

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

RESOLUTION NO. 40, SERIES OF 2007
(Adoption of Drainage Basin Fees)

WHEREAS, pursuant to 29-1-204.2 C.R.S., the Southeast Metro Stormwater Authority (SEMSWA) was established on September 19, 2006 by an Intergovernmental Agreement (IGA) entitled *Concerning the Formation of a Drainage Authority Amongst County of Arapahoe, City of Centennial, Arapahoe County Water and Wastewater Authority, East Cherry Creek Valley Water and Sanitation District and Inverness Water and Sanitation District Pursuant to Section 29-1-204.2, C.R.S.*; and

WHEREAS, SEMSWA Water Activity Enterprise was established by SEMSWA on September 28, 2006 pursuant to 37-45.1-101 C.R.S. *et.seq.*; and

WHEREAS, the IGA at Section II. 4. (a) provides for SEMSWA's adoption of drainage basin fees which "shall be set to rationally, reasonably and equitably pay for the costs of collection, construction and, related costs of drainage and water quality facilities that are not fully funded by the particular Party's SDF or other Authority revenues."; and

WHEREAS, the County of Arapahoe has, over a period of a number of years, studied and prepared drainage basin master plans for the various drainage basins located within the boundaries of the County and, as part of those master plans, it has been determined what major drainage improvements will need to be constructed as a result of new development as well as cost estimates for those improvements; and

WHEREAS, the County of Arapahoe has, over a period of a number of years, established, implemented and collected drainage basin fees for those drainage basins that have been studied. Those fees being calculated on the basis of the estimated cost of the major drainage improvements that will need to be constructed as a result of new development in the drainage basin divided by the remaining undeveloped area in the drainage basin; and

WHEREAS, the drainage basin fees of the County of Arapahoe, at the time they were established, were "set to rationally, reasonably and equitably pay for the costs of collection, construction and, related costs of drainage and water quality facilities" and, if anything, the cost to construct those identified major drainage facilities has gone up; and

WHEREAS, the drainage basin fees of the County of Arapahoe also take into consideration the nature and proportionality of a subdivision's impact on the necessity and extent of drainage improvements; and

WHEREAS, at this time, the County of Arapahoe is collecting drainage basin fees in behalf of SEMSWA and the City of Centennial is not collecting drainage basin fees although

new development is continuing without contributing to the cost of those major drainage improvements necessitated by that development; and

WHEREAS, at this time, the Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District are collecting drainage basin fees; however, the sole purpose of those collections are to complete construction of major drainage improvements that were under way on September 19, 2006 and to accumulate sufficient funds to reimburse developers and/or themselves for the construction of major drainage improvements in excess of what was necessitated by that developer's development; and

WHEREAS, pursuant to the IGA, the burden of constructing the major drainage improvements identified in master plans, has been delegated to SEMSWA which presently is not collecting any drainage basin fees related to new development; and

WHEREAS, 29-1-204.2 (3)(j) C.R.S. provides that the general powers of a drainage authority shall include the power to "fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the entity;"

WHEREAS, it is desirable for SEMSWA to adopt a policy that provides for the assessment of drainage basin fees. If a developer, as part of its development, constructs major drainage improvements that are specified to be constructed in a master plan and SEMSWA approves both in advance as well as accepting the completed improvement, SEMSWA may grant a credit for the reasonable cost of that construction up to but not exceeding the drainage basin fees that would be due as a result of that development; and

WHEREAS, despite the collection of drainage basin fees by the Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District, it is still necessary for SEMSWA to collect drainage basin fees within the boundaries of the Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District and the East Cherry Creek Valley Water and Sanitation District in order to have sufficient funds to construct major drainage improvements within their boundaries; and

WHEREAS, at this time, it is unknown how much of the drainage basin fees now being collected by the Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District will be received by SEMSWA and, if so, when; and

WHEREAS, until SEMSWA has had an opportunity to study the question of what is an appropriate drainage basin fee to be charging within the boundaries of the Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District considering that these entities are currently charging drainage basin fees within their boundaries, it is appropriate not to charge a drainage basin fees within the boundaries of these entities at this time; and

WHEREAS, the drainage basin fees established by the County of Arapahoe are attached hereto and incorporated herein by reference and identified as Exhibit “A”; and

