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El Paso County, CO  
  
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RESOLUTION NO. 20- 297

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF EL PASO, STATE OF COLORADO

APPROVAL OF RIVERBEND DETENTION POND MAINTENANCE  
AGREEMENT (DA-20-002)

WHEREAS, the Avatar Riverbend LP has submitted a preliminary plan and final plat(s) applications to the County, which includes the construction of a detention pond on property legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Site"); and

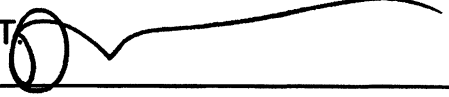
WHEREAS, Developer desires to construct a detention pond to serve both the commercial portion of the Rivebend Development located within the City limits of Fountain as well as the residential portion of the Rivebend Development located within unincorporated El Paso County; and

WHEREAS, the Avatar Riverbend LP will be required to construct a number of public improvements in connection with development of the Riverbend Development, to include a detention pond; and

NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby approves entry into the attached detention pond maintenance agreement;

DONE THIS 11<sup>th</sup> day of August 2020, at Colorado Springs, Colorado.

BOARD OF COUNTY  
COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

ATTEST  
By:   
Chair

By:   
County Clerk & Recorder  


**Exhibit "A"**

**EL PASO**  **COUNTY**  
**COLORADO**

COMMISSIONERS:  
MARK WALLER (CHAIR)  
LONGINOS GONZALEZ, JR. (VICE-CHAIR)

HOLLY WILLIAMS  
STAN VANDERWERF  
CAMI BREMER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**MEMORANDUM**

**Date:** August 11, 2020

**To:** Board of County Commissioners  
Mark Waller, Chair

**From:** Nina Ruiz, Planning Manager  
Lori Seago, Assistant County Attorney

**Through:** Craig Dossey, Planning and Community Development Director

**Subject:** Detention Pond Maintenance Agreement – Riverbend (DA-20-002) (Parcel Nos. 6514100034 and 6514100033)

**Summary:** A request by Avatar Riverbend LP for approval and authorization by the Board of County Commissioners to allow the Chair to sign a Detention Pond Maintenance Agreement and Easement between El Paso County, the City of Fountain, Avatar Fountain LP, Avatar Riverbend LP, and Riverbend Crossing Metropolitan District. The proposed residential development area is comprised of two parcels totaling 51.96 acres in area. The parcels are located at the southwest corner of the Highway 85/87 and Southmoor Drive intersection.

Avatar Fountain owns approximately 10.2 acres of land within the City of Fountain which they propose to develop for commercial uses. Avatar Riverbend LP owns approximately 51.96 acres of land immediately adjacent which they propose to develop for residential uses. The two limited partnership companies are developing the commercial and residential developments simultaneously.

The City of Fountain and El Paso County are both subject to MS4 Permit requirements which require the jurisdictions to take measures to protect the quality of stormwater from sediment and other contaminants and requires the developer to provide adequate permanent stormwater quality BMPs with new development or significant redevelopment. Additionally, the County requires the developer to enter into a maintenance agreement with the County for such BMPs to ensure proper maintenance and to provide the County with an easement to allow the County to enter the property should proper construction or maintenance not be completed. The applicant wishes to construct a single water quality detention pond to serve both the commercial and residential developments. This facility would ultimately be owned and maintained by the Riverbend Crossing Metropolitan District.

2880 INTERNATIONAL CIRCLE, SUITE 110  
PHONE: (719) 520-6300



COLORADO SPRINGS, CO 80910-3127  
FAX: (719) 520-6695

The City of Fountain and El Paso County have worked cooperatively to amend the standard El Paso County Detention Pond Maintenance and Easement Agreement to include provisions for the City of Fountain to be signatory as well as share the financial responsibility with El Paso County in the event that the proposed facility is not completed in a timely manner, is not properly maintained, or is defective and the collateral provided by the developer is insufficient to remedy the issue. The City's proportionate share has been calculated at 36.4%, which is equivalent to the percentage of runoff entering the detention pond as a result of the development within the City.

