

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

RESOLUTION 19-21

Approval of the Revised Standard Stormwater Maintenance Agreement

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 (MS4) systems in accordance with the Colorado Discharge Permit System (CDPS) General Permit No. COR-080021 (MS4 Permit), issued April 15, 2016, hereinafter referred to as “current MS4 Permit,” as may be amended, specifically for discharges wholly or partly within the Cherry Creek Reservoir drainage basin; and

WHEREAS, SEMSWA approved Resolution No. 32, Series of 2007 *Approval of Standard Stormwater Maintenance Agreement and Authorization of the Executive Director to Execute the Standard Stormwater Agreement Maintenance Agreement*, hereinafter referred to as “Maintenance Agreement” to meet the MS4 Permit in effect at the time of its adoption; and

WHEREAS, in accordance with the current MS4 Permit, CDPHE has now required permittees by July 1, 2019 to implement a Post-Construction Stormwater Management in New Development and Redevelopment program to ensure adequate design, permitting, implementation, inspection, and enforcement of SEMSWA-approved permanent water quality control measures, hereinafter referred to as “control measures” to provide treatment of post construction site stormwater runoff which requirements are different from those in existence in 2007; and

WHEREAS, in accordance with the Post-Construction Stormwater Management in New Development and Redevelopment program of the current MS4 Permit, oversight for the long-term operations and maintenance of control measures shall include procedures to enforce the requirement that the owner/operator of a control measure implement and maintain the control measure; and

WHEREAS, SEMSWA has prepared Standard Operating Procedures for each of the SEMSWA standard control measures to include procedures for the owner/operator to provide routine maintenance and identify if the control measure is adequate; and

WHEREAS, the current MS4 Permit provides additional clarification for long-term operations and maintenance requirements for control measures, allowing the Maintenance Agreement to be amended to meet the current MS4 Permit, to include removing the requirement for owner/operator self-inspections and reporting to SEMSWA annually; and

WHEREAS, SEMSWA has adopted an Enforcement Response Plan as Resolution 18-16, outlining the collective enforcement responses available to SEMSWA, allowing the Maintenance Agreement to be amended to remove specific enforcement procedures and instead refer to the Enforcement Response Plan; and

WHEREAS, in order to enforce the implementation of procedures that will ensure the long-term operation and maintenance of control measures meeting the current MS4 Permit, SEMSWA has prepared a revised Maintenance Agreement to be executed for each project with a control measure; and

WHEREAS, the revised Maintenance Agreement continues to require the owner and all subsequent owners to maintain the functional elements of the control measure in perpetuity such that the control measure functions in accordance with the approved design; and

WHEREAS, the revised Maintenance Agreement continues to provide a legal means of access to the control measure for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, and repairing or replacing the control measure to the extent that the owner fails to do so and as necessary to ensure its proper working condition; and

WHEREAS, the revised Maintenance Agreement will provide SEMSWA a means to implement an effective Post-Construction Stormwater Management in New Development and Redevelopment program that ensures the long-term operations and maintenance of a control measure such that the control measure function in accordance with the design.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Board adopts the revised Maintenance Agreement, as attached hereto as Exhibit A.
2. The Board authorizes the use of the revised Maintenance Agreement in administering and enforcing the Post-Construction Stormwater Management in New Development and Redevelopment program within the boundaries of the City of Centennial.
3. The Board authorizes the Executive Director to make any minor non-substantive modifications to the revised Maintenance Agreement without prior Board approval.

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

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

STANDARD STORMWATER FACILITY MAINTENANCE AGREEMENT

This Maintenance Agreement is entered into by and between the SOUTHEAST METRO STORMWATER AUTHORITY, a political subdivision of the State of Colorado ("SEMSWA") and _____ (the "Owner").

