

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

RESOLUTION 11-12

(Approval of a Standard Lessee Stormwater Facility Maintenance Agreement and Authorization
of the Executive Director to Execute the Standard Agreement)

WHEREAS, the City of Centennial (City) and the Southeast Metro Stormwater Authority (SEMSWA) have entered into an Implementing Intergovernmental Agreement (IIGA) allowing for the transfer of the Colorado Department of Public Health and Environment (CDPHE) issued National Pollution Discharge Elimination System (NPDES) for Municipal Separate Storm Sewer System – Phase II requirements permit from the City to SEMSWA; and

WHEREAS, the City has adopted the City of Centennial Stormwater Management Manual (Manual) that sets for the criteria for the design of stormwater improvements and allowable connections to the public stormsewer system; and

WHEREAS, as part of the IIGA, SEMSWA has assumed responsibility for reviewing and approving stormwater improvements in accordance with the Manual; and

WHEREAS, the Manual requires that an Operation and Maintenance Manual (O&M) be provided in accordance with the construction of stormwater facilities for the purpose of educating and providing guidance for parties responsible for maintenance and management of stormwater facilities, including executing a Maintenance Agreement to ensure the long term maintenance of the stormwater facility; and

WHEREAS, the SEMSWA Board of Directors approved a standard form of a Stormwater Facilities Maintenance Agreement in Resolution No. 32, Series of 2007; and

WHEREAS, the Standard Stormwater Facilities Maintenance Agreement doesn't account for stormwater improvements that are on a parcel leased by the party responsibly for the maintenance of the stormwater facility; and

WHEREAS, in order to account for agreements in which the stormwater improvement is on a parcel leased by the party responsible for the maintenance of the stormwater facility, a Lessee Stormwater Facility Maintenance Agreement has been prepared by SEMSWA staff and legal counsel and is attached hereto as **Exhibit A**; and

WHEREAS, there are estimated to be a need for three or more Lessee Stormwater Facility Maintenance Agreements in the City of Centennial annually; and

WHEREAS, because of the number of Lessee Stormwater Facility Maintenance Agreements estimated annually, it is the desire of the Board to delegate the issuance and the execution of these Lessee Stormwater Facility Maintenance Agreements to the Executive

Director when warranted and provided the Lessee Stormwater Facility Maintenance Agreement adheres to the standard, with minor non-substantive modifications; and

WHEREAS, the Lessee Stormwater Facility Maintenance Agreement meets the requirements of the Manual and SEMSWA staff and legal counsel have approved the **Exhibit A** Agreement and recommend that the same be approved by the Board of SEMSWA

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board Approves the form of the Standard Lessee Stormwater Facility Maintenance Agreement attached hereto as **Exhibit A**.
2. The Board authorizes the Executive Director to issue and execute, when warranted, the form of the Standard Lessee Stormwater Facility Maintenance Agreement attached hereto as **Exhibit A**, provided the agreement adheres to the standard form, with minor non-substantive modifications.

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

Exhibit A

Approval of Standard Lessee Stormwater Facility Maintenance Agreement and Authorization of
the Executive Director to Execute the Standard Agreement

Resolution 11-12

SEMSWA Case No. ____
City Case No. ____

LESSEE STORMWATER FACILITY MAINTENANCE AGREEMENT

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

RECITALS

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

Lot __, Block__
Subdivision Name, Filing No.____

referred to as the "Property"; and

WHEREAS, by separate agreement, the Lessee has entered into a long term lease with the Owner, where Owner has delegated the operations and maintenance of stormwater management facilities on the Property to Lessee for the life of the lease.

WHEREAS a Phase III Drainage Report and Plan have been recommended for approval by SEMSWA and approved by the City, referred to as the "Plan"; and

WHEREAS, said Plan provides for stormwater management facilities including drainage facilities intended to reduce, detain, convey, and manage stormwater runoff, "drainage facilities," and facilities intended to provide water quality benefits, "water quality facilities," within the confines of the Property, (drainage facilities and water quality facilities are collectively referred to as "Facilities"); and

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

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

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

The Lessee 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 City of Centennial Stormwater Management 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.

The maintenance of the Facilities shall be performed in accordance with the O&M Manual for the specified facility.

The Lessee shall cause inspections on the facilities to be conducted as follows:

The Lessee agrees to cause inspection of the facilities, at the Lessee's expense, by a person experienced in the inspection of stormwater facilities. Inspections shall occur at least once every calendar year.

