

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

RESOLUTION NO. 09-49
(Approval of Non-Standard Stormwater Facility Maintenance Agreement)

WHEREAS, the Board of the Southeast Metro Stormwater Authority (SEMSWA) in Resolution No. 32, Series of 2007, has approved a Standard Stormwater Facility Maintenance Agreement and authorized the Executive Director of SEMSWA to execute such Agreements on behalf of SEMSWA as long as they adhere to the Standard Stormwater Facility Maintenance Agreement with minor, non-substantive modifications; and

WHEREAS, Boston Smoky Hill, LLC (Developer) owns certain real property in fee simple in the City of Centennial and within the SEMSWA service area as more particularly described in the Agreement; and

WHEREAS, Developer desires to develop the Property and has submitted to the City of Centennial for approval and execution a Final Development Plan designated the Key Bank Centennial Final Development Plan, Case No. LU-0808-010/D08-1047 (hereinafter referred to as the "FDP"), a copy of which is on file in the Land Use Services Office of the City of Centennial; and

WHEREAS, Developer agrees that the development of the Property as specified in the FDP will require increased stormwater management services from SEMSWA and will require the installation of post construction BMP facilities; and

WHEREAS, Program 5, Permanent Stormwater Facilities Including Post-Construction Best Management Practices (BMPs), of the MS4 stormwater discharge permit requires that post construction BMPs be constructed for all new development, redevelopment, or added impervious area within the City Of Centennial for the purpose of providing water quality treatment; and requires the City to ensure long term inspection and maintenance of the post construction BMP facilities; and

WHEREAS, the City has adopted the City of Centennial Stormwater Management Manual (Manual) that sets forth the requirements for the design and long term inspection and maintenance of post-construction BMPs and stormwater improvements ; and

WHEREAS, SEMSWA currently requires developers to enter into a Stormwater Facility Maintenance Agreement for the purpose of guaranteeing the long term inspection and maintenance of post-construction BMPs and stormwater improvements ; and

WHEREAS, it is necessary for SEMSWA to enter into a Stormwater Facility Maintenance Agreement with developers that commit to constructing post-construction BMPs and stormwater improvements; and

WHEREAS, it was necessary to deviate from the Standard Stormwater Facility Maintenance Agreement due to the fact that the Developer requested changes in the Stormwater Facility Maintenance Agreement consistent with the requests that the Developer had made in regard to the Easement Deed and Revocable Storm Drainage License Agreement and other changes including requesting SEMSWA agree to be responsible for its negligence in use of the easement granted or in the work performed on the facilities by SEMSWA; and

WHEREAS, a non-standard Stormwater Facility Maintenance Agreement has been prepared by SEMSWA staff and legal counsel.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the Stormwater Facility Maintenance Agreement attached hereto and authorizes the Executive Director of SEMSWA to execute the attached Agreement.

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Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor