

**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 [Lorson, LLC](#) (Developer) and [Lorson Ranch 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 District provides various municipal services to certain real property in El Paso County, Colorado referred to as [Carriage Meadows South at Lorson Ranch Filing No. 1](#) and

B. 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

C. WHEREAS, Developer desires to plat and develop on the Property a subdivision to be known as [Carriage Meadows South at Lorson Ranch Filing No. 1](#) and

D. 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 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 [two](#) 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 provide for operating, cleaning, maintaining and repairing such detention basin/BMP(s); and

J. WHEREAS, Developer desires to construct the detention basin/BMP(s) on property that is or will be platted as [Tract M, Tract P, and Tract H, Carriage Meadows South at Lorson Ranch Filing No. 1](#) and as set forth on [Exhibit B](#) attached hereto; and

K. WHEREAS, Developer shall be charged with the duty of constructing the detention basin/BMP(s) and the Metro District shall be charged with the duties of operating, maintaining and repairing the detention basin/BMP(s) on the Property described in [Exhibit B](#); 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 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

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 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 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 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 clean, maintain and/or repair the detention basin/BMP(s) serving this Subdivision; and

O. WHEREAS, the County could condition subdivision 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’s and the Metro District’s promises contained herein; 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 detention basin/BMP(s); 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 land is legally described in Exhibit A 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 on that portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, **two** 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. 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 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 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: Developer hereby grants the County and the Metro District 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 and the Metro District 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, the Metro District and their respective 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 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 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 Subdivision Approval: Developer's and the Metro District's execution of this Agreement is a condition of subdivision approval. Additional conditions of this Agreement include, but are not limited to, the following:

- a. Conveyance of [Tract M, Tract P, and Tract H, Carriage Meadows South at Lorson Ranch Filing No. 1](#) from 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 detention basin/BMP(s)), 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 detention basin/BMP(s).

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 Department of Transportation: 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 Transportation. 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 Transportation.

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 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, 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 Developer and 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 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 obligation and liability of the Developer hereunder shall only continue until such time as the Final Plat as described in Paragraph Three (3) of the Recitals set forth above is recorded and the Developer completes the construction of the detention basin/BMP(s) 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 Tract M, Tract P, and Tract H from Developer to the Metro District.

IN WITNESS WHEREOF, the Parties affix their signatures below.

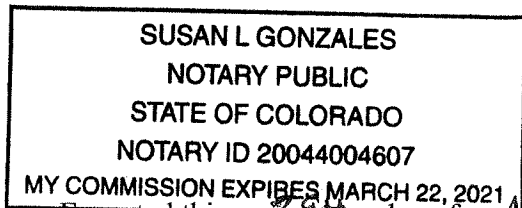
Executed this 29th day of August, 20 17, by:
Lorson, LLC

By: Jeff Mark
Jeff Mark, Manager

The foregoing instrument was acknowledged before me this 29th day of August, 2017, by Jeff Mark, Authorized signing Agent, Lorson, LLC.

Witness my hand and official seal.

My commission expires: 3-22-21



Susan L. Gonzales
Notary Public

Executed this 29th day of August, 20 17, by:
Lorson Ranch METROPOLITAN DISTRICT

By: Jeff Mark
Jeff Mark, President

SUSAN L GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044004607
MY COMMISSION EXPIRES MARCH 22, 2021

Attest:

By:

Jeff Mark, President

The foregoing instrument was acknowledged before me this 29th day of August,

20 17 by Jeff Mark, President, Lorson Ranch METROPOLITAN DISTRICT

Witness my hand and official seal.

My commission expires: 3-22-21

SUSAN L GONZALES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044004607
MY COMMISSION EXPIRES MARCH 22, 2021

[Signature]
Notary Public

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

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____

_____, President

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: CARRIAGE MEADOWS SOUTH AT LORSON RANCH FILING NO. 1

A TRACT OF LAND LOCATED IN A PORTION OF THE NORTHEAST ONE-QUARTER (NE1/4) OF SECTION 22 AND A PORTION OF THE NORTHWEST ONE-QUARTER (NW1/4) OF SECTION 23, ALL IN TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST ONE-QUARTER CORNER OF SAID SECTION 23, SAID POINT BEING THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED FROM WHICH THE EAST ONE-QUARTER CORNER OF SAID SECTION 23 BEARS N89°41'52"E, A DISTANCE OF 5319.56 FEET AND IS THE BASIS OF BEARINGS USED HEREIN;

THENCE ALONG THE SOUTHERLY BOUNDARY LINE OF THE ALTA/ACSM LAND TITLE SURVEY AS RECORDED UNDER DEPOSIT NO. 203900175 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER THE FOLLOWING THREE (3) COURSES:

