

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION NO. 22-16

Authorization to Approve a Non-Standard Revocable Drainage Improvement
License Agreement – Peakview Place 2

WHEREAS, the Colorado Department of Public Health and Environment (CDPHE) issues and administers discharge permits and other control mechanisms as provided by the Colorado Water Quality Control Act (25-8-101 et seq., CRS, 1973, as amended) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., the “Act”); and

WHEREAS, SEMSWA has been authorized to discharge stormwater associated with their Municipal Separate Storm Sewer System (MS4) in accordance with the Colorado Discharge Permit System (CDPS) General Permit No. COR-080021 (MS4 Permit), specifically for discharges wholly or partly within the Cherry Creek Reservoir drainage basin; and

WHEREAS, in accordance with the MS4 Permit, CDPHE requires permittees to implement an Illicit Discharge, Detention, and Elimination (IDDE) program to prohibit illicit discharges, access properties to implement illicit discharge procedures, and cease or require to cease illicit discharges; and

WHEREAS, SEMSWA has adopted Chapter 14, Stormwater Quality, of the Stormwater Management Manual as Resolution 19-20, which requires a license agreement for direct connections of non-stormwater discharges to the MS4; and

WHEREAS, SEMSWA adopted Resolution 11-10 for the Authorization of a Standard Revocable Drainage Improvement License Agreement (Standard License Agreement) as a means to comply with the Stormwater Management Manual and the MS4 Permit IDDE program; and

WHEREAS, the Standard License Agreement has been modified for a City of Centennial development named Peakview Place 2, case number DPR21-00040, to allow for a three-party agreement between the owner of the parcel where the discharge originates (Discharge Property), the owner of the property where the discharge outfalls (Outfall Property), and SEMSWA in which the maintenance responsibilities are assigned to the Discharge Property; and

WHEREAS, the Non-Standard Revocable Drainage Improvement License Agreement has been prepared by SEMSWA staff and legal counsel and approved by the Discharge Property and Outfall Property.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the Non-Standard Revocable Drainage License Agreement attached hereto as Exhibit A and authorizes the Executive Director of SEMSWA to execute the Agreement.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: June 15, 2022

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

REVOCABLE DRAINAGE IMPROVEMENT LICENSE AGREEMENT

(Non-stormwater Discharge)

This REVOCABLE DRAINAGE IMPROVEMENT LICENSE AGREEMENT (this “Agreement”) is entered into this ____ day of _____, 20____, by DISCHARGE OWNER whose address is ADDRESS 1, (together with its successors and assigns, “Discharge Owner”), by POND OWNER, whose address is ADDRESS 2, (together with its successors and assigns, “Pond Owner”), collectively “Owners”, and the Southeast Metro Stormwater Authority, a political subdivision and a public corporation of the State of Colorado, 7437 South Fairplay Street, Centennial, CO 80112 (together with its successors and assigns, “SEMSWA”).

WITNESSETH:

WHEREAS, Pond Owner owns certain property located in the City of Centennial (“City”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Pond Owner Property”) and Discharge Owner owns certain property located in the City, as more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the “Discharge Owner Property”), collectively “Properties”; and

WHEREAS, the Municipal Separate Storm Sewer System (the “MS4”) is SEMSWA and/or the City owned and/or maintained conveyance system or system of conveyances designed to collect and convey stormwater to a discharge into state waters; and

WHEREAS, SEMSWA must effectively prohibit illicit discharges to the MS4 unless the discharge is otherwise excluded within the MS4 permit, which includes discharges authorized by a CDPS or NPDES permit or discharges from foundation drains if they are located above the water table with no visible sheen, odor, color, turbidity or floatables, and as further defined in Resolutions 12-29 and 19-09 SEMSWA; and

WHEREAS, Discharge Owner desires to discharge from a foundation drain on the Discharge Owner Property into a water quality pond on the Pond Owner Property, hereinafter referred to as the “Discharge”. The Discharge ultimately drains into the MS4, as generally depicted in Exhibit C; and

WHEREAS, in connection with the Discharge, the Owners desires that SEMSWA grant a license to ~~Discharge~~ setting forth, among other matters, the terms and conditions of the Discharge, as approved by the City and SEMSWA in the Phase III Drainage Report and construction drawings for the Discharge Owner Property; and

WHEREAS, the Discharge will not compromise the capacity of the water quality pond on the Pond Owner Property of any MS4 conveyances, including storm sewer; and

WHEREAS, SEMSWA is willing to grant Owners a license for the Discharge on the terms and conditions contained herein; and

WHEREAS, Owners acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by SEMSWA, and that such matters are necessary to protect, promote, and enhance the public welfare.