WHEREAS, due to rising costs of construction, it will be necessary on an ongoing basis to reevaluate the costs of construction of the major drainage improvements that are recommended in the current master plans prepared by SEMSWA, County of Arapahoe, and/or others; and

WHEREAS, SEMSWA held a public hearing on June 20, 2007, after notice, in regard to the adoption of drainage basin fees as contained in this Resolution.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The attached Exhibit “A” is hereby adopted as the drainage basin fee for residential and for non-residential subdivisions regardless of the size of the lots located within the boundaries of SEMSWA except for those portions lying within the boundaries of Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District which will not be assessed a drainage basin fee at this time. For the purposes of Exhibit “A”, the words “impervious” shall mean surfaces on or in the real property where the passage of stormwater into the earth’s surface has been reduced by the works of man. Works of man include buildings, roads, driveways, patio areas, roofs, sidewalks, parking lots and storage areas, and other manmade structures or hard-surface areas.

2. The drainage basin fees contained in Exhibit “A” are determined by SEMSWA to be set rationally, reasonably and equitably in order to pay for the costs of collection, construction and, related costs of drainage and water quality facilities necessitated by new development and to take into consideration the nature and proportionality of a subdivision’s impact on the necessity and extent of drainage improvements.

3. The drainage basin fees contained in Exhibit “A” are the same as those currently being charged by Arapahoe County. These fees will be reevaluated and adjusted as described in Paragraph 10 below.

4. SEMSWA shall assess and collect the drainage basin fees as contained in Exhibit “A” in all areas of its boundaries except for those portions lying within the boundaries of Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District which will not be assessed a drainage basin fee at this time and as limited by the IGA.

5. These drainage basin fees shall be paid at the time of approval of the final development plan and the fees paid shall be those in effect at the time of acceptance of the submittal of the final development plan.

6. SEMSWA shall enter into intergovernmental agreements with the City of Centennial as well as the County of Arapahoe to assure that final plat approval shall not occur unless and until SEMSWA's drainage basin fee has been paid to SEMSWA. In order to obtain the agreement of the City of Centennial and the County of Arapahoe, SEMSWA is authorized to agree to defend, indemnify and hold the City and the County harmless in regard to any claims asserted against them in regard to SEMSWA's drainage basin fee and its collection.

7. If a developer, as part of its development, constructs major drainage improvements that are specified to be constructed in a master plan and SEMSWA approves both in advance as well as accepting the completed improvement, SEMSWA may grant a credit for the reasonable cost of that construction up to but not exceeding the drainage basin fees that would be due as a result of that development.

8. SEMSWA shall, as soon as reasonably possible, complete a determination as to what drainage basin fees shall be collected within the boundaries of Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District taking into consideration the drainage basin fees currently being collected by those entities, the receipt by SEMSWA of a portion of those fees from each entity, and the financial needs of SEMSWA as a result of the necessity to construct major drainage improvements identified in master plans.

9. Until SEMSWA is able to justify the collection of its full per acre drainage basin fee within the boundaries of the Arapahoe County Water and Wastewater Authority, the Inverness Water and Sanitation District, and the East Cherry Creek Valley Water and Sanitation District applying the requirement of Section II. 4. (a) of the IGA, the construction of major drainage improvements within the boundaries of those entities may be limited to actual drainage basin fees collected within the boundaries of those entities. In addition, a portion of the annual stormwater fees may also be used for construction of major drainage improvements, if not required for other purposes and if included in the CIP program approved by the Board.

10. SEMSWA on a continuing basis, as funds are available, shall reevaluate the costs of construction of the major drainage improvements that are recommended in the current master plans prepared by the County of Arapahoe and/or the City of Centennial and update those plans and adjust the drainage basin fees to reflect changes in actual development since the prior plan's adoption as well as the costs to construct the improvements recommended in those master plans.

11. This Resolution shall become effective immediately and be applicable to all development within the boundaries of SEMSWA where either the City of Centennial or the County of Arapahoe has not accepted a final plat submittal as of the date of the adoption of this Resolution.

(SEAL)

SOUTHEAST METRO STORMWATER AUTHORITY
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Date: _____

ATTEST:

Secretary

Chairperson