

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

RESOLUTION 20-05  
Authorization to Revise the Standard Stormwater Facility Multi-Party  
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 adopted Resolution No. 11, Series of 2011, *Approval of a Standard Stormwater Facility Maintenance Agreement and Authorization of the Executive Director to Execute the Standard Agreement*, hereinafter referred to as “Multi-Party 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 Multi-Party Maintenance Agreement continues to require the facility owner or benefitting owner and all subsequent facility owners or benefitting 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 Multi-Party 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 Multi-Party 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 Multi-Party Maintenance Agreement, as attached hereto as Exhibit A.
2. The Board authorizes the use of the revised Multi-Party 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 Multi-Party 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

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WHEREAS, the revised Multi-Party 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

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Secretary

\_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:

Attorney for  
Southeast Metro Stormwater Authority

By: \_\_\_\_\_  
Edward J. Krisor

SEMSWA Case No. \_\_\_\_\_

STANDARD STORMWATER FACILITY MULTI-PARTY MAINTENANCE AGREEMENT

This Multi-party Maintenance Agreement is entered into by and between the SOUTHEAST METRO STORMWATER AUTHORITY, a political subdivision of the State of Colorado ("SEMSWA"), \_\_\_\_\_ (the water quality facility(s) owner "Facility Owner"), \_\_\_\_\_ (any additional offsite owner(s) benefitting from the use of the water quality facility(s) "Additional Owner(s)") and \_\_\_\_\_ (the "Maintenance Entity").

## RECITALS

WHEREAS, \_\_\_\_\_ is the Facility Owner of that certain parcel of land containing the water quality facility(s) known as:

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

referred to as the "Water Quality Property"; and

WHEREAS, \_\_\_\_\_ is the Additional 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 "Offsite Property"; and

WHEREAS, \_\_\_\_\_ is the Second Additional 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 "Additional Offsite Property"; and

WHEREAS, \_\_\_\_\_ is also the Maintenance Entity. (The Maintenance Entity must be either the Facility Owner or Additional Owner(s).

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 Water Quality Property and to the benefit of the Water Quality Property, Offsite Property and Additional Offsite Property; and

WHEREAS, SEMSWA requires that the Water Quality Facility(s) shown on the Plan be implemented by the Facility Owner and/or Additional Owner(s) and maintained by the Maintenance Entity in a manner that allows for the Water Quality Facility(s) to function in accordance with the approved Plan; and

WHEREAS, SEMSWA has required that the Facility Owners and/or Additional Owner(s) 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 or which are hereby acknowledged, the parties agree as follows:

#### AGREEMENT

1. The Maintenance Entity 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 Facility(s) function in accordance with the approved Plan and as outlined in the SOPs, as applicable to the Water Quality Facility(s) on the Water Quality Property, to include routine maintenance and identifying if the Water Quality Facility is inadequate and eliminating those inadequacies.
2. The Facility Owner and Additional Owner(s), hereby, grant, bargain and convey to SEMSWA and its agents easements over the Water Quality Property, Offsite Property and Additional Offsite Property for access from public rights-of-way, abutting private roadway, and/or private driveway, including all other rights the Facility Owner and Additional Owner(s) possesses to access the Water Quality Facility(s), Water Quality Property and Additional Offsite Property (collectively referred to a “Properties”), for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing Water Quality Facility(s) to the extent that Maintenance Entity 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 seven below.
3. In the event the Maintenance Entity fails to properly maintain the Water Quality Facility(s) 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 Maintenance Entity, SEMSWA may enter upon the Properties and take whatever steps it deems necessary to maintain the Water Quality Facility(s), in accordance with the SEMSWA Enforcement Response Plan (“ERP”), Resolution 18-16 and seek full

reimbursement for its costs incurred from Property Owner and Additional Property Owner(s), jointly and severally.

4. In the event the Maintenance Entity fails to properly maintain the Water Quality Facility(s), as provided in paragraph three above, SEMSWA may demand that the Facility Owner and/or Additional Owner(s) assume the Maintenance Entity responsibilities, in accordance with this Agreement. In such cases, SEMSWA will provide written notice to Facility Owner and Additional Owner(s) to require the maintenance of the Water Quality Facility(s), in accordance with paragraph one above.

5. If the Maintenance Entity'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 Facility Owner, Additional Owner(s) or Maintenance Entity, to alleviate that failure. It is expressly understood and agreed that SEMSWA is under no obligation to maintain or repair the Water Quality Facility(s) and in no event shall this Agreement be considered to impose any such obligation on SEMSWA.

6. The Facility Owner and Maintenance Entity agrees that it will not at any time dedicate the Water Quality Facility(s) 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.

7. In an event of emergency involving Water Quality Facility(s), SEMSWA or its agents may enter immediately upon the Properties and take whatever reasonable steps it deems necessary to alleviate the emergency. SEMSWA shall notify the Facility Owner, Additional Owner(s) and Maintenance Entity 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 Facility Owner, Additional Owner(s) and Maintenance Entity by phone to take whatever reasonable action is necessary within a specified period of time. Should the Facility Owner, Additional Owner(s) and Maintenance Entity fail to respond, or should the Facility Owner, Additional Owner(s) or Maintenance Entity inform SEMSWA that it intends to not respond within the specified period of time, SEMSWA or its agents may enter immediately upon emergency, take any and all actions to alleviate the emergency and seek full reimbursement for its costs incurred from Property Owner and Additional Property Owner(s), jointly and severally.

8. SEMSWA shall not pay any compensation at any time for its use of the Facility Property or Offsite Property(s) for the inspections and maintenance of the Water Quality Facilities, including access to the Water Quality Facilities.

9. SEMSWA shall conduct inspections of the Water Quality Facility(s) on the Facility Property. Inspections shall occur, at a minimum, at the frequency level defined in the CDPS MS4 Permit to ensure that the Water Quality Facility(s) are functioning as designed in the Plan.

10. 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 owners of record of the Properties 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 Facility Owner and Additional Owner(s).



11. The Facility Owner, Additional Owner(s), and Maintenance Entity, 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 Water Quality Facility.

12. The responsibilities and obligations of the Facility Owner, Additional Owner(s), and Maintenance Entity 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 Properties of any portion thereof served by the Water Quality Facility(s). In addition, any fines or assessments levied against SEMSWA as a result of the Property Owner, Additional Owner(s), and/or Maintenance Entity's or its successor's or assign's failure to comply with the terms of this Agreement shall be the sole and absolute responsibility of the Facility Owner, Additional Owner(s), and/or Maintenance Entity, jointly and severally, or their successors or assigns.

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

14. In the event any 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]

SEMSWA Case No. \_\_\_\_\_

For the Board of Southeast Metro Stormwater Authority

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

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  
\_\_\_\_\_

Facility Owner (if also Maintenance Entity, note here):

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

Name: \_\_\_\_\_

STATE OF COLORADO     )  
  ) SS.  
COUNTY OF                    )

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Signature

\_\_\_\_\_  
Name of Notary  
\_\_\_\_\_

SEMSWA Case No. \_\_\_\_\_

Additional Owner (if also Maintenance Entity, note here):

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

Name: \_\_\_\_\_

STATE OF COLORADO       )  
  ) SS.  
COUNTY OF                    )

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Signature

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Name of Notary

\_\_\_\_\_  
Address of Notary