

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

RESOLUTION NO. 39, SERIES OF 2007

Authorization for SEMSWA to Enter Into Memorandum of Understanding with City of Centennial and Arapahoe County to Transition Administration of the Grading, Erosion and Sediment Control (GESC) Program to SEMSWA

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 I. 5(a) paragraph 1, requires SEMSWA to manage stormwater quality and comply, to the degree legally required, with provisions and permit requirements of NPDES MS4 Stormwater Permits transferred to SEMSWA by the Parties as well as those obtained in the name of SEMSWA; and

WHEREAS, in order for SEMSWA to be able to transfer or obtain NPDES MS4 permits, it must among other activities be able to regulate certain grading, erosion, and sediment control activities and to declare certain actions and activities as unlawful which result in the degradation of the health, safety and welfare; and

WHEREAS, the IGA at Section I. 5 (a) paragraph 3, requires the City and the County to delegate to SEMSWA such police powers as may be necessary to enable SEMSWA to enforce any and all provisions of NPDES MS4 Stormwater Permits transferred to SEMSWA or obtained by SEMSWA; and

WHEREAS, until the City of Centennial's and Arapahoe County's NPDES MS4 Stormwater permits are transferred to SEMSWA, there is a desire to transition the administration of the NPDES MS4 Stormwater Management Program No. 4 – Construction Runoff Control; from the City and County to SEMSWA; and

WHEREAS, SEMSWA desires to enter into a Memorandum of Understanding with the City of Centennial and with Arapahoe County to provide for the City and County to delegate to SEMSWA the necessary authority and police powers to enable SEMSWA to administer the GESC program in the name of the City and County; and

WHEREAS, the City of Centennial passed Ordinance No. 2005-O-05; an Ordinance adopting by reference the "Grading, Erosion, And Sediment Control (GESC) Manual (the "GESC" Manual) published by the City of Centennial, Colorado dated March 2005, amending the Manual, establishing penalties for violations of the manual, and declaring an emergency; and

WHEREAS, Arapahoe County passed Resolution No. 050113 and 050114; adopting the “Grading, Erosion and Sediment Control (GESC) Manual (the “GESC” Manual) published by Arapahoe County, and revising the Arapahoe County Land Development Code to incorporate Grading, Erosion and Sediment Control (GESC) standards into the Subdivision and Zoning Regulations; and

WHEREAS, both SEMSWA and the City of Centennial desire SEMSWA implement and enforce Ordinance No. 2005-O-05 on behalf of the City of Centennial, to regulate certain grading, erosion, and sediment control activities in accordance with the standards and criteria established in the City of Centennial’s GESC Manual and City of Centennial Ordinance No. 2005-O-05; and

WHEREAS, both SEMSWA and Arapahoe County desire SEMSWA implement and enforce Arapahoe County Resolutions 050113 and 050114 on behalf of Arapahoe County within the SEMSWA Service Areas in unincorporated Arapahoe County, to regulate certain grading, erosion, and sediment control activities in accordance with the standards and criteria established in the Arapahoe County GESC Manual and with Arapahoe County Resolutions 050113 and 050114.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board authorizes SEMSWA to make the following commitments and agreements regarding the implementation of the GESC Program by SEMSWA:

1. Enter into a Memorandum of Understanding with the City of Centennial wherein the City will delegate it’s authority and police powers to SEMSWA to implement and enforce, on behalf of the City, the City of Centennial’s Ordinance No. 2005-O-05 regarding Grading, Erosion and Sediment Control activities.
2. Enter into a Memorandum of Understanding with Arapahoe County wherein the County will delegate it’s authority and police powers to SEMSWA to implement and enforce, on behalf of the County, Arapahoe County Resolutions 050113 and 050114 regarding Grading, Erosion and Sediment Control activities, for the areas of unincorporated Arapahoe County that are within the SEMSWA Service Area.
3. Agree to assume the NPDES MS4 permit liabilities associated with SEMSWA’s administration of the City of Centennial’s and Arapahoe County’s Stormwater Management Program 4 – Construction Runoff Control to the extent such activities are within the authority and police powers provided to SEMSWA by the City and County, and will agree to defend, indemnify and hold the City and County harmless for actions taken and actions not taken in SEMSWA’s administration of the GESC program in behalf of the City and County.
4. Administer the City of Centennial and Arapahoe County GESC programs consistent with the programs established within the City and County, including application of the administrative standards and technical criteria established in the City of Centennial GESC Manual and the Arapahoe County GESC Manual.
5. Require, issue and inspect GESC permits in accordance with the GESC permitting requirements established in the City of Centennial GESC Manual and the Arapahoe County GESC Manual.

6. Collect and retain GESC review fees and GESC permit fees in accordance with the GESC review and permit fees that have been adopted by the City and County. The City's and County's GESC fee schedules are provided as Attachments "A" and "B".

7. This authorization is based on, to the extent permitted by law, the City and County delegating to SEMSWA such police powers as may be necessary to enable SEMSWA to enforce any and all provisions of their GESC Manuals. In addition, if legally necessary, the City and County assisting SEMSWA in SEMSWA's enforcement actions.

8. Enforcement of penalties for GESC permit violations in accordance with the actions described in Section 5.9 of the City of Centennial GESC Manual and as defined in City of Centennial Ordinance No. 2005-O-05.

9. Enforcement of GESC permit penalties for violations in accordance with the remedies described in Section 5.9 of the Arapahoe County GESC Manual and the Arapahoe County Land Development Code.

10. This authorization is based on the Memorandums of Understanding with the City of Centennial and Arapahoe County automatically terminating when the respective NPDES MS4 permits have been transferred to SEMSWA and upon SEMSWA's development of its own Grading, Erosion and Sediment Control Regulation and program. However, those portions of the Memorandums of Understanding dealing with enforcement will continue in full force and effect, if legally necessary, for SEMSWA to take certain enforcement actions.

(SEAL)

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Date: _____

ATTEST:

Secretary

Chairperson