

ORDINANCE NO. 2009-01

**AN ORDINANCE OF ALAMEDA COUNTY FLOOD CONTROL &
WATER CONSERVATION DISTRICT, ZONE 7 ESTABLISHING A
FLOOD PROTECTION AND STORM WATER DRAINAGE
DEVELOPMENT IMPACT FEE**

BE IT ORDAINED by the Board of Directors of Zone 7 of the Alameda County Flood Control & Water Conservation District, that an ordinance establishing and approving the collection of a Flood Protection and Storm Water Drainage Development Impact Fee is hereby adopted to read as follows:

GENERAL PROVISIONS

Sections:

- 1 Purpose and Authority
- 2 Legislative Findings
- 3 Adoption of Development Impact Fee
- 4 Definitions
- 5 Establishment and Applicability of Flood Protection and Storm Water Drainage Development Impact Fee
- 6 Collection of Fees
- 7 Accounting, Use and Review of Fee
- 8 Reimbursements to Developer for Construction of Facilities
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- 12 Former Development Fees
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SECTION 1: PURPOSE AND AUTHORITY.

The purpose of this Ordinance is to adopt updated development impact fees and a related development impact fee report to address new developments' proportionate share of costs to implement flood protection and storm water drainage elements of Zone 7's Stream Management Master Plan and in doing so, to provide for the means to fund and finance adequate public infrastructure, improvements and facilities made necessary by the impacts created by new development in the Zone 7 Service Area comprised of the Cities of Dublin, Pleasanton, Livermore and unincorporated Eastern Alameda County.

This Ordinance is enacted pursuant to Section 12.1 of the Alameda County Flood Control & Water Conservation District Act and other applicable law authorizing the prescription, revision and collection of fees or charges for facilities furnished or to be furnished to any area, new building, improvement or structure that will benefit from any flood protection and/or storm drainage system constructed or to be constructed in a zone of the District. Revenues derived therefrom are authorized to be used for the acquisition, construction, engineering and improvement of the flood protection and/or storm water drainage elements of the SMMP of Zone 7, or to reduce the principal or interest of any bonded indebtedness thereof.

SECTION 2: LEGISLATIVE FINDINGS.

The Board of Directors of Zone 7 finds and declares that:

- 1) Zone 7 is responsible for controlling and managing storm water that flows into the Alameda Creek watershed for flood protection, erosion control and sediment control purposes and provides flood protection and storm water drainage improvements, facilities and services for property owners, residents, businesses, visitors, and employees within the Zone 7 Service Area comprised of the Cities of Dublin, Pleasanton and Livermore as well as unincorporated areas of eastern Alameda County.
- 2) Zone 7 currently owns, manages and maintains approximately 37 miles of both improved and unimproved channels, ranging from engineered trapezoidal-shaped, natural soil and concrete-lined channels to natural creeks, and related flood protection and storm water drainage facilities.
- 3) Existing and new development in the watershed contributes substantial storm water into the downstream Zone 7 flood protection and storm water drainage system. Adequate capital flood protection improvements and storm water drainage infrastructure facilities are needed to protect and advance the health, safety, and general welfare of the citizens within Zone 7's service area.

