

MEMORANDUM OF UNDERSTANDING

Between

Arapahoe County and Southeast Metro Stormwater Authority

Regarding

Transfer of Stormwater Fees

This Memorandum of Understanding (“MOU”) is entered into by and between Southeast Metro Stormwater Authority (“SEMSWA”) and Arapahoe County (“County”) regarding the transfer of stormwater fees. SEMSWA and County being collectively referred to as “Parties”.

NOW, THEREFORE, it is mutually understood and agreed by the parties as follows:

- A. The City of Centennial (the “City”) and County have previously entered into an Intergovernmental Agreement (IGA) to provide municipal services.

- B. Section 3.7.2 of the IGA provides:
Collateral. The COUNTY, through land use approvals of land that is now included within the CITY, has entered into various agreements with landowners regarding cash payments, bonds, letters of credit and other collateral to secure landowner obligations. Such agreements may include COUNTY obligations to hold, exercise or return such collateral. The COUNTY has provided a preliminary inventory of the collateral it proposes to transfer to the CITY. A complete inventory shall be provided by July 1, 2004, or as soon thereafter as is reasonably practical (and in no event later than August 1, 2004), and upon the CITY’s review of such inventory, the Parties shall agree to an assignment of all or part of such collateral, based on terms deemed appropriate.

- C. Pursuant to section 3.7.2 of the IGA the County has provided such inventory and the City is now requesting transfer of those Basin Fees and Stormwater Fees In Lieu Of Improvements as described in Exhibit A (“Fees”) to SEMSWA in the amount of \$712,964.98.

- D. County previously transferred \$19,434.00 to the City of Centennial via Warrant No. 21400009861 on March 9, 2009.

- E. City of Centennial approved disbursement of these drainage fees to SEMSWA on May 7, 2008 (Exhibit B).

- F. County represents that County has provided to City copies of all agreements, plats, maps, correspondence, approval and other information in the County's possession related to each of the developments described in Exhibit A for which Fees were collected, to include any agreements which relate to the purposes or requirements for retaining and/or returning such Fees.
- G. Pursuant to §30-11-101, C.R.S (2007), the County is empowered to make and enter into agreements necessary to the exercise of its administrative actions.
- H. In exchange for the transfer of the requested Fees to SEMSWA, SEMSWA agrees to assume the assignment of all duties and liabilities for the Fees related to the projects in Exhibit A. To the extent that such Fees are not committed to a particular improvement, SEMSWA agrees to utilize those Fees in the drainage basin that generated those Fees. Such assumption is limited to the amount of each Fee received from County in regard to each corresponding Case No. listed on Exhibit A.
- I. Payment of the \$712,964.98 in Fees shall be made by the County to SEMSWA by no later than June 23, 2009.
- J. SEMSWA further agrees to the extent authorized by law, and without waiving the provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, et. seq., C.R.S. that SEMSWA shall defend, indemnify and save harmless the County, its officers, employees, or agents against any claims asserted by any payor(s) of such Fees or their successors or assigns, that arise from the transfer of such Fees from the County to SEMSWA or that arise from the future use by SEMSWA of such Fees.
- K. Notices to be provided under this MOU shall be given in writing either by hand delivery, or deposited in the United States Mail, certified mail, return receipt requested, with sufficient postage to the following persons:

Arapahoe County
Office of the County Attorney
5334 S. Prince Street
Littleton, CO 80166

Southeast Metro Stormwater Authority
76 Inverness Drive East, Suite A
Englewood, CO 80112-5106
Attn: Executive Director

Any party may from time to time designate any other address for this purpose by giving written notice thereof to the other party.

- L. This MOU, and any exhibits attached hereto, contain the entire agreement between the Parties and shall supersede all prior offers, negotiations and agreements.
- M. No revision of this MOU shall be valid unless made in writing and signed by SEMSWA and Arapahoe County or their authorized agent (s).
- N. The laws of the State of Colorado shall govern this MOU. Venue for any action for the enforcement of this MOU shall be in the appropriate court for Arapahoe County, Colorado. Any judgment shall be limited to specific performance and/or injunctive relief and no party shall have any claim or remedy for monetary damages arising from an alleged breach of this MOU against another party. This MOU is not intended to modify or eliminate the standing the Parties may possess independent of this MOU. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this MOU.
- O. A waiver by any party to this MOU or the breach of any term or provision of this MOU shall not operate or be construed as a waiver of any subsequent breach by a party.
- P. The Parties agree that this MOU, by its terms, shall be binding upon the successors, legal representatives, and assigns of the Parties; provided that this Section shall not authorize assignment.
- Q. Nothing contained in this MOU is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party. Absolutely no third party beneficiaries are intended by this MOU. Any third-party receiving a benefit from this MOU is an incidental and unintended beneficiary only.

ARAPAHOE COUNTY

(SEAL)

By: _____
Susan Beckman, Chair

ATTEST: Nancy A. Doty
Clerk of the Board

By: _____

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through SEMSWA Water Activity Enterprise

By _____
John A. McCarty, P.E., Executive Director

Approved as to Form:

By _____
Edward J. Krisor, SEMSWA Attorney