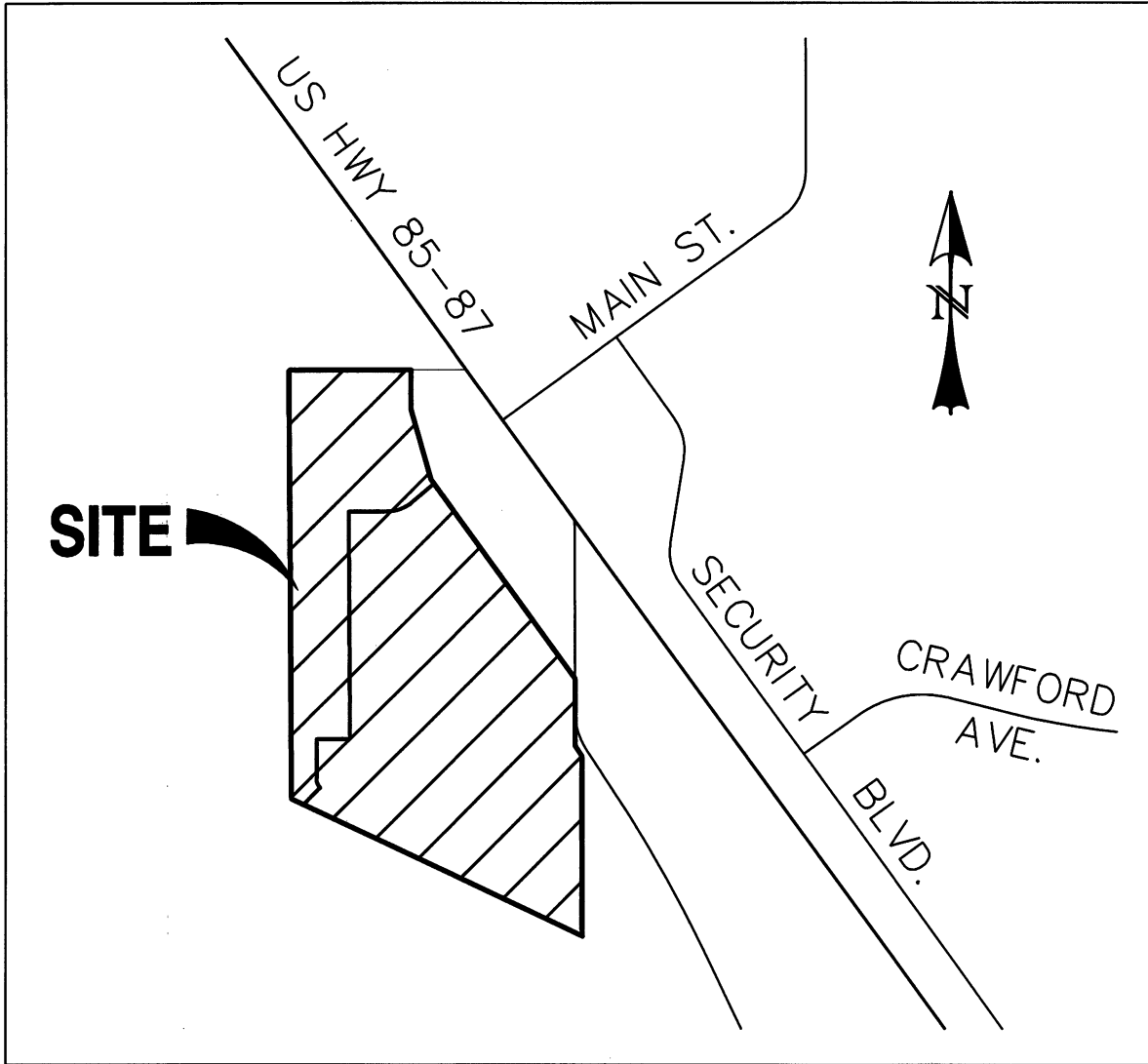
The City of Fountain, the developer, and the Metropolitan District have all signed the agreement. Staff requests the Board of County Commissioners approve the agreement and authorize the Chair to sign the agreement on behalf of the Board.

**Recommendation:**

Staff recommends approval of the agreement. Approval includes authorization for the Chair to sign the Detention Pond Maintenance Agreement.


**Attachments:**

Vicinity Map  
Detention Pond Maintenance Agreement



**VICINITY MAP**

SCALE: N.T.S.

 CATAMOUNT ENGINEERING PO BOX 692 DIVIDE, CO 80814 (719) 428-2124	<b>RIVERBEND CROSSING</b>	SCALE: NTS	DATE: 09/05/18
	<b>VICINITY MAP</b>	JOB NO.: 17-114	SHEET: 1 OF 1

**DETENTION POND  
MAINTENANCE AGREEMENT AND EASEMENT**

This DETENTION POND 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 (“County”), the CITY OF FOUNTAIN (“City”), AVATAR FOUNTAIN LP (“Avatar Fountain”), AVATAR RIVERBEND LP (“Avatar Riverbend”), and RIVERBEND CROSSING METROPOLITAN DISTRICT (“District”). The above may occasionally be referred to herein singularly as “Party” and collectively as “Parties.”