NOW THEREFORE, in consideration of the foregoing recitals and their mutual covenants and agreements hereinafter set forth, the sufficiency of which consideration is hereby acknowledged by all parties, the parties agree as follows:

1. Subject to the terms and conditions hereof, Pond Owner hereby permits the Discharge Owner to discharge from a foundation drain on the Discharge Owner Property into a water quality pond on the Pond Owner Property, as generally depicted in Exhibit A.

2. Subject to the terms and conditions hereof, SEMSWA hereby permits and licenses the Discharge Owner to discharge from a foundation drain into a water quality pond which drains into the MS4, as generally depicted in Exhibit C, in accordance with SEMSWA's MS4 permit and the terms and conditions contained in Resolutions 12-29 and 19-09. As a condition of this License, Discharge must:
 - (a) be authorized by a CDPS or NPDES permit, including the CDPS Permit COG603000 for Discharges from Subterranean Dewatering Activities; or
 - (b) be authorized by SEMSWA's MS4 permit as a discharge that can be excluded from being effectively prohibited.
3. Owners shall make reasonable commercial efforts not to cause any interference with or allow blockage of the flow of water within the MS4. In no event shall Owners make any cross-connection of the MS4 to any other facility not expressly authorized herein or divert any water from the MS4 conveyances for any purpose. Owners shall comply with all applicable regulations and requirements of SEMSWA and any other governmental entities having jurisdiction over stormwater conveyances, with respect to the stormwater conveyances.
4. Owners shall make no changes to the Discharge or water quality pond on the Pond Owner Property, including but not limited to changes in the quantity or quality of flows from the Discharge or modifications to the water quality pond, and shall at all times be in conformance with the approved Phase III Drainage Report and Construction Drawings, Case No. DPR21-00040 Peakview Place 2, unless otherwise approved in writing by SEMSWA.
5. The responsibilities and obligations of this License shall constitute a covenant running with the land, and shall be binding upon all present and subsequent owners, their administrators, executors, assigns, heirs, and any other successors in interest so long as they own an interest in the Properties or any portion thereof served by the Discharge.
6. Owners acknowledge that SEMSWA does not provide Owners any assurance or guarantee of water quality. Owners agree to accept any liability to their system associated with inundation of the system, surcharged pressure flow conditions, and/or the quality of the stormwater being conveyed within the MS4. SEMSWA shall not perform maintenance of the MS4 or any other storm conveyance system, in order to protect or facilitate Owner's use of the MS4, nor should Owners rely on any maintenance of the MS4 by SEMSWA. The initial term of this Agreement shall expire on December 31 of the year in which this Agreement is made and shall be subject to renewal on these or such other generally applicable terms as may be imposed by SEMSWA pursuant to its regulations. If no notice of renewal or nonrenewal is recorded prior to the end of the initial term or any renewal term, this Agreement shall be automatically renewed for an additional one-year period without additional notice. Notwithstanding any contrary provision of this Agreement, this Agreement shall be automatically renewed for such one-year period from time to time without notice so long as, at the time of the commencement of the applicable renewal period, there is no uncured material breach of this Agreement after notice is given and the applicable cure period having expired in accordance with Paragraph 8. In the event of any nonrenewal pursuant to this Paragraph 6, SEMSWA shall provide 90 days prior written notice to Owners.
7. Pond Owner shall, at its sole cost and expense, maintain the Discharge in proper operating condition and shall make such repairs and replacements thereto as may be necessary to keep all components of such drainage system in proper operating condition. This includes long term operations and maintenance of the water quality pond, as generally depicted in Exhibit C, and in accordance with the Maintenance Agreement, as recorded at XXXX. Pond Owner shall be responsible for all costs and liabilities relating to such maintenance and repair. Pond Owner shall cause inspections of the Discharge to be conducted as follows:

