Hills Ranch North Filing No. 2, as indicated on the final plat of the Subdivision, including the property described on Exhibits B & C, from the Developer to the Metro District.

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

17. 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: _____
Gilbert LaForce, Engineering Manager
Department of Public Works
Authorized signatory as County Engineer designee pursuant to Resolution 24-145

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 _____, 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:

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 THE NORTHEAST CORNER OF TRACT A OF THE ESTATES AT ROLLING HILLS RANCH FILING NO. 2, RECORDED WITH RECEPTION NO. 222714944 IN THE RECORDS OF EL PASO COUNTY, POINT BEING ON THE NORTH LINE OF THE NORTHWEST 1/2 OF SAID SECTION 20;

1. THENCE S89°25'43"E ON SAID NORTH LINE, A DISTANCE OF 2624.85 FEET TO A POINT ON THE WESTERN BOUNDARY OF FALCON REGIONAL PARK RECORDED WITH RECEPTION NO. 214093227;

THE FOLLOWING COURSE IS ON SAID BOUNDARY LINE:

2. THENCE S00°13'13"E A DISTANCE OF 1295.07 FEET, POINT BEING ON THE NORTHERN BOUNDARY OF ROLLING HILLS RANCH NORTH FILING NO. 1 RECORDED WITH RECEPTION NO. _____ IN THE RECORDS OF EL PASO COUNTY;

THE FOLLOWING EIGHTEEN (18) COURSES ARE ON THE BOUNDARY LINE OF SAID ROLLING HILLS RANCH NORTH FILING NO. 1:

3. THENCE S89°46'57"W A DISTANCE OF 160.00 FEET;
4. THENCE N00°13'03"W A DISTANCE OF 99.94 FEET;
6. THENCE S89°46'57"W A DISTANCE OF 225.24 FEET;
7. THENCE S87°17'03"W A DISTANCE OF 98.28 FEET;
8. THENCE S77°08'32"W A DISTANCE OF 97.44 FEET;
9. THENCE S69°55'18"W A DISTANCE OF 97.94 FEET;
10. THENCE S67°33'39"W A DISTANCE OF 215.00 FEET;
11. THENCE S64°41'54"W A DISTANCE OF 100.12 FEET;
12. THENCE S67°33'39"W A DISTANCE OF 230.00 FEET;
13. THENCE S22°26'21"E A DISTANCE OF 103.00 FEET;
14. THENCE S22°33'39"W A DISTANCE OF 31.11 FEET;
15. THENCE N67°33'39"E A DISTANCE OF 278.06 FEET TO A POINT OF CURVE TO THE RIGHT;
16. 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 S82°29'50"W A DISTANCE OF 164.96 FEET;
17. THENCE N37°33'58"W A DISTANCE OF 31.11 FEET TO A NON-TANGENT CURVE TO THE LEFT;
18. 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 N02°47'11"W A DISTANCE OF 152.59 FEET;
19. THENCE S76°59'35"W A DISTANCE OF 60.00 FEET;
20. THENCE S83°02'50"W A DISTANCE OF 125.64 FEET;
21. THENCE N82°33'58"W A DISTANCE OF 1005.00 FEET TO A POINT ON THE EASTERN BOUNDARY OF SAID THE ESTATES AT ROLLING HILLS RANCH FILING NO. 2;

THE FOLLOWING FIVE (5) COURSES ARE ON THE BOUNDARY LINE OF SAID THE ESTATES AT ROLLING HILLS RANCH FILING NO. 2:

22. THENCE N07°26'02"E A DISTANCE OF 375.00 FEET;
23. THENCE S82°33'58"E A DISTANCE OF 180.00 FEET;
24. THENCE N06°14'24"W A DISTANCE OF 495.03 FEET;
25. THENCE N06°47'53"W A DISTANCE OF 290.00 FEET;
26. THENCE N00°34'17"E A DISTANCE OF 340.00 FEET THE POINT OF BEGINNING.

THE ABOVE PARCEL OF LAND CONTAINS 88.173 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).