RECITALS

WHEREAS, _____ is the Owner of that certain parcel of land known as:

Lot _____, Block _____
Subdivision Name, Filing No. _____
County of Arapahoe, State of Colorado
Address: _____

referred to as the "Property"; and

WHEREAS a Phase III Drainage Report or Drainage Letter and Construction Drawings have been recommended for approval by SEMSWA, (collectively referred to as the "Plan"); and

WHEREAS, said Plan provides for post construction control measures intended to provide water quality benefits ("Water Quality Facilities") within the confines of the Property; and

WHEREAS, SEMSWA requires that the Water Quality Facilities shown on the Plan be implemented and maintained by the Owner in a manner that allows for the Water Quality Facilities to function in accordance with the approved Plan; and

WHEREAS, SEMSWA has required that the Owner submit an Operations and Maintenance Site Plan ("O&M Site Plan") as specified in the SEMSWA Stormwater Management Manual ("SMM"); and

WHEREAS, SEMSWA has prepared Standard Operating Procedures, ("SOPs") outlining maintenance requirements for Water Quality Facilities, as referenced in the SMM; and

NOW THEREFORE, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. The Owner agrees to perform maintenance when necessary, at no expense to SEMSWA, by a person experienced in the maintenance of stormwater facilities, to assure that the Water Quality Facilities function in accordance with the approved Plan and as outlined in the SOPs, as applicable to the Water Quality Facilities on the Property, to include routine maintenance and identifying if the Water Quality Facility is inadequate and eliminating those inadequacies.

2. The Owner, hereby, grants, bargains and conveys to SEMSWA and its agents easements over the property for access from public rights-of-way, abutting private roadway, and/or private driveway, including all other rights the Owner possesses to access the Water Quality Facility and Property, for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing Water Quality Facilities to the extent that Owner fails to do so and as necessary to ensure their proper working condition as provided in paragraph one above, or in the case of an emergency, as provided in paragraph six below.
3. In the event the Owner fails to properly maintain the Water Quality Facilities within thirty (30) days after written notice by SEMSWA, or in a greater timeframe otherwise specified within the written notice by SEMSWA, of such deficiencies to the Owner, SEMSWA may enter upon the property and take whatever steps it deems necessary to maintain the Water Quality Facilities, in accordance with the SEMSWA Enforcement Response Plan (“ERP”), Resolution 18-16.
4. If the Owner’s failures could cause damage to property, loss of life or a violation of a CDPS MS4 Permit, SEMSWA may take immediate action, without notice to the Owner, to alleviate that failure. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Water Quality Facilities and in no event shall this Agreement be considered to impose any such obligation on SEMSWA.
5. The Owner agrees that it will not at any time dedicate the Water Quality Facilities to the public, to public use or to SEMSWA without SEMSWA’s written consent, nor will it subdivide or convey the property without the written consent of SEMSWA and without a covenant running with the land that provides that a proportionate share of the cost of maintenance and other costs associated with other of the obligations and duties contained herein encumber each subdivided part of the original tract or parcel of land.
6. In an event of an emergency involving Water Quality Facilities, SEMSWA or its agents may enter immediately upon the Property and take whatever reasonable steps it deems necessary to alleviate the emergency. SEMSWA shall notify the Owner of such emergency and entry as soon as possible but in no event later than twenty-four (24) hours after such entry. Alternatively, SEMSWA may notify the Owner by phone to take whatever reasonable action is necessary within a specified period of time. Should the Owner fail to respond, or should the Owner inform SEMSWA that it intends to not respond within the specified period of time, SEMSWA or its agents may enter the Property immediately and alleviate the emergency.
7. SEMSWA shall not pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Water Quality Facilities, including access to the Water Quality Facilities.
8. SEMSWA shall conduct inspections of the Water Quality Facilities on the Property. Inspections shall occur, at a minimum, at the frequency level defined in the CDPS MS4 Permit to ensure that the Water Quality Facilities are functioning as designed in the Plan.
9. Any amounts owed to SEMSWA, in accordance with the ERP, and not paid within ten (10) days of the date of notification shall be the joint and several obligations of any owner of record of the

Property or any portion thereof served by the Water Quality Facilities, on the date the liability arose and all of the successors of interest of such Owner.

10. The Owner, its successors and assigns shall indemnify and hold harmless SEMSWA, its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against SEMSWA arising out of or resulting from the reconstruction, presence, existence, maintenance or use of the Water Quality Facility.
11. The responsibilities and obligations of the Owner 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 Property or any portion thereof served by the Water Quality Facilities.
12. This Agreement shall be recorded in the Arapahoe County Clerk and Recorder's Office.
13. In the event either of the Parties hereto files a lawsuit to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

[Remainder of Page Intentionally Left Blank]

For the Board of Southeast Metro Stormwater Authority

Executive Director

Owner:

By: _____

Name: _____

STATE OF COLORADO)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__,
by _____, as _____ of _____

_____.
My commission expires _____. Witness my hand and official seal.

Signature

Name of Notary

Address of Notary