- 4) New development will create additional impervious surfaces that will contribute increased storm water into Zone 7 existing and new flood protection and storm water drainage facilities, change discharge rates and degrade storm water quality. The increased quantity and velocity of storm water flow from the new impervious surfaces contribute to and would potentially worsen downstream flooding and erosion impacts. Moreover, as erosion occurs in various reaches, sedimentation will occur downstream as water velocity slows and previously suspended sediment settles out. Zone 7's existing and new flood protection and storm drainage facilities will manage that storm water and mitigate the flooding, erosion and sedimentation impacts caused by the increased storm water flows from new development projects.
- 5) New development and the expansion of existing development within the Zone 7 Service Area will impose a burden on the existing flood protection and storm water drainage infrastructure within the Zone 7 service area and require Zone 7 to expand its facilities to meet the needs and impacts of new development. Furthermore, the existing facilities will also serve and benefit new development. It is therefore appropriate that new development should be obligated to pay its fair and equitable share of the costs of new flood protection and storm water drainage facilities needed to serve new development.
- 6) In order to serve and mitigate the impacts caused by new and anticipated development at acceptable levels of flood protection and storm water drainage service, infrastructure projects for flood protection, mitigation and storm water drainage contemplated by and described in Zone 7's Stream Management Master Plan ("SMMP") must be constructed. The SMMP and associated Master Environmental Impact Report, Mitigation Monitoring Reporting Program and Statement of Overriding Consideration were adopted by the Zone 7 Board on August 16, 2006.
- 7) The SMMP identifies and describes certain flood protection and storm drainage facilities, improvements, infrastructure, land acquisition, equipment and other items to be funded and financed with the new Flood Protection and Storm Water Drainage Development Impact Fee. It also sets forth descriptions of each of the facilities to be funded through the Flood Protection and Storm Water Drainage Development Impact Fee, including their approximate location, size, approximate time of availability, and estimated costs.
- 8) The Zone 7 Board of Directors has determined that a Flood Protection and Storm Water Drainage Development Impact Fee is needed in order to finance these capital improvements and to pay for new development's fair share of the acquisition and improvement construction costs and other

costs necessary or convenient for implementation of the flood protection and storm drainage elements of the SMMP.

- 9) In establishing the fee described in this Ordinance, a March 2009 report entitled "Development Impact Fees for Flood Protection and Storm Water Drainage" was prepared by HDR Consultants Inc. ("Development Impact Fee Report") in compliance with the requirements of Government Code section 66001 which (1) identifies the purpose of the proposed development impact fees, (2) identifies the uses to which the proposed development impact fees are to be put, (3) identifies the facilities, improvements, infrastructure, land acquisition, and other items to be funded and financed with the new development impact fee, (4) determines, explains and substantiates how there is a reasonable relationship between the fee's use and the types of development projects on which the fee is imposed, (5) determines, explains and substantiates how there is a reasonable relationship between the need for each identified facility, improvement, infrastructure, land acquisition and other item and the type of development project on which the fee is imposed, and (6) determines, explains and substantiates how there is a reasonable relationship between the amount of the fee and the costs of the public facility or portion of the public facility attributable to the development on which the fee is imposed.
- 10) The Zone 7 Board has considered the specific facility descriptions and cost estimates identified in the Development Impact Fee Report and SMMP and approves the facility descriptions and finds that the cost estimates are fair and reasonable and provide an adequate basis for calculating and imposing the development impact fees.
- 11) The Board further finds that there is a rational relationship between the fees to be imposed upon new development and the cost to provide flood protection and storm water drainage infrastructure necessary to accommodate and provide such services to new development.
- 12) The Zone 7 Board of Directors further find that the fees charged to new development do not exceed the estimated reasonable cost of providing the flood protection and storm water drainage facilities attributable to new development.
- 13) The Flood Protection and Storm Water Drainage Development Impact Fee shall be imposed on all new development and expansion of existing development projects and will be used to fund and finance the flood protection and storm water drainage facilities as described in the Development Impact Fee Report and SMMP.
- 14) The adoption of the Development Impact Fee Report and levying of development impact fees are exempt from review under the California

Environmental Quality Act pursuant to CEQA Guidelines sections 15061(b)(3), 15273 and 15378(b)(4).

- 15) Zone 7 has (1) made available to the public, at least ten days prior to its public hearing, data indicating the estimated cost required to provide the flood protection and storm water drainage facilities and infrastructure for which these development fees are levied and the revenue sources anticipated to provide those facilities and infrastructure, (2) mailed notice at least fourteen days prior to this meeting to all interested parties who have requested notice of new or increased development fees, and (3) held a duly noticed, regularly scheduled public hearing on March 18, 2009 at which time oral and written testimony was received regarding the proposed fees.
- 16) The Zone Board has reviewed and considered the staff report, the Development Impact Fee Report and all oral and written testimony.