1. THENCE S89°21'16"W, A DISTANCE OF 1142.42 FEET;
2. THENCE S89°31'47"W, A DISTANCE OF 640.69 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MARKSHEFFEL ROAD;
3. THENCE N14°49'49"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE SAID LINE ALSO BEING THE WESTERLY LINE OF THE BARGAIN AND SALE DEED, AS RECORDED UNDER RECEPTION NO. 204201646 OF SAID COUNTY RECORDS, A DISTANCE OF 1504.13 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BROWNSVILLE SUBDIVISION NO. 2, AS RECORDED IN PLAT BOOK H-6 AT PAGE 81 OF SAID COUNTY RECORDS;
THENCE N14°49'49"E CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE SAID LINE ALSO BEING THE WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 157.02 FEET TO THE SOUTHWESTERLY CORNER OF LOT 2, AS PLATTED IN SAID BROWNSVILLE SUBDIVISION NO. 2;

THENCE ALONG THE SOUTHERLY AND EASTERLY LINES OF SAID LOT 2 THE FOLLOWING TWO (2) COURSES:

1. THENCE N80°50'04"E, A DISTANCE OF 785.06 FEET;
2. THENCE N00°38'37"E, A DISTANCE OF 169.43 FEET TO THE COMMON CORNER OF SAID LOT 1 AND 2 SAID POINT ALSO BEING A POINT ON SAID BARGAIN AND SALE DEED;

THENCE ALONG SAID BARGAIN AND SALE DEED AND SAID LOT 2 THE FOLLOWING THREE (3) COURSES:

1. THENCE N00°38'37"E, A DISTANCE OF 124.03 FEET;
2. THENCE N89°18'08"W, A DISTANCE OF 216.53 FEET;
3. THENCE S71°48'21"W, A DISTANCE OF 459.63 FEET;

THENCE N14°47'59"E, A DISTANCE OF 641.36 FEET TO THE SOUTHWESTERLY CORNER OF THE SPECIAL WARRANTY DEED, AS RECORDED UNDER RECEPTION NO. 207107321 OF SAID COUNTY RECORDS;

THENCE ALONG THE SOUTHERLY LINE OF SAID SPECIAL WARRANTY DEED THE FOLLOWING EIGHT (8) COURSES:

1. THENCE N55°32'45"E, A DISTANCE OF 107.62 FEET;
2. THENCE N89°26'47"E, A DISTANCE OF 696.96 FEET;
3. THENCE S87°39'02"E, A DISTANCE OF 85.64 FEET;
4. THENCE S84°44'52"E, A DISTANCE OF 49.47 FEET;
5. THENCE S42°46'53"E, A DISTANCE OF 59.48 FEET;
6. THENCE N87°51'21"E, A DISTANCE OF 104.03 FEET;
7. THENCE N44°18'57"E, A DISTANCE OF 56.44 FEET;
8. THENCE N89°26'47"E, A DISTANCE OF 585.13 FEET TO THE SOUTHEASTERLY CORNER OF SAID SPECIAL WARRANTY DEED;

THENCE S03°20'59"W, A DISTANCE OF 378.71 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A 1830.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 07°15'43", AN ARC LENGTH OF 231.94 FEET (THE LONG CHORD OF WHICH BEARS S00°16'58"E, A LONG CHORD

EXHIBIT A

DISTANCE OF 231.79 FEET) TO A POINT OF REVERSE CURVE;
THENCE ALONG THE ARC OF A 2170.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 17°57'10", AN ARC LENGTH OF 679.94 FEET (THE LONG CHORD OF WHICH BEARS S05°03'45"W, A LONG CHORD DISTANCE OF 677.16 FEET;
THENCE S14°02'20"W, A DISTANCE OF 519.84 FEET TO A POINT OF CURVE;
THENCE ALONG THE ARC OF A 2170.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 06°34'13", AN ARC LENGTH OF 248.84 FEET (THE LONG CHORD OF WHICH BEARS S17°19'26"W, A LONG CHORD DISTANCE OF 248.71 FEET;
THENCE S20°36'33"W, A DISTANCE OF 560.24 TO A POINT ON THE SOUTH LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 23;
THENCE S89°41'52"W ALONG SAID SOUTH LINE, A DISTANCE OF 142.46 FEET TO THE POINT OF BEGINNING;

SAID TRACT OF LAND CONTAINS 106.64 ACRES OF LAND, MORE OR LESS.

PREPARED BY:
CORY L. SHARP, COLORADO P.L.S. NO. 32820
FOR AND ON BEHALF OF M & S Civil Group