An inspection report shall be submitted in writing to SEMSWA prior to January 15th of each year for the Facilities. The inspection report shall be in accordance with the requirements set forth in the O&M Manual.

The Lessee agrees to perform promptly all needed maintenance and report maintenance activities in accordance with the requirements set forth in the O&M Manual.

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, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing the Facilities to the extent that Lessee fails to do so and as necessary to ensure their proper working condition as provided above.

In the event the Lessee fails to inspect, report, or properly maintain the Facilities within fourteen (14) days after written notice by SEMSWA of such deficiencies to the Owner and Lessee, SEMSWA may enter upon the Property and take whatever steps it deems necessary to maintain the Facilities. However, if the failures could cause damage to property, loss of life or a violation of a NPDES MS4 Permit, SEMSWA may take immediate action, without notice to the Lessee or Owner, 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.

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 or

SEMSWA Case No. ____

City Case No. ____

convey the property without a covenant providing that a proportionate share of the cost of maintenance and other costs associated with the other obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.

In an event of emergency involving the Facilities, SEMSWA or its agents may immediately enter the Property and take whatever reasonable steps it deems necessary to address the emergency. SEMSWA shall notify the Lessee and 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 Lessee and Owner by phone to take whatever reasonable action is necessary within a specified period of time. Should the Owner or Lessee fail to respond, or should they inform SEMSWA that they intend to not respond within the specified period of time, SEMSWA or its agents may immediately enter the Property and take whatever reasonable steps it deems necessary to address the emergency.

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.

In the event SEMSWA, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or construction of the Facilities, including labor, equipment, supplies and materials, the Lessee and/or Owner, jointly and severally shall reimburse SEMSWA within ten (10) days after SEMSWA gives the Owner written notice of such expenditures. If the Owner and/or Lessee or their 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 and attorney fees.

Any amounts owed to SEMSWA and not paid within ten (10) days of the date of notification shall be the joint and several obligations of any owner of record or Lessee 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 and Lessee.

The Lessee and Owner and their 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 construction, presence, existence maintenance or use of the Facility.

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 any document of transfer. The Owner and Lessee agree to notify SEMSWA upon any change of legal address.

SEMSWA Case No. ____

City Case No. ____

The responsibilities and obligations of the Owner and Lessee shall constitute a covenant running with the land, and shall be binding upon all present and subsequent owners and leases, their administrators, executors, assigns, heirs, and any other successors in interest so long as they own an interest in the Property of any portion thereof served by the Facilities.

The Lessee recognizes that the executed Final Development Plan, Administrative Site Plan, Location and Extent, Use by Special Review, Engineering Case, or other case process determined by City of Centennial to be a final plan, includes the following language: "The property owner shall be responsible for maintenance of all permanent Best Management Practices (BMP's) and Stormwater Facilities installed pursuant to the Public Improvement Agreements and the Operations and Maintenance (O&M) Manual. Requirements include, but are not limited to, maintaining the specified BMP's contained in the O& M Manual recorded at reception number _____, and the Stormwater Facilities shown in the approved Phase III Drainage Report and shown on the approved Construction Drawings. The Lessee it's successors and/or assigns in interest, or some entity other than SEMSWA, agree to the responsibility of maintaining all permanent BMP's and/or Stormwater Facilities associated with this development. If the permanent BMP's and Stormwater Facilities are not properly maintained, SEMSWA may provide necessary maintenance and assess the maintenance cost to the owner of the property." Failure to abide by the note shall constitute a Zoning Violation, as defined in the City of Centennial Land Development Code.

In addition, any fines or assessments levied against SEMSWA as a result of the Lessee and/or Owner's or their successor's or assign's failure to comply with the terms of this *Lessee Stormwater Facility Maintenance Agreement* shall be the sole and absolute responsibility of the Lessee and/or Owner and their successors or assigns.

This Agreement shall be recorded in the Arapahoe County Clerk and Recorder's Office.

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SEMSWA Case No. ____
City Case No. ____

For the Board of Southeast Metro Stormwater Authority

Executive Director Authorization

Date _____

Lessee:

By: _____

Name: _____

STATE OF COLORADO)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 200 , by _____, as _____ of _____
_____.

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

Signature

Name of Notary

Address of Notary

Owner:

By: _____

Name: _____

SEMSWA Case No. ____
City Case No. ____

STATE OF COLORADO)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 200 , by _____, as _____ of _____
_____.

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

Signature

Name of Notary

Address of Notary