SECTION 3. ADOPTION OF REPORT.

The Zone 7 Board of Directors hereby adopts the development impact fee report entitled "Development Impact Fees for Flood Protection and Storm Water Drainage" prepared by HDR Consultants Inc., March, 2009.

SECTION 4: DEFINITIONS.

For the purposes of this Ordinance, the following definitions shall apply:

- 1) "Building Permit" means a building or grading permit issued or required by a city or county for construction or installation of any building or structure or grading pursuant to and as defined by the California Building Code and/or a local city or county building or grading permit ordinance.
- 2) "Developer" means a Person as defined in subsection 11 below who constructs, installs or undertakes a Development Project.
- 3) "Development Impact Fee Report" means the March, 2009 report entitled "Development Impact Fees for Flood Protection and Storm Water Drainage" prepared by HDR Consultants Inc. on file with the Zone Board Secretary, and any amendments or updates to that report as may be approved from time to time by the Zone Board.
- 4) "Development Project" means the construction, installation or undertaking of any building or structure, grading or other man-made change to improved or unimproved real property that creates Impervious Surface

area and that requires a Building Permit (or, for a project of a state or local government agency that is exempt from a Building Permit, would require a Building Permit except for the exemption), including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. "Development Project" shall also include construction, installation or alteration of public infrastructure improvements including but not limited to streets, sidewalks, curbs, gutters, driveways and parking lots.

- 5) "District" means the Alameda County Flood Control and Water Conservation District, Zone 7.
- 6) "Drainage Project" means a flood protection or storm water drainage facility or infrastructure described and included in the Development Impact Fee Report and, as also described in the Stream Management Master Plan.
- 7) "Fee" or "Development Impact Fee" or "Flood Protection and Storm Water Drainage Development Impact Fee" means the Fee established by this Ordinance.
- 8) "Flood Protection and Storm Water Drainage Development Impact Fee Fund" or "Fee Fund" means that special interest-bearing fund established pursuant to Section 7 of this Ordinance.
- 9) "General Manager" means the chief executive officer of Zone 7 of the Alameda County Flood Control and Water Conservation District or his or her designee.
- 10) "Impervious Surface" means the total area of a parcel of real property covered by an impervious surface. An "impervious surface" is any surface on or in any parcel that reduces the rate of natural infiltration of storm water into the soil, including, but not limited to, any area occupied by buildings, structures, driveways, streets, sidewalks, asphalt, concrete, compacted gravel, or other non-porous or semi-porous substance.
- 11) "Person" means any person, firm, corporation, partnership, limited liability company, city, county, special district, school district or other federal, state or local government agency.
- 12) "Stream Management Master Plan" or "SMMP" means the report and plan prepared by RMC and approved by the Zone 7 Board of Directors August 16, 2006 on file in the Offices of the Zone 7 Water Agency.

- 13) "Zone Board" means the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District.
- 14) "Zone 7" means Zone 7 of Alameda County Flood Control and Water Conservation District.
- 15) "Zone 7 Service Area" means the area comprised of the Cities of Dublin, Pleasanton, Livermore and unincorporated areas of eastern Alameda County and as described in the Development Impact Fee Report.

