

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

RESOLUTION 13-03

Approval of Standard Non-Exclusive Permanent Floodplain and Drainage Easement Agreement and
Authorization of the Executive Director to Execute the Agreement

WHEREAS, the City of Centennial (City) and the Southeast Metro Stormwater Authority (SEMSWA) 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 permit and general stormwater related functions from the City to SEMSWA; and

WHEREAS, the City adopted the SEMSWA Stormwater Management Manual (Manual) that sets forth the criteria for the design of post-construction BMPs and stormwater improvements; and

WHEREAS, the Stormwater Management Manual requires all property which is defined as a 100-year floodplain to be contained within a floodplain easement to ensure that the property is restricted to allow only those uses permitted in a floodplain; and

WHEREAS, the Stormwater Management Manual requires developers to dedicate drainage easements for stormwater improvements (Easement Property) permitting SEMSWA to enter, re-enter, and occupy the Easement Property; and

WHEREAS, floodplain and drainage easements may be dedicated via separate instrument; and

WHEREAS, as a result of the transfer of the CDPHE stormwater discharge permit and SEMSWA's assumption of the City's stormwater functions as further described in the IIGA, SEMSWA assumed responsibility for ensuring maintenance of certain stormwater improvements and is required to enter and re-enter the Easement Property for routine inspections; and

WHEREAS, as a result of the transfer of the CDPHE stormwater discharge permit and SEMSWA's assumption of the City's stormwater functions, SEMSWA is required to assume ownership of certain stormwater improvements; and

WHEREAS, a standard form of Non-Exclusive Permanent Floodplain and Drainage Easement Agreement has been prepared by SEMSWA staff and legal counsel and is attached as Exhibit A; and

WHEREAS, there are estimated to be several Floodplain And Drainage Easement Agreements executed in association with Capital Projects and Land Use cases in the City annually; and

WHEREAS, because of the large number of Floodplain And Drainage Easement Agreements, it is the desire of the Board to delegate the approval of Floodplain and Drainage Easement Agreements to the Executive Director as long as the acceptance of the dedication of drainage easements and tracts adheres to the standard Non-Exclusive Permanent Floodplain And Drainage Easement Agreement attached hereto as Exhibit A, with minor non-substantive modifications.

NOW, THEREFORE, BE IT RESOLVED THAT:

Within the City of Centennial:

1. The Board Approves the form of the Non-Exclusive Permanent Floodplain and Drainage Easement Agreement attached hereto as Exhibit A.
2. The Board authorizes the Executive Director to execute the Non-Exclusive Permanent Floodplain and Drainage Easement Agreement, as long as the Agreement adheres to the standard set forth in Exhibit A, with minor non-substantive modifications.
3. The Executive Director will report to the Board quarterly the number and location of Non-Exclusive Permanent Floodplain and Drainage Easement Agreements executed that quarter.

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Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

Non-Exclusive Permanent Floodplain and Drainage Easement Agreement

This PERMANENT FLOODPLAIN AND DRAINAGE EASEMENT ("Easement") is granted this _____ day of __, 2013, by __ whose legal address is __ (the "Grantor"), to the Southeast Metro Stormwater Authority, a political subdivision and a public corporation of the State of Colorado, whose legal address is 76 Inverness Drive East, Suite A, Centennial, CO, 80112 (the "Grantee"), its successors and permitted assigns.

For and in consideration of the sum of One Dollars (\$1.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants, bargains, sells and conveys to the Grantee, its transferees and successors in title or assigns, a perpetual non-exclusive permanent floodplain and drainage easement containing the 100 year floodplain of __ (e.g., Windmill Creek) __ (the "Easement"), to construct, reconstruct, install, operate, use, inspect, maintain, repair, replace and/or remove drainage improvements and related appurtenances necessary for the retention, detention and conveyance of flood waters and drainage and compliance with the Clean Water Act and the National Flood Insurance Program (the "Drainage Improvements"), in, on, to, through, over, under and across a certain parcel of real property located in the Arapahoe County, Colorado, as more particularly described in Exhibit "A" (the "Easement Parcel"), together with the right of the Grantee to enter upon said property for the purposes of constructing, reconstructing, installing, operating, using, inspecting, maintaining, repairing, replacing and/or removing any Drainage Improvements for which this Easement is granted pursuant to the following terms and conditions:

1. Grantee, its' agents, successors, and permitted assigns, shall have and exercise the right of perpetual ingress and egress in, to, through, over, under and across the Easement Parcel for any purpose necessary and, at any and all times necessary or convenient, for the full enjoyment of the rights granted it in the Easement. Including the right to cross adjacent property owned by Grantor, its transferees and successors in title or assigns, to access the above described Easement Parcel for purposes of construction, reconstruction, installation, operation, use, inspection, maintenance, repair, replacement and/or removal of the Drainage Improvements of Grantee on the Easement Parcel and any adjacent real property. Such access shall be at a mutually agreeable location. However, Grantor shall not unreasonably withhold its approval in regard to that access location.
2. Grantor shall protect and preserve the Floodplain and Drainage Easement as Floodplain and a Special Flood Hazard Area (SFHA), and shall restrict uses within the Floodplain and Drainage Easement in accordance with all requirements of the City of Centennial, Colorado Land Development Code. The uses and restrictions are specifically described in the Land Development Code, Article 7, Open Space, Floodplain Management and Environmental Quality.
3. Grantee shall have the right to enter upon the Easement Parcel and to survey, construct, reconstruct, install, operate, use, inspect, maintain, repair, upgrade, replace

and/or remove the Drainage Improvements made within the Easement, and to remove objects interfering therewith.

4. Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the drainage Improvements. Grantor shall not take any action which would impair the lateral or subjacent support for the drainage Improvements.

5. Grantee shall have the right and authority to assign to any appropriate local governmental entity, any and all rights to use, and all rights and obligations associated with, the Easement as are granted to and accepted by the Grantee herein.

6. Grantee agrees that at such time and in the event that the Easement described herein be abandoned by the Grantee and any assignee, such Easement shall terminate and the real property interest represented by such Easement shall revert to the Grantor, its heirs, successors and/or assigns. Because of the potentially infrequent nature of the allowed use of the Easement Parcel, mere non-use of the Easement Parcel, notwithstanding the length of time of such non-use, shall not constitute abandonment.

7. The Grantor warrants, covenants, grants, bargains and agrees that, to the best of its knowledge, the Grantor is well seized of the Easement Parcel above conveyed and has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restriction of whatever kind or nature what so ever, except matters of record.

8. Each and every one of the benefits and burdens of the Easement shall inure to and be binding upon the respective legal representatives, administrators, successors and permitted assigns of the Grantor and the Grantee.

9. The consideration set forth above includes full and just compensation.

10. In further consideration hereof, Grantor for itself and its transferees and successors in title or assigns, covenants and agrees that it shall not take any action in regard to the Easement Parcel including but not limited to the placing, erecting, storing, installing or permitting any building, structure, fill of soils or other materials, or other above or below ground obstruction in the Easement Parcel without written authorization of Grantee; and further covenants and agrees that in the event the terms of this paragraph are violated by Grantor, its transferees and successors in title or assigns, or any person or organization working directly or indirectly for Grantor, its transferees and successors in title or assigns, such violation shall be corrected and eliminated within ninety (90) calendar days after the receipt of notice from Grantee. If such corrections are not made by Grantor, its transferees and successors in title or assigns, or whoever is the current owner of the fee title to the Easement Parcel, if different from Grantor, within said ninety (90) day period, Grantee shall have the right to correct and eliminate such violation, and Grantor, its transferees and successors in title or assigns, or

whoever is the current owner of the fee title to the real property described as the Easement Parcel, if different from Grantor shall promptly pay the actual costs thereof.

11. Grantee shall maintain the Drainage Improvements on Grantor's property subject to and on the condition that the Board of Directors of Grantee approves and adequately budgets for such maintenance, neither of which can be guaranteed.

12. As promptly as reasonable under the circumstances, after any construction or other operations by Grantee which disturb the surface of the property in or about the Easement Parcel, Grantee will restore the general surface of the ground, including authorized appurtenances as nearly as may reasonably be done to the grade and condition it was in immediately prior to construction, except as necessarily modified to accommodate Grantee's drainage facilities and improvements. Topsoil shall be replaced, and any excess earth resulting from installations by Grantee shall be removed from Grantor's property at the sole expense of Grantee.

13. Grantor represents that it has visually inspected the real property described in Exhibit "A" to determine whether or not any contamination exists on or under the surface of said real property in the form of any hazardous or dangerous substances, and represents to the best of the knowledge of Grantor, that no such contamination exists.

14. Grantor represents and warrants that it neither has nor will cause any contamination to the real property described in Exhibit "A" and warrants that, if it has caused or does cause any such contamination, it shall be the responsibility of Grantor to clean up and remediate such contamination and it shall be the obligation of Grantor to defend, indemnify and hold Grantee harmless in regard to such contamination.

15. Grantor warrants that it has full right and lawful authority to make the grant herein above contained, and promises and agrees to defend Grantee in the exercise of its rights hereunder against any defect in Grantor's title to the land involved or Grantor's right to make the grant herein above contained.

16. Each and every one of the benefits and burdens of this Easement Deed shall inure to and be binding upon the respective legal representative, heirs, executors, administrators, transferees, successors in title or assigns of the parties hereto.

17. The above and foregoing constitutes the whole agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument.

GRANTOR:

*

By _____
President

STATE OF COLORADO)
) ss.
County of Arapahoe)

The foregoing Non-Exclusive Permanent Drainage Easement was acknowledged before me this _____ day of *, 2013, by. _____ as the President and _____ as Secretary of Grantor, *

Witness my hand and official seal:

Notary Public _____

My commission expires: _____