

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

RESOLUTION NO. 10-21

(Reauthorization to Enter Into an Agreement with Arapahoe County Water and Wastewater Authority and Approval to Accept Indemnification Provision with Government Entities)

WHEREAS, Arapahoe County (County) has prepared a design and has commenced construction on the widening of Broncos Parkway between Easter Avenue and Potomac Street (Project); and

WHEREAS, the County and Southeast Metro Stormwater Authority (SEMSWA) have agreed to design, build and maintain a water quality swale on behalf of the County in conjunction with the Project; and

WHEREAS, the location of the proposed water quality swale is on land primarily owned by the County and the outfall from the swale is on land primarily owned by the County and the Arapahoe County Water and Wastewater Authority (ACWWA); and

WHEREAS, prior to the Board of ACWWA approving the draft Permanent Storm Drainage Easement, the SEMSWA Board adopted Resolution No. 10-19, which authorized the Executive Director to accept and record in the records of the Clerk and Recorder of Arapahoe County, Colorado, the Permanent Storm Drainage Easement from ACWWA attached to Resolution 10-19.

WHEREAS, subsequent to the Board's adoption of Resolution No. 10-19, ACWWA requested and SEMSWA staff, subject to SEMSWA Board approval, negotiated the following modifications to the terms and conditions of the previously approved Permanent Storm Drainage Easement: a) deletion of the last sentence of paragraph #7; and b) addition of paragraphs #9 and #10.

WHEREAS, a revised Permanent Storm Drainage Easement (attached hereto as Exhibit A), which reflects the negotiated modifications, has been prepared jointly by SEMSWA and the ACWWA staffs and has been reviewed by SEMSWA legal counsel and approved by the ACWWA Board.

WHEREAS, SEMSWA staff and legal counsel have identified a need for staff to have the authority to enter into agreements with other governmental entities that contain indemnification provisions similar to those contained in Paragraph #10 of the Permanent Storm Drainage Easement (attached hereto as Exhibit A) on the condition that those same governmental entities have or have expressed their willingness to provide SEMSWA the same indemnification, if requested.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to accept and record in the records of the Clerk and Recorder of Arapahoe County, Colorado, the Permanent Storm Drainage Easement (attached hereto as Exhibit A).
2. The Board authorizes the Executive Director to enter into agreements with other governmental entities that contain indemnification provisions similar to those contained in Paragraph #10 of the Permanent Storm Drainage Easement (attached hereto as Exhibit A) on the condition that those same governmental entities have or have expressed their willingness to provide SEMSWA the same indemnification, if requested.

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

PERMANENT STORM DRAINAGE EASEMENT

This **PERMANENT DRAINAGE EASEMENT** is granted this \_\_\_\_ day of \_\_\_\_\_, 2010, by **Arapahoe County Water and Wastewater Authority (ACWWA)** a separate governmental entity whose legal address is 13031 East Caley Avenue, Centennial, Colorado 80111, (the “Grantor”), to the **Southeast Metro Stormwater Authority**, a separate governmental entity, whose legal address is 76 Inverness Drive East, Suite A, Centennial, Colorado 80112, (the “Grantee”), its successors and permitted assigns.

For and in consideration of the sum of One Dollar (\$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 a Permanent Drainage Easement to construct, reconstruct, install, operate, use, maintain, repair, replace, and/or remove drainage improvements, in, on, to, through, over, under, and across a certain parcel of real property located in Arapahoe County, Colorado, as more particularly described in **EXHIBIT "A"** (the “Easement Parcel”), pursuant to the following terms and conditions:

1. The 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 to it in this Permanent Drainage Easement.
2. The Grantee shall have the right to enter upon the Easement Parcel and to survey, construct, reconstruct, operate, use, maintain, repair, upgrade, replace, and remove the improvements made within the Permanent Drainage Easement, and to remove objects interfering therewith.
3. The 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. The Grantor shall not take any action which would impair the lateral or subjacent support for the drainage improvements.
4. The Grantee shall have the right and authority to assign to any appropriate local governmental entity or to any public utility provider any and all rights to use, and all obligations associated with, the Permanent Drainage Easement as are granted to and accepted by the Grantee herein.
5. The Grantee shall not assign this easement without written approval from the Grantor. Grantor will not unreasonably withhold such approval.
6. The Grantee agrees that at such time and in the event that the Permanent Drainage Easement described herein is abandoned by the Grantee and any assignee such Permanent Drainage Easement shall terminate and the real property interest represented by such Permanent Drainage Easement shall revert to the Grantor, his heirs, successors, and/or assigns.
7. The Grantor warrants, covenants, grants, bargains, and agrees to and with the Grantee that 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 restrictions of whatever kind or nature so ever, except matters of record. ~~The Grantor further promises and agrees to warrant and forever defend the Grantee in its quiet and peaceful possession of the Easement Parcel in the exercise of its rights hereunder against all and every person lawfully claiming or to claim the whole or any part thereof.~~
8. Each and every one of the benefits and burdens of this Permanent Drainage Easement shall inure to and be binding upon the respective legal representatives, heirs, administrators, successors, and permitted assigns of the Grantor and the Grantee.
9. Grantee agrees that after any construction or other operations within the Drainage Easement by the Grantee, Grantee’s agents, employees, servants, subcontractors, or business invitees

Formatted: List Paragraph, Left, No bullets or numbering, Tab stops: Not at 0.25" + 0.75"

which disturb the surface of the ground, it will restore the general surface of the ground as may reasonably be done to the grade and condition it was in immediately prior to construction.

10. Grantee hereby covenants and agrees to indemnify, defend, save, and hold the Grantor harmless from any and all liability, loss, costs, charges, penalties, obligations, expenses, attorney’s fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, or arising out of, or by any reason of any violation of the terms of this Easement or of any law, ordinance, or regulation by Grantee, Grantee’s agents, employees, servants, subcontractors, or business invitees in regard to this Easement or as a result of the construction or maintenance activities initiated by the Grantee within this Easement; or by reason of any injury or damage however occurring to any person or persons whomever as a result of such construction or maintenance activities initiated by Grantee within the Easement. Grantee’s obligation under this paragraph shall be limited to the extent that is permitted by law to do so.

Formatted: List Paragraph, Left, No bullets or numbering, Tab stops: Not at 0.25" + 0.75"

GRANTOR:

ARAPAHOE COUNTY WATER AND  
WASTEWATER AUTHORITY, a  
political subdivision of the State of Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
  )       SS.  
COUNTY OF ARAPAHOE                )

The Foregoing Permanent Drainage Easement was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, Grantor.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

GRANTEE:

SOUTHEAST METRO STORMWATER AUTHORITY,  
a political subdivision of the state of Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
  )       SS.  
COUNTY OF ARAPAHOE                )

The Foregoing Permanent Drainage Easement was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, Grantee.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public