Recitals

A. WHEREAS, Avatar Fountain is the owner of certain real estate (the “Fountain Property”) in Fountain, Colorado, which Fountain Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

B. WHEREAS, Avatar Fountain wishes to develop on the Fountain Property a commercial development to be known as Riverbend Crossing; and

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

D. WHEREAS, Avatar Riverbend wishes to develop on the County Property two subdivisions to be known as Riverbend Residential Filing No. 1 and Riverbend Residential Filing No. 2; and

E. WHEREAS, the development of the County Property will materially increase the volume and decrease the quality of stormwater runoff from such property; therefore, it is in the best interest of the public health, safety and welfare for the County to condition approval of the Riverbend Residential subdivisions on the construction of adequate drainage control facilities and permanent stormwater quality structural control measures, which measures are also known as Best Management Practices (“BMPs”), for the subdivisions; and

F. WHEREAS, the El Paso County Land Development Code, as periodically amended, requires the construction and maintenance of detention ponds and other drainage facilities adequate to maintain historic stormwater flow patterns, protect natural and man-made drainage conveyances, and prevent property damage in connection with the development of subdivisions, and further requires that subdivision developers enter into maintenance agreements and easements with the County for such drainage facilities; and

G. WHEREAS, the El Paso County Drainage Criteria Manual, Volumes 1 and 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 Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (“MS4 Permit”), 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 to enter into maintenance agreements and easements with the County for such BMPs; and

H. WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual, Volume I provides for a developer's promise to maintain a development's drainage facilities in the event the County does not assume such responsibility; and

I. WHEREAS, Avatar Fountain has similar requirements to maintain historic stormwater flow patterns and protect stormwater quality with respect to its commercial development in Fountain; and

J. WHEREAS, Avatar Fountain and Avatar Riverbend desire to construct for their respective developments one detention pond on the County Property as the means for providing adequate drainage and stormwater runoff control and to meet the requirements of the County's and the City's MS4 Permits; and

K. WHEREAS, Avatar Fountain shall be charged with the duty of constructing the detention pond on the property legally described in Exhibit C, attached hereto; and

L. WHEREAS, the District shall be charged with the duties of operating, cleaning, maintaining and repairing the detention pond on the property described in Exhibit C; and

M. WHEREAS, the County and the City, in order to protect the public health, safety and welfare, desire the means to access, construct, maintain, and repair the detention pond, and to recover their costs incurred in connection therewith, in the event Avatar Fountain and the District fail to meet their obligations to do the same; and

N. WHEREAS, the County conditions approval of the Riverbend Residential subdivisions on Avatar Fountain's promise to construct the detention pond, on the District's promise to clean, maintain and repair the detention pond, and on the promise of the responsible parties, as set forth herein, to reimburse the County in the event the burden falls upon the County to construct, clean, maintain or repair the detention pond serving these developments; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this Agreement and the Riverbend Residential subdivisions upon Avatar Riverbend's grant herein of a perpetual Easement on the County Property, or a portion thereof, for the purpose of allowing the County to periodically access, inspect, and, when necessary, to construct, clean, maintain or repair the detention pond.

#### 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:** Avatar Fountain and Avatar Riverbend, and the District agree that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in Exhibits A and B attached hereto, and that this entire Agreement and the performance thereof shall be binding upon themselves and their respective successors and assigns.

3. **Construction:** Avatar Fountain shall construct on the property described in Exhibit C, attached hereto and incorporated herein by this reference, one detention pond adequate to serve both the Fountain Property and the County Property. Avatar Fountain shall not commence construction of the detention pond until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the detention pond, this Agreement has been signed by all Parties and returned to the PCD, collateral to guarantee construction acceptable to the County and City in both form and amount has been provided to PCD, and all necessary permits have been obtained from the County. Avatar Fountain shall complete construction of the detention pond in substantial compliance with the County-approved plans and specifications. Avatar Fountain shall also provide certification from a Colorado-registered Professional Engineer that the detention pond was constructed in accordance with and provides the volume and capacity required by such plans and specifications. Avatar Fountain shall not commence construction on the Fountain Property and no commercial development will begin prior to the detention pond being constructed in conformance with the requirements of this Agreement. Failure to meet these requirements shall be a material breach of this Agreement and shall entitle the County or the City to pursue any remedies available to it at law or in equity to enforce the same. Construction of the detention pond shall be substantially completed within one (1) year (defined as 365 days), which one-year period will commence to run on the date the plans and specifications are approved by PCD. Rough grading of the detention pond must be completed and inspected by the PCD prior to commencing road construction.

