

**STORMWATER MAINTENANCE AGREEMENT  
BETWEEN  
THE CITY OF COLORADO SPRINGS, Colorado,  
a home rule city and Colorado municipal corporation  
and  
TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT,  
a quasi-municipal corporation and political subdivision of the State of Colorado**

THIS STORMWATER MAINTENANCE AGREEMENT (the "Maintenance Agreement"), is made on the 21<sup>st</sup> day of October 2021, by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation (the "City"), and TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "Owner").

The Owner and the City, for mutual consideration received, agree as follows:

Paragraph 1.

The Owner owns the parcel of land known as:

Tract A, Tuscan Foothills Village, Filing No. 1, according to the Plat thereof recorded December 19<sup>th</sup>, 2018, at Reception No. 218714258 of the records of the El Paso County, Colorado, Clerk and Recorder.  
City of Colorado Springs, County of El Paso, State of Colorado  
Parcel Number 7323210067,  
(the "Property")

Paragraph 2. In accordance with the Drainage Criteria Manual, Volume II, the Owner shall submit an Inspection and Maintenance Plan (the "IM Plan") to be approved by the City. The Owner shall also submit an Erosion and Stormwater Quality Control Plan (the "ES Plan"), to be approved by the City.

Paragraph 3. The Owner shall install, or cause to be installed, upon the Property the permanent stormwater best management practices (the "BMPs") as required under the IM Plan.

**(1) Extended Detention Basin (EDB)**

The required maintenance activities for the BMPs installed on the Property, and under this Maintenance Agreement, are recorded in the El Paso County, Colorado, Clerk and Recorder's Office, at **Reception Number 209114713**. The Owner, shall, at his/its sole expense, inspect, maintain, and ensure proper functioning of the BMPs, in accord with, and as set out in, the IM Plan and the ES Plan, and as set forth herein below, in perpetuity.

Paragraph 4. In accordance with the Drainage Criteria Manual, Volume II, the Owner shall, upon completion of construction, submit to the City: (i) as-built plans of the BMPs and (ii) a Professional Engineer ("PE") certification of the constructed BMPs. The Owner shall maintain copies of the as-built plans and PE certification for the life of the BMPs and this Maintenance Agreement; moreover, the Owner shall provide copies of the same to any subsequent purchaser or assignee of the Owner. The as-built plans and PE certification will be incorporated by reference hereto and made a part of this Agreement upon submission to the City.

Paragraph 5. The Owner shall inspect the BMPs at least once every calendar year, and shall submit written inspection reports to the City Engineer prior to May 31st of each calendar year. The City is under no obligation to notify the Owner of any obligation to submit such inspection reports.

Paragraph 6. The Owner shall promptly perform all required maintenance and shall report such maintenance activities to the City Engineer in accordance with the requirements set forth in the IM Plan.

Paragraph 7. In the event that the Owner fails to inspect, maintain, or repair any BMP, the City, in the City's sole discretion, shall have the right to enter upon the Property without warrant or further process of law and make whatever inspection, maintenance or repair which may be required, all at the Owner's sole cost. The City shall invoice the Owner for any such costs incurred by the City, including but not limited to personnel, contracting, labor, or materials, and the Owner shall pay those costs within fifteen (15) City business days from the date of the invoice. If the invoice is not timely paid, the City retains the right to take any legal action necessary to collect the same, and the Owner shall be responsible for all reasonable costs of collection, including attorney's fees. The City's rights and remedies hereunder shall be in addition to City Code 3.8.501 *et seq.* and City Code 7.7.1527, and the City may also proceed under applicable provisions of the City Code.

Paragraph 8. This Maintenance Agreement shall be binding upon the Owner and the Owner's heirs, successors, and assigns. This Agreement shall be recorded in the El Paso County, Colorado, Clerk and Recorder's Office. The benefits and burdens of this Maintenance Agreement shall run with the land.

Paragraph 9. This Maintenance Agreement is subject to, and shall be interpreted under, the laws of the State of Colorado, and the Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs, Colorado. Court venue and jurisdiction shall exclusively be in the District Court for the Fourth Judicial District, El Paso County, Colorado. The Parties agree that this Maintenance Agreement shall be deemed to have been made and performed in the City of Colorado Springs, El Paso County, Colorado.

Paragraph 10. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, the performance of the City's obligations under this Maintenance Agreement is expressly subject to appropriation of funds by the City Council and the availability of those funds for expenditure.

Paragraph 11. It is expressly understood and agreed that enforcement of the terms and conditions of this Maintenance Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Maintenance Agreement shall give or allow any such claim or right of action by any other party, or third person or entity, on this Maintenance Agreement. It is the express intention of the parties hereto that any person or entity, other than the parties hereto, receiving services or benefits under this Maintenance Agreement, shall be deemed to be an incidental beneficiary only.

Paragraph 12. This Maintenance Agreement may be amended only by prior writing executed by duly authorized representatives of the Owner and the City, and recorded in the records of the El Paso County, Colorado, Clerk and Recorder's Office.

Paragraph 13. The headings of the several paragraphs of this Maintenance Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Maintenance Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Paragraph 14. This Maintenance Agreement, together with all exhibits attached hereto, and items incorporated herein by reference, constitutes the entire agreement between the parties, and all other representations or statements previously made, verbal or written, are merged herein.

Paragraph 15. No waiver of default by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Owner, shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the Owner.

Paragraph 16. This Maintenance Agreement is for the benefit of the Owner. The Owner does hereby waive, remise, and release any claim, right, or cause of action the Owner may have, or which may accrue in the future, whether under theories of tort or contract, or any other cause of action, whatsoever, against the City arising in whole or in part from this Maintenance Agreement.

Paragraph 17. The Owner shall defend, protect and hold harmless the City and its officers, employees, and agents (collectively the "Indemnitees"), from and against all losses, claims, causes of action, liabilities, injuries, damages and expenses, including attorneys' fees and expenses (collectively, "Losses"), which the Indemnitees may incur by reason of any injury or damage sustained to any person or property arising out of the Owner's performance of its obligations under this Maintenance Agreement.

Paragraph 18. The provisions of this Maintenance Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions, so long as the primary purpose(s) of this Maintenance Agreement are effectuated by the remaining terms.

In witness hereof, the undersigned have set their hands and seals effective as of the date set forth above.

Signed this 21 day of October, 2021.

remainder of page blank, signatures appearing in counterpart on subsequent page(s)

**CITY:**

**CITY OF COLORADO SPRINGS,**  
a home rule city and Colorado municipal corporation,

By: 

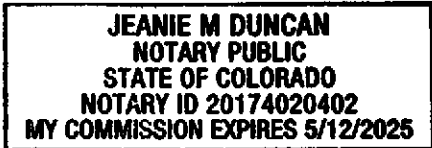
Date: 10/21/21

Richard Mulledy  
Stormwater Enterprise Manager

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF EL PASO     )

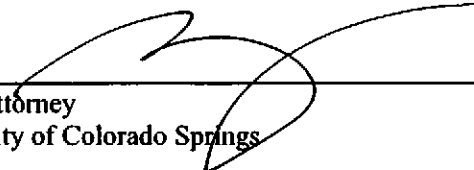
The foregoing instrument was acknowledged before me this 21 day of October 2021 by Richard Mulledy, as the Manager of the Stormwater Enterprise of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

Witness my hand and seal.



  
Notary Public  
My Commission Expires: 5/12/2025

Approved as to Form:

  
\_\_\_\_\_  
Attorney  
City of Colorado Springs

**OWNER:**

TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT,  
a quasi-municipal corporation and political subdivision of the State of Colorado

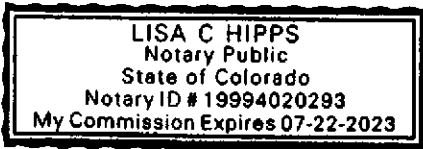
By:   
Raymond O'Sullivan, as ~~Manager~~ Board Member *pt*

**ACKNOWLEDGEMENT**

State of Colorado )  
County of El Paso )ss

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October, 2021  
by Raymond O'Sullivan, as Manager of TUSCAN FOOTHILLS VILLAGE METROPOLITAN  
DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and seal.



  
Notary Public  
My Commission Expires: 7/22/2023

**Civil Engineer**  
**Stormwater Best Management Practice (permanent) Certification Letter**

July 6, 2021

City of Colorado Springs  
City Engineering Division, Stormwater Enterprise (SWENT)  
30 S. Nevada Avenue, Suite 402  
PO Box 1575, MC 520  
Colorado Springs, CO 80901-1575

Attn.: TJ Gajda  
Drainage Engineer II

Gentlemen:

The permanent stormwater Best Management Practices (BMPs) for *Tuscan Foothills Village Filing No. 1* located at the southwest corner of Centennial Boulevard and Mule Deer Drive, Colorado Springs, CO consist of a surface extended detention basin, trickle channel into a micropool, and a drop box outlet structure. Kimley-Horn & Associates, Inc. has reviewed the attached letter(s) from CTL Thompson, Inc., as appropriate. Based upon this information and information gathered during periodic site visits to the site project during significant/key phases of the stormwater BMP installation, Kimley-Horn & Associates, Inc. is of the opinion that the stormwater BMPs have been constructed in general compliance with the approved Erosion and Stormwater Quality Control Plan, Permanent Best Management Practice Construction Plans, and Specifications as filed with the City.

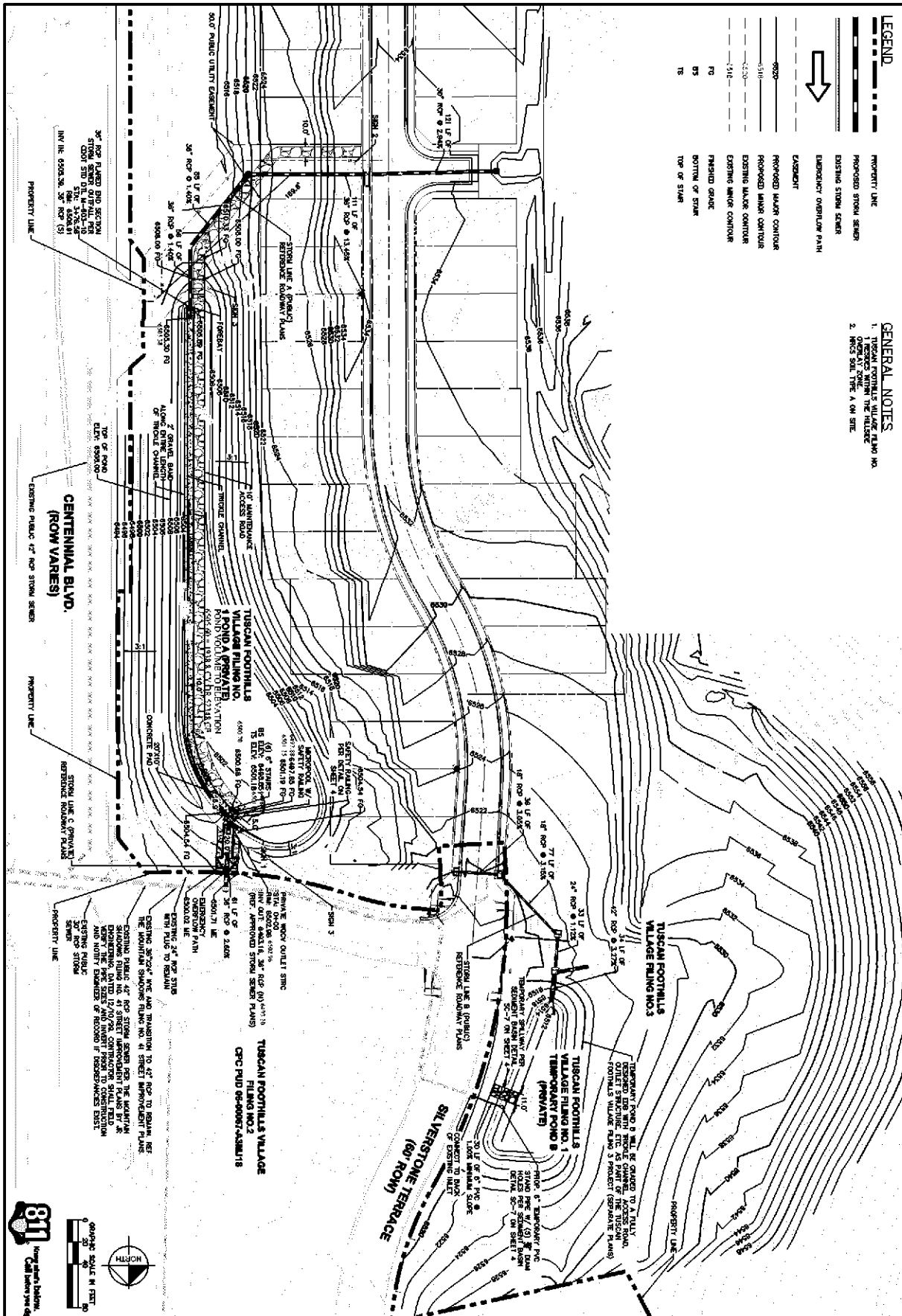
**Statement Of Engineer In Responsible Charge:**

