

STORMWATER FACILITY MAINTENANCE AGREEMENT

This Stormwater Maintenance Agreement is entered into by and between the SOUTHEAST METRO STORMWATER AUTHORITY, a political subdivision of the State of Colorado ("SEMSWA") and Boston Smoky Hill, LLC, a Colorado limited liability company (the "Owner").

RECITALS

WHEREAS, Boston Smoky Hill, LLC is the Owner of that certain parcel of land known as:

Lot 4,  
SECOND ADMINISTRATIVE REPLAT PINEY CREEK VRG  
COMMERCIAL SUBDIVISION FILING NO. 1  
County of Arapahoe, State of Colorado

referred to as the "Property"; and

WHEREAS, a Phase III Drainage Report and Plan dated March 27, 2009 and prepared by Jansen Strawn Consulting Engineers have been recommended for approval by SEMSWA and approved by the City, referred to as the "Plan"; and

WHEREAS, said Plan provides for facilities intended to provide water quality benefits, "water quality facilities," within the confines of the property, (referred to as "Facilities"); and

WHEREAS, SEMSWA requires that the Facilities shown on the Plan be constructed and adequately maintained by the Owner; and

WHEREAS, SEMSWA has required that the Owner submit an Operation and Maintenance Manual as specified in the City of Centennial Stormwater Management Manual, hereinafter referred to as the "O&M Manual,"; and

WHEREAS, if there exists any inconsistency between this Agreement and the O&M Manual, the O&M shall control.

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 shall provide maintenance for all the Facilities as described on the Plan to ensure that the Facilities are and remain in proper working condition in accordance with

the O&M Manual, and other applicable SEMSWA approved standards, and applicable legal requirements. Maintenance shall include routine landscaping, sediment removal, repair, reconstruction, or replacement of the Facilities as necessary to meet the requirements of this Agreement and the O&M Manual.

2. The maintenance of the Facilities shall be performed in accordance with the O&M Manual for the specified facility.
3. The Owner shall cause inspections on the Facilities to be conducted as follows:
  - A. The Owner agrees to cause inspection of the Facilities, at the Owner's expense, by a person experienced in the inspection of stormwater facilities. Inspections shall occur at least once every calendar year.
  - B. An inspection report shall be submitted in writing to SEMSWA prior to January 15<sup>th</sup> of each year for the Facilities. The inspection report shall be in accordance with the requirements set forth in the O&M Manual.
  - C. The Owner agrees to perform promptly all needed maintenance and report maintenance activities in accordance with the requirements set forth in the O&M Manual.
4. The Owner, hereby, grants, bargains and conveys to SEMSWA and its agents a non-exclusive easement over the property for access from public rights-of-way, abutting private roadway, and/or private driveway, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing Facilities to the extent that Owner fails to do so as required by the O&M Manual and this Agreement and as necessary to ensure their proper working condition as provided in paragraphs one and two above. The Owner retains the right to use the easement for all purposes as long as such use is not inconsistent with the grant of the easement to SEMSWA and does not interfere with SEMSWA's use of the easement.
5. In the event the Owner fails to inspect, report, or properly maintain the Facilities within thirty (30) days after written notice by SEMSWA of such deficiencies to the Owner, SEMSWA may enter upon the property and take reasonable steps it deems necessary to maintain the Facilities pursuant to the requirements of the O&M Manual and this Agreement. In the case where the failure will reasonably take longer to cure than thirty (30) days, Owner shall have such additional time as is reasonably required on the condition that Owner is diligently pursuing the cure of the failure. However, if the Owner's failures could cause damage to property (other than the Property), loss of life or a violation of a NPDES MS4 Permit, SEMSWA may take immediate action, with reasonable notice or no notice to the Owner, as required by the circumstances; to alleviate that failure. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Facilities and in no event shall this Agreement be considered to impose any such obligation on SEMSWA.

6. The Owner agrees that it will not at any time dedicate the Facilities to the public, to public use or to SEMSWA without SEMSWA's written consent, nor will it subdivide the Property.
7. In an event of emergency involving Facilities, SEMSWA or its agents may enter immediately upon the Property and take whatever reasonable steps it deems necessary to meet 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 immediately upon emergency.
8. 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 Facilities, including access to the Facilities. SEMSWA will use reasonable efforts to prevent damage to the Property or unnecessary interference with Owner's use of the Property.
9. In the event SEMSWA, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or construction of the Facilities as required by the O&M Manual and this Agreement, including labor, equipment, supplies and materials, the Owner shall reimburse SEMSWA within thirty (30) days after SEMSWA gives the Owner written notice of such expenditures including documentation of such expenditures. If the Owner or its successor or assigns fail to make timely payment as required herein, Owner hereby authorizes SEMSWA to file a mechanic's lien on the Property in the amount of unpaid work, foreclose on that lien and request and be awarded its costs, interest from the date due and attorney fees. If Owner contests such expenditures, Owner may raise that defense in court.
10. Any amounts owed to SEMSWA and not paid within thirty (30) 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 Facilities, on the date the liability arose and all of the successors of interest of such Owner.
11. The Owner, its successors and assigns shall defend, 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 construction, presence, existence maintenance or use of the Facility. SEMSWA, to the extent permitted by law, shall defend, indemnify and hold harmless Owner from SEMSWA's negligence or willful misconduct in regard to SEMSWA's use of the easement or any work performed on the Facilities by SEMSWA.
12. The Owner shall notify SEMSWA when the Owner transfers its interest in Property or any portion thereof. The Owner shall supply SEMSWA with a duly executed copy of

For the Board of Southeast Metro Stormwater Authority

\_\_\_\_\_  
Executive Director

Owner: Boston Smoky Hill, LLC  
a Colorado Limited Liability Company

By: \_\_\_\_\_

Name: Joren Peterson, Manager

STATE OF UTAH )  
COUNTY OF SUMMIT ) SS.

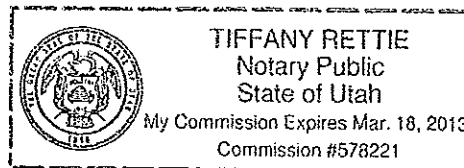
The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of DECEMBER, 2009,  
by Joren Peterson, as Manager of Boston Smoky Hill, LLC, a Colorado Limited Liability  
Company.

My commission expires MAR 18, 2013. Witness my hand and official seal.

Tiffany Rettie  
Signature

TIFFANY RETTIE  
Name of Notary

1450 N HWY 224, PO, UT 84078  
Address of Notary



## **Appendix B**

### **General Location and Description of Stormwater Management Facilities**

#### **A. General Site Description**

The proposed KeyBank - Centennial is located at 16796 E. Smoky Hill Road. The site is located in the Southeast Quarter of Section 8, Township 5 South, Range 66 West of the 6th Principal Meridian and is known as Lot 4 of Piney Creek VRG Commercial Subdivision 1st Filing, 2nd Administrative Replat.

#### **B. General Stormwater Management Description**

Runoff from the disturbed portions of the proposed site will drain via sheet flow and minor concentrated flow to one of two proposed modified extended detention basins (EDBs) that will provide water quality capture volume (WQCV) for the site. Both proposed EDBs are controlled through a modified EDB outlet structure that includes a well screen trash rack and orifice plate that are affixed to proposed curb and gutter along the southern edge of the site. The orifice plates discharge the runoff from the proposed site as surface flow into the existing parking lot located to the south of the site.

Runoff that is tributary to the westernmost EDB will sheet flow across the proposed asphalt pavement, then across a proposed grass buffer and into a proposed grass swale. The proposed grass buffer and grass swale provide a higher level of water quality for the site through minimizing directly connected impervious areas.

#### **C. Stormwater Facilities Site Plan**

Inspection or maintenance personnel may utilize the Stormwater Facilities Map located in Appendix G for locating the stormwater facilities within this development.

#### **D. On-Site Stormwater Management Facilities**

##### **Volume Reduction Facilities**

The western basin within the proposed site utilizes Level II MDCIA. There is no curb head along the western edge of the proposed pavement which allows runoff from the pavement to be evenly distributed across the proposed grass buffer that is adjacent to the proposed pavement. All runoff that passes through the grass buffer will drain into a proposed grass swale. All proposed impervious areas that drain to the west will surface drain over the proposed grass buffer and grass swale prior to discharging from the site.

The eastern basin within the proposed site utilizes Level I MDCIA. All proposed paved areas will surface flow over a proposed grass swale prior to being discharged from the site.

### **Storage Facilities (Detention)**

Detention for the site is provided by an existing detention pond known as Detention Pond #1 as designed in the *Phase III Drainage Report for Piney Creek Commercial* by Jehn & Associates, Inc., April 1993. The existing pond was designed to provide stormwater detention for the site during the 10-year and 100-year storm events in accordance with Arapahoe County criteria. The existing pond is located to the south of the existing Albertsons, which is located south of the site.

### **Water Quality Facilities**

Water quality for the site is provided by two proposed extended detention basins. The proposed ponds provide the required water quality capture volume for the proposed disturbed area in accordance with current City of Centennial and SEMSWA criteria. The proposed EDBs discharge through orifice plates in the proposed curbs along the southern edge of the development and release the discharge overland across the existing parking lot to the south of the site.

### **Source Control Best Management Practices**

Several non-structural source control BMPs apply to the site and are detailed in the following sections of this O&M Manual including frequent trash removal, bagging grass clippings during mowing, etc.