- A. Pond Owner shall cause inspection of the Discharge, at the Pond Owners expense, by a person experienced in the inspection of stormwater facilities. Inspections shall occur at least once every calendar year.
 - B. An inspection report for the Discharge shall be submitted in writing to SEMSWA, for each calendar year, no later than May 31 of the following year. The inspection report shall be in the form of the inspection report attached hereto as Exhibit D and incorporated herein by this reference or such other form as mutually agreed upon by the parties (the "Inspection Report").
 - C. Owner shall promptly perform all needed maintenance and shall report maintenance activities as set forth on the Inspection Report within 30 days of their completion.
- 6. In the event the Pond Owner fails to repair the Discharge within 30 days after written notice by SEMSWA to Pond Owner of a deficiency or defect with respect thereto, SEMSWA may enter upon the Owner's Property and take whatever reasonable steps it deems necessary to repair the Discharge; provided, however, if such deficiency or defect is of a nature that it cannot reasonably be repaired within such 30-day period, so long as Pond Owner diligently is pursuing the repair, Pond Owner shall have such additional time as reasonably necessary to complete such repair. Notwithstanding the foregoing, if such deficiency or defect could cause damage to property, loss of life or a violation of the MS4 Permit, SEMSWA may take immediate action without prior written notice to the Pond Owner to correct such deficiency or defect, provided that SEMSWA shall provide prompt notice to Pond Owner of such action. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Discharge and in no event shall this Agreement be construed to impose any such obligation on SEMSWA.
 - 7. To the extent permitted by law, Owners hereby indemnifies, and agrees to defend and hold harmless, SEMSWA and its Board of Directors, employees, and agents, from and against any and all claims, enforcement actions, fines or penalties arising from the Discharge, provided that such indemnification does not extend to claims, enforcement actions, fines or penalties resulting from SEMSWA's negligence or willful misconduct.
 - 8. If SEMSWA determines in its reasonable discretion that Owners are in material breach of any provision of this Agreement, SEMSWA shall give Owners written notice of such breach and Owners shall have 30 days after such written notice to cure such breach; provided, however, if such breach is of a nature that it cannot reasonably be cured within such 30-day period, so long as Owners are diligently pursuing the cure, Owner shall have such additional time as reasonably necessary to complete the cure. If Owners do not complete the cure within the foregoing period, SEMSWA shall have the right to terminate this Agreement and remove the Discharge without liability therefor. Nothing herein shall prevent or preclude SEMSWA, without liability to Owners, from removing such Discharge without giving 30 days' prior written notice to Owner if SEMSWA reasonably determines that such disconnection is necessary for the public health, safety or welfare. However, if SEMSWA determines that the Discharge may constitute an MS4 permit violation, this Agreement can be terminated immediately and the Discharge removed.
 - 9. Owners shall maintain a policy of general liability insurance with respect to the Discharge. The amount of such insurance shall be no less than \$1,000,000.00. Such policy shall name SEMSWA as an additional insured and provide that it shall not be amended or terminated except upon at least 30 days' prior written notice to SEMSWA. Owners shall provide to SEMSWA a certificate of insurance evidencing the above insurance coverage meeting the requirements of this Paragraph 9 within 30 days of written request therefor from SEMSWA to Owners.

IN WITNESS WHEREOF, this Agreement is signed by the parties as of the date above written.

For the Board of Directors of the Southeast Metro Stormwater Authority, Centennial,
Colorado

Paul Danley, Executive Director

Authorization pursuant to Resolution _____

Exhibit D



Annual Inspection and Maintenance Reporting Form

Non-stormwater Discharge *this form to be available to SEMSWA within
30 days upon request from SEMSWA*

Date: _____

Southeast Metro Stormwater Authority
7437 South Fairplay Street
Centennial, CO 80112

Non-stormwater discharge inspection and maintenance

Property/Subdivision Name: _____

Property Address: _____

Contact Name: _____

I certify that the required stormwater facility inspections and required maintenance have been completed in accordance with the Non-stormwater Discharge License associated with the above referenced property.

The required Inspection and Maintenance forms are hereby provided.

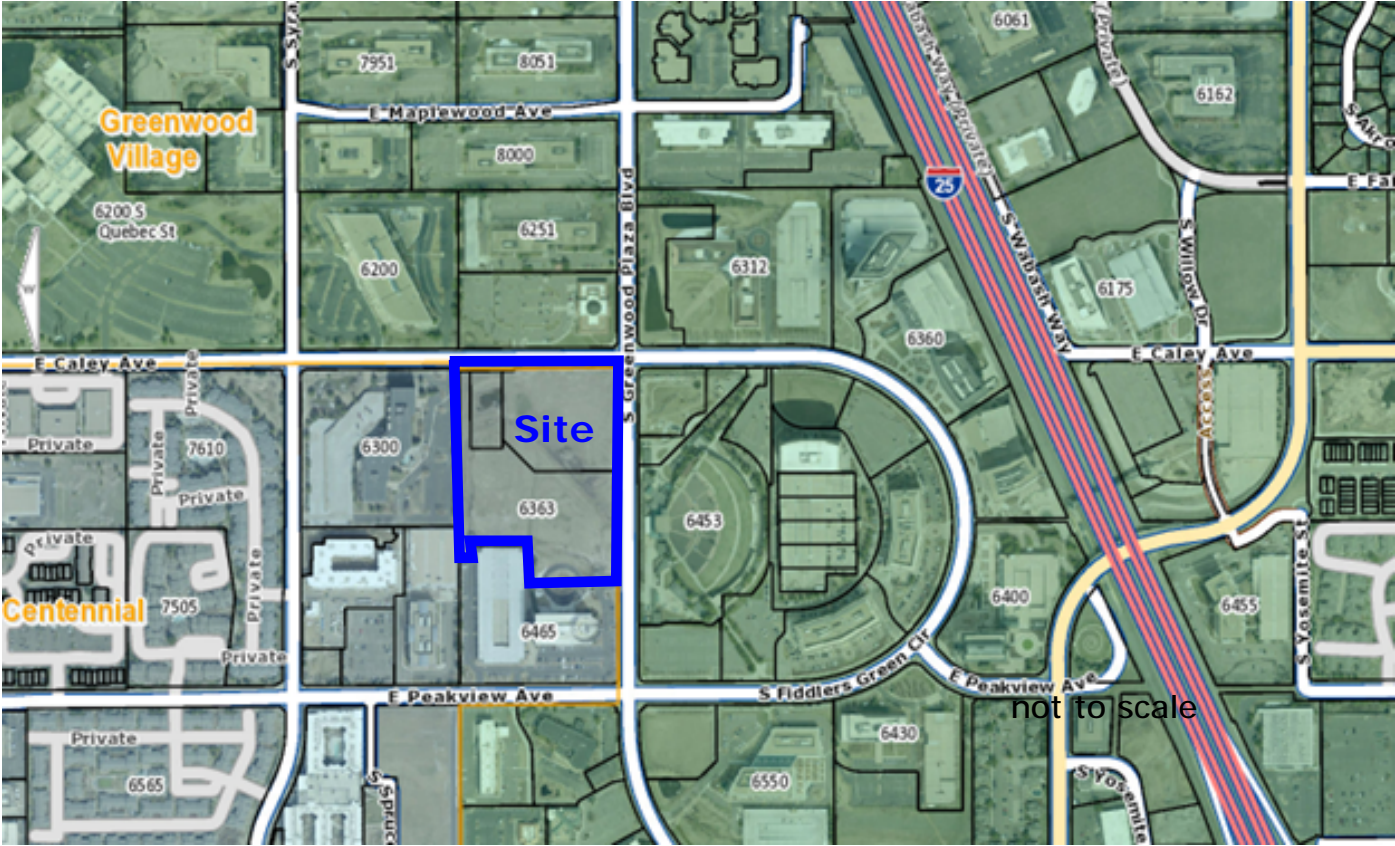
Name of Party Responsible for Inspection &
Maintenance

Property Owner

Authorized Signature

Signature

Peakview Place 2



VICINITY MAP



not to scale