In the event construction is not substantially completed within the one-year period, then the County or City may, at least one week following written notice to the other Party of its intent, exercise its discretion to execute on the collateral provided by Avatar Fountain and complete the detention pond. If the collateral is insufficient to cover the actual costs and expenses incurred in the process of completing construction, the Party not completing construction shall pay the difference to the Party completing construction, up to its Proportionate Share, within thirty (30) days of a written request to do so. The Proportionate Share constitutes the City's and County's respective share of the actual costs and expenses for construction and is based upon the percentage of runoff entering the detention pond attributable to the Fountain Property and to the County Property. The City's Proportionate Share has been calculated to be 36.4%, and the County's Proportionate Share has been calculated to be 63.6%. The County and the City shall have the right to seek reimbursement from Avatar Fountain and its successors and assigns for the actual costs and expenses incurred in the process of completing construction.



4. Maintenance: The District agrees for itself and its successors and assigns that it will regularly and routinely inspect, clean, maintain and repair the detention pond in compliance with the County-reviewed Operation and Maintenance Manual 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 pond shall be planted or allowed to grow in the basin of the detention pond.

5. Creation of Easement: Avatar Riverbend hereby grants Avatar Fountain, the District, the County, and the City each a non-exclusive perpetual easement upon and across the property described in Exhibit C. The purpose of the easement is to allow Avatar Fountain to access and construct the detention pond, the District to access, clean, repair and maintain the detention pond, and the County and City to access, inspect, construct clean, repair and maintain the detention pond. The creation of the easement does not expressly or implicitly impose on the County or the City a duty to so inspect, construct, clean, repair or maintain the detention pond.

6. County's and City's Maintenance Rights and Obligations: Any time the County or City determines, in the sole exercise of its discretion, that the detention pond has not been properly cleaned, maintained, or otherwise kept in good repair, the County or City shall give reasonable notice of such to all Parties and their successors and assigns. The notice shall provide a reasonable time to correct the problems. Should the District fail to correct the specified problems, the County or City may enter upon the property described in Exhibit C to perform the needed work. The City shall obtain any necessary permits from the County prior to commencing work, e.g. approval of amended construction drawings or an erosion and stormwater quality control permit. The Party not performing the work shall pay to the Party performing the work, within thirty (30) days of a written request to do so, its Proportionate Share of the actual costs and expenses of performing the work incurred by the Party who performs the work. The County and the City shall have the right to seek reimbursement from the District for the actual costs and expenses in performing the work. Notice shall be effective to the above by the 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 or the City a duty to inspect, construct, clean, repair or maintain the detention pond.

7. Actual Costs and Expenses: Avatar Fountain, Avatar Riverbend, and the District agree and covenant, for themselves and their successors and assigns, that they will reimburse the County and City for their actual costs and expenses incurred in the process of completing construction of, cleaning, maintaining, or repairing the detention pond pursuant to the provisions of this Agreement.

The term "actual costs and expenses" as used in this Agreement shall be liberally construed in favor of the County and City, 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 or City uses its own personnel, tools, equipment and supplies, etc. to perform the work. In the event the County or City initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County and City shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether the County or City contracts with outside legal counsel or utilizes in-house legal counsel for the same.

8. Contingencies of Land Use/Land Disturbance Approval: Avatar Fountain's and Avatar Riverbend's execution of this Agreement is a condition of subdivision, land use, or 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 Executive Director of the El Paso County Planning and Community Development Department and/or the El Paso County Engineer. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be submitted to and shall be made by the Executive Director of the Planning and Community Development Department and/or the El Paso County Engineer.

10. Enforcement of County Regulations: Nothing in this Agreement shall be construed to limit the County's authority to enforce any of its laws, regulations or ordinances as they may apply to this Agreement or to the design, construction, inspection, maintenance and repair of the detention pond that is the subject of this Agreement.

11. Effect of Annexation: Upon annexation of the property described in Exhibit C by the City, all of the County's rights and obligations under this Agreement shall be terminated without the need for further action by the Parties, effective as of the date of annexation.

12. Indemnification and Hold Harmless: Avatar Fountain and Avatar Riverbend agree, for themselves and their successors and assigns, that they will indemnify, defend, and hold the County and the City 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 intentional or negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees and licensees in the design, 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 pond, 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 defenses available to the District, County and the City pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.* C.R.S., or as otherwise provided by law.

13. Assignment: Neither the City, the County, nor the District shall assign the rights or responsibilities under this Contract without the express, written consent of both the City and the County, which may be withheld for any reason or for no reason.

