

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

RESOLUTION 12-08

Approval of a Maintenance Agreement with Panorama Metropolitan District and Authorization of the
Executive Director to Execute the Agreement

WHEREAS, the City of Centennial (City) and the Southeast Metro Stormwater Authority (SEMSWA) have entered into an Implementation Intergovernmental Agreement (IIGA) providing 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 storm sewer system; and

WHEREAS, as part of 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 with the construction of stormwater facilities for the purpose of educating and providing guidance for entities 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 the unique maintenance situation at the Panorama Office Park III due to the fact that there is a sub-regional facility located on the property owned by the Panorama Metropolitan District (PMD) which is a quasi-municipal corporation and political subdivision of the State of Colorado formed pursuant to C.R.S Title 32; and

WHEREAS the stormwater improvements at Panorama Office Park III are owned by PMD and include stormwater conveyance structures associated with that sub-regional facility; and

WHEREAS, the stormwater improvements at Panorama Office Park III other than the stormwater conveyance structures are and will be operated and maintained by the PMD; and

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WHEREAS, due to the stormwater conveyance structures associated with the sub-regional facility at Panorama Office Park III, SEMSWA as part of the Stormwater Facilities Maintenance Agreement, should agree to maintain, repair, reconstruct or replace those structures which are limited to the pond inlet and outlet structures, forebay, stilling basin and trickle channel; and

WHEREAS, due the legal status of PMD the real property that it owns may not be subject to a lien; and

WHEREAS, in order to address the situation a Panorama Office Park III Stormwater Maintenance Agreement has been prepared by SEMSWA staff and legal counsel which differs substantially from the standard form of Stormwater Facilities Maintenance Agreement previously approved by the SEMSWA Board and the same is attached hereto as **Exhibit A**; and

WHEREAS, the Panorama Office Park III Stormwater 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 Panorama Office Park III Stormwater Maintenance Agreement attached hereto as **Exhibit A**.
2. The Board authorizes the Executive Director to execute the Panorama Office Park III Stormwater Maintenance Agreement attached hereto as **Exhibit A**.

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

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 Panorama Metropolitan District (the "Owner").

RECITALS

WHEREAS, Panorama Metropolitan District is the Owner of that certain parcel of land known as:

Tract A
Panorama Office Park III, Filing No.____
County of Arapahoe, State of Colorado

referred to as the "Property"; and

WHEREAS a Phase III Drainage Report and Plan have been recommended for approval by SEMSWA and approved by the City of Centennial, 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 Owner; and

WHEREAS, SEMSWA has required that the Owner submit an Operation and Maintenance Manual as specified in the Arapahoe County/City of Centennial Stormwater Management Manual, which manual is the Stormwater Management Facility Operation and Maintenance (O&M) Manual for Panorama Office Park III located at the intersection of E. Panorama Drive and S. Yosemite Street to which this Stormwater Facility Maintenance Agreement is attached as Appendix A, 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

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 City of Centennial Stormwater Management Manual, and other applicable SEMSWA approved standards, and applicable legal requirements. Maintenance shall include routine landscaping, trash and debris removal, weed control, mowing and maintaining vegetative cover so as to prevent erosion of embankment. Repair of areas damaged by erosion because of failure to maintain proper vegetative cover shall be the sole responsibility of the Owner.
2. SEMSWA shall be responsible for routine removal of sediment, maintenance, repair, reconstruction, or replacement of the stormwater conveyance structures which are limited to the

pond inlet and outlet structures, forebay, stilling basin and trickle channel, referred to as the "Stormwater Conveyance Structures".

3. The maintenance of the Facilities shall be performed in accordance with the O&M Manual for the specified facility.
4. 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 15th 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 on all Facilities except for Stormwater Conveyance Structures, which shall be the responsibility of SEMSWA pursuant to paragraph 2 set forth above.
5. 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 Facilities to the extent that Owner fails to do so and as necessary to ensure their proper working condition as provided in paragraphs one and two above.
6. In the event the Owner fails to inspect, report, or properly maintain the Facilities within fourteen (14) days after 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 Facilities. However, if the Owner's 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 Owner, to alleviate that failure. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Facilities, other than the Stormwater Conveyance Structures, and in no event shall this Agreement be considered to impose any such obligation on SEMSWA. SEMSWA shall, in its sole discretion, prioritize and fund its obligations set forth in this Agreement related to the Stormwater Conveyance Structures.
7. 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 convey the property without covenant providing that a proportionate share of the cost of maintenance and other costs associated with other of the obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.
8. 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.

9. 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.
10. 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 Owner shall reimburse SEMSWA within ten (10) days after SEMSWA gives the Owner written notice of such expenditures, provided, however, the provisions of this paragraph shall not apply to Stormwater Conveyance Structures which shall be the responsibility of SEMSWA. The Owner, as a governmental entity, agrees to make timely payment to SEMSWA of amounts owing pursuant to this paragraph. If the Owner or its successor or assigns fail to make timely payment as required herein, Owner hereby acknowledges SEMSWA's right to pursue its rights in equity and law.
11. 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 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.
12. 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 construction, presence, existence maintenance or use of the Facility.
13. 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 agrees to notify SEMSWA upon any change of legal address.
14. 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 of any portion thereof served by the Facilities.
15. The Owner 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 Arapahoe County/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 Subdivision 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 Owners of this Subdivision, their 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 Arapahoe County/City of Centennial Land Development Code. SEMSWA acknowledges that the Owner is a governmental entity that only owns the property within the Subdivision Improvement Agreement and documents referenced above. As such, the

Owner can only represent that it will abide by the Note, but cannot be responsible for the acts of other entities, including, but not limited to, private parties.

THE PROPERTY IS A GOVERNMENT OWNED DETENTION POND. THE OWNER CANNOT GRANT LIEN RIGHTS.

In addition, any fines or assessments levied against SEMSWA as a result of the Owner's or its successor's or assign's failure to comply with the terms of this Paragraph shall be the sole and absolute responsibility of the Owner or its successors or assigns.

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

[Remainder of Page Intentionally Left Blank]

For the Board of Southeast Metro Stormwater Authority

John A. McCarty
Executive Director

Owner: Panorama Metropolitan District

By: _____
Name: Timothy J. Burke
It's: President

STATE OF COLORADO)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012,
by Timothy J. Burke, as President of Panorama Metropolitan District.

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

Signature

Name of Notary

Address of Notary