I, John R. Heiberger, a registered Professional Engineer in the State of Colorado, in accordance with Sections 5.2 and 5.3 of the Bylaws and Rules of the State Board of Registration for Professional Engineers and Professional Land Surveyors, do hereby certify that I or a person under my responsible charge periodically observed the construction of the above mentioned project. Based on the on-site field observations and review of pertinent documentation, it is my professional opinion that the required permanent BMPs have been installed and are in general compliance with the approved Erosion and Stormwater Quality Control Plan, Permanent Best Management Practice Construction Plans, and Specifications as filed with the City of Colorado Springs. For BMPs with a Water Quality Capture Volume (WQCV), I have attached the post-construction As-Built drawings. The As-Built drawings accurately depict the final installation of the stormwater BMPs and verify the WQCV.

John R. Heiberger, P.E.  
Colorado No. 50096



K:\CCS\_Civil\09666605\_Tuscan Filing No 1\CADD\Permanent BMP (Pond) Ponds\Pond Details.dwg McCallum, Jessica 4/15/2019 1:58 PM



PROJECT NO.	09666605
SHEET	2 OF 4

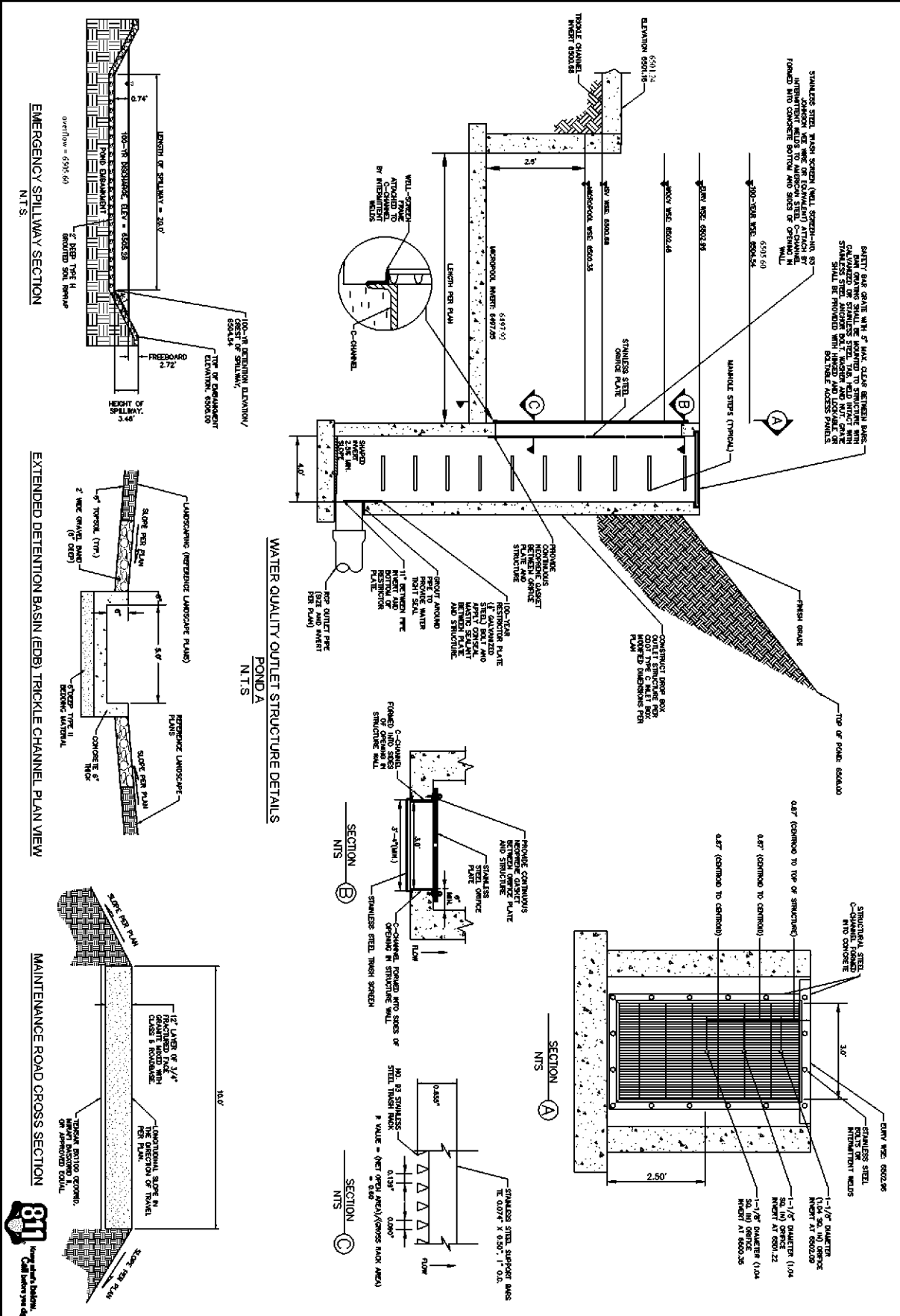
**TUSCAN FOOTHILLS VILLAGE FILING NO. 1**  
**CONSTRUCTION DOCUMENTS (PERMANENT BMP'S)**  
**POND A DETAILS**

**Kimley»Horn**

2018 KIMLEY-HORN AND ASSOCIATES, INC.  
 2 North Nevada Avenue, Suite 300  
 Colorado Springs, Colorado 80927 (719) 453-0180

NO.	REV	DATE	BY	DATE	REVISION
1	REV 5	JUN04/15/19	JRH		
2	REV 4	JUN02/14/19	JRH		
3	REV 3	JAN11/29/19	JRH		
4	REV 2	JAN11/29/19	JRH		
5	REV 1	JUN12/5/19	JRH		

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PROJECT NO.	09666605
SHEET	3 OF 4

TUSCAN FOOTHILLS VILLAGE FILING NO. 1  
 CONSTRUCTION DOCUMENTS (PERMANENT BMP'S)  
 EXTENDED DETENTION BASIN DETAILS

**Kimley»Horn**

2018 KIMLEY-HORN AND ASSOCIATES, INC.  
 2 North Nevada Avenue, Suite 300  
 Colorado Springs, Colorado 80927 (719) 453-0180

NO.	REVISION	DATE	BY	DATE	REPR.
5		JAN 04/25/18	JRH		
4	REV 4	JAN 02/14/18	JRH		
3	REV 3	JAN 11/29/17	JRH		
2	REV 2	JAN 11/29/17	JRH		
1	REV 1	JAN 12/5/16	JRH		
0	REV 0				