SECTION 5: ESTABLISHMENT AND APPLICABILITY OF FLOOD PROTECTION AND STORM WATER DRAINAGE DEVELOPMENT IMPACT FEE

- 1) A Flood Protection and Storm Water Drainage Development Impact Fee ("Fee") is hereby established to be levied upon any new Development Project located within the Zone 7 Service Area. The Fee shall be used to pay costs associated with the planning, design, lands and rights-of-way acquisition, environmental review, permitting, construction and installation costs, fees and expenses of and for Drainage Projects.
- 2) This Fee shall be paid by each Developer of a Development Project within the Zone 7 Service Area.
- 3) The amount and method of calculation of the Fee to be levied are as set forth in Appendix A of this Ordinance, "Zone 7 Flood Protection and Storm Water Drainage Development Impact Fee".
- 4) The Fee established by this Ordinance shall automatically be adjusted on January 1 of each calendar year by a percentage equal to the increase in construction costs from the prior year as determined by the General Manager on December 1 of each calendar year. The General Manager's determination shall be based on the annual increase in the Engineering News Record, Construction Cost Index for the calendar year as of December 1 from the prior year to the current year.
- 5) The Zone 7 Board may from time to time by resolution, adjust the Fee as it deems necessary and appropriate to reflect changes in the scope and/or cost of Drainage Projects.

SECTION 6: COLLECTION OF FEES.

- 1) The Fee shall be imposed any new Development Project and shall be paid at the rate in effect on the day of payment. The time for collection of Fees shall be as follows:
 - A. Unless otherwise set forth herein, the Fee for all Development Projects shall be due and payable at the time of issuance of Building Permit.
 - B. For a governmental Development Project that does not require a Building Permit, the Fee shall be due and payable within 30 (thirty) calendar days prior to commencement of construction.
 - C. Fees for Development Projects for public infrastructure improvements shall be due and payable at the time of final map approval by the city or county with jurisdiction.
 - D. If state law requires that the Fee be collected at a time other than provided by this section, then the Fee shall be collected at the time required by State law.
- 2) Fees provided for herein shall be collected by the General Manager or the city or county building department with jurisdiction.
- 3) The General Manager is authorized to coordinate and contract with cities and the County of Alameda concerning the collection of the Fee. Zone 7's determination of the amount of the Fee, however, shall be binding. If the County Building Official or a city building official collects a Fee amount that Zone 7 finds is inconsistent with the Ordinance, then the Developer shall be required to pay the Fee as calculated by Zone 7.

SECTION 7: ACCOUNTING, USE AND REVIEW OF FEE.

- 1) The fee established by this Ordinance shall be placed in a separate development impact fee fund known as "Flood Protection and Storm Water Drainage Development Impact Fee Fund".
- 2) Funds within the Flood Protection and Storm Water Drainage Development Impact Fee Fund and interest earned on the funds, shall be expended solely for (1) the uses and purposes described in this Ordinance and the Development Impact Fee Report, (2) reimbursing Developers who, pursuant to written agreement with Zone 7, have constructed or provided a Drainage Project of supplemental size, length, or capacity beyond that needed to serve or mitigate the impacts of the Developer's

Development Project, (3) payment of principal and interest incurred by Zone 7 in connection with its construction of Drainage Projects funded through bond proceeds or other debt and (4) payment of costs required for the administration of this Ordinance, including, but not limited to costs incurred in conduction hearings required by State law and in collecting the Fee.

SECTION 8: REIMBURSEMENTS TO DEVELOPER FOR CONSTRUCTION OF FACILITIES.

- 1) Whenever at the request of Zone 7, a Developer constructs a Drainage Project that has supplemental size, length, or capacity beyond that needed to serve or mitigate the impacts of the Development and when such construction is necessary to ensure efficient and timely construction of the facilities network, a written reimbursement agreement with the Developer may be offered. The reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the facility or the burdens created by the Development Project. The terms of the reimbursement shall be set forth in the reimbursement agreement. A Developer shall be entitled to reimbursement only pursuant to a written reimbursement agreement with Zone 7.
- 2) The reimbursement agreement shall provide that payments, if any, to Developer are contingent upon the collection of fees from other Developers in accordance with this Ordinance and shall also include the total estimated amount of reimbursement to be provided for the construction of the Drainage Project and the provision of rights of way therefor.
- 3) When a Developer who is required to pay the Development Impact Fee under this Ordinance constructs a Drainage Project identified in the SMMP and dedicates and conveys the completed improvement to Zone 7, a credit for the corresponding Fee may be granted by Zone 7. Zone 7 will on a case-by-case basis, negotiate a separate Credit Agreement with the Developer and any such credit shall offset, on a proportionate basis, without interest, the corresponding Fee to be paid pursuant to this Ordinance. Any fee credits granted by Zone 7 pursuant to a Credit Agreement shall be an obligation of Zone 7 that runs with the subject Development Project land and inures to the benefit of each successor in interest of the original landowner until full credit has been received. A development impact fee credit cannot be assigned or transferred by an owner or Developer.
- 4) This section alone shall not create an entitlement to reimbursement, credit or a Zone 7 liability for reimbursement or credit.

SECTION 9: EXEMPTIONS.

- 1) No Person is exempt from the payment of the Flood Protection and Storm Water Drainage Development Impact Fee except for those specific situations mentioned under this section. All Developers shall pay the required Fee when applicable.
- 2) No fee shall be collected under the following circumstances:
 - A. For any building, structure, or improvement installed or constructed in substantially the same location and surface area as a previously existing building, structure or improvement when such new building, structure, or improvement is being reconstructed, constructed or installed as replacement for the previously existing building, structure or improvement provided that the amount of Impervious Surface area in the before and after condition is the same or less.
 - B. For any building, structure, or improvement on land that is zoned "Agricultural" by the County or City having jurisdiction if such building, structure or improvement does not require a building permit or a conditional use permit and is incidental and necessary to agricultural development of such land.
 - C. For any public flood protection or stormwater drainage facilities, or channel maintenance access roads constructed or installed by Zone 7 or other federal, state or local government agency.
 - D. All fees calculated to be less than \$10.00 may be waived by the General Manager, provided, however, that this provision shall not be used to avoid payment of fees by building in stages.
 - E. Where levy and collection of the Fee are prohibited by law.
- 3) A Developer may be exempt from the Fee if it can demonstrate to the reasonable satisfaction of the General Manager that its Development Project will not contribute storm water to the existing or new Zone 7 flood protection and storm drainage facilities or will not otherwise benefit from the Drainage Projects, or if there is no nexus between the type and/or amount of Fee and the Development Project.
 - A. A Developer claiming eligibility for Fee exemption pursuant to this subsection (3) shall submit a written request to the General Manager. The application shall state in detail the factual basis or bases for the claim of exemption. The Developer shall provide at the time of its request, any supporting technical information

including but not limited to hydrologic and geotechnical studies, engineering plans and specifications, and other information deemed necessary by Zone 7 to evaluate the Developer's claim of exemption. The Developer may be required to submit a deposit of funds to pay for technical consultants retained by Zone 7 and for the actual cost of Zone 7 staff time necessary to review technical information submitted by the Developer. The General Manager is authorized to grant the Fee exemption if in his/her sole reasonable discretion, the General Manager determines that the Development Project will not contribute storm water to the existing or new Zone 7 flood protection and storm drainage facilities or will not otherwise benefit from the facilities, or if there is no nexus between the type and/or amount of Fee and the Development Project.

SECTION 10. APPEALS.

- 1) Denial of a Developer's request for exemption by the General Manager pursuant to subsection (3) of Section 9 above, may be appealed to the Zone Board within 15 business days of written notice from the General Manager of denial and upon remittance of the Fee due and payable. Appeals shall be submitted in writing to the Zone 7 Clerk of the Board and shall set forth the basis of the appeal along with all supporting factual information. The Clerk of the Zone Board shall thereafter set the matter for consideration by the Zone Board at a regularly scheduled meeting or at a separate hearing of the Zone Board as soon as practical but no later than 90 days from receipt of request for appeal and all necessary supporting information and documents.
- 2) After hearing a Developer's appeal, the Zone Board may grant a Fee exemption if the Zone Board properly makes findings supported by specific evidence, that the Development Project will not contribute storm water to the existing or new Zone 7 flood protection and storm drainage facilities or will not otherwise benefit from the facilities, or that there is no nexus between the type and/or amount of Fee and the Development Project, or that an exemption is necessary or appropriate because imposition of the Fee would be unlawful or would result in substantial inequities. Findings must be based on written and other evidence submitted by the property owner substantiating the Developer's contention that the Fee should not be applicable. The Developer shall bear the burden of proof to demonstrate that an exemption is necessary or appropriate. The Zone Board shall uphold the Fee and deny the application if it finds that there is a reasonable relationship between the impacts of the Development Project and the amount of the fee charged and the type of facilities to be financed. The Zone Board shall render and notify Developer of its

decision no later than 15 business days after completion of the hearing on Developer's appeal.

- 3) When the General Manager or Board of Directors grants a Fee exemption, and if the Developer has previously paid the Fee, then Developer shall be entitled to a refund of the Fee commensurate with the findings of the General Manager or Board of Directors less 1% paid by Zone 7 to its collecting agents. The reimbursements payable by Developer to Zone 7 pursuant to paragraph 5 below, may be deducted from the Fee refund amount otherwise due to Developer.
- 4) The decision of the Zone 7 Board of Directors shall be final. If a Fee exemption is granted, any substantial change of the Development Project relating to Impervious Surface area shall invalidate the Fee exemption and Developer shall pay all applicable Fees.
- 5) An applicant for a Fee exemption shall reimburse to Zone 7 the final actual costs of processing and deciding the application, including the processing of and decision on any appeal. Applicants shall be required to pay or reimburse such costs even if the application or appeal is withdrawn, denied, approved or approved subject to conditions or modifications. The actual costs of processing and deciding a Fee exemption application and appeal shall mean the actual labor, materials and costs for Zone 7 staff and those billed to Zone 7 by its contract staff and consultants (including, but not necessarily limited to, engineering, technical and environmental services) assigned to process, consult and/or advise Zone 7 on the application and/or appeal. The Developer shall reimburse the amount due to Zone 7 within 30 days after receipt of an invoice requesting payment of such amount.

SECTION 11. REPEAL OF SPECIAL DRAINAGE AREA 7-1 ORDINANCE.

Upon the effective date of this ordinance, it shall supersede the Special Drainage Area 7-1 development impact fee adopted by Zone 7 by Zone 7 Ordinance No. 00-2004-42 which will thereby be repealed.

SECTION 12. FORMER DEVELOPMENT FEES, CREDITS AND REIMBURSEMENTS.

Upon the effective date of this ordinance, all funds currently in the SDA Operations (Fund 71) and SDA 7-1 Trust Fund (Fund 90) shall be transferred to the Flood Protection and Storm Water Drainage Development Impact Fee Fund established pursuant to Section 7 herein. All outstanding SDA 7-1 Reimbursement Agreements are hereby assigned to and assumed as obligations payable or otherwise satisfied, from the Flood Protection and Storm Water

Drainage Development Impact Fee Fund. All outstanding SDA 7-1 Exemption Credits shall be liquidated at the SDA 7-1 Fee in effect as of March 18, 2009 and payment made to the current holder of said Exemption Credits.

SECTION 13: SEVERABILITY.

The provisions of this Ordinance shall not apply to any person, association, corporation or to any property as to whom or which it is beyond the power of Zone 7 to impose the fee herein provided. If any sentence, clause, section or part of this Ordinance, or any fee imposed upon any person or entity is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this Ordinance, or person or entity; and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Ordinance, or its effect on other persons or entities. It is hereby declared to be the intention of The Zone 7 Board of Directors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part of this Ordinance not been included herein; or had such person or entity been expressly exempted from the application of this Ordinance. To this end the provisions of this Ordinance are severable.”

SECTION 14. EFFECTIVE DATE:

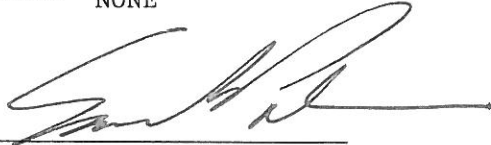
This ordinance shall take effect 60 days following the date of adoption by the Zone 7 Board of Directors.

SECTION 15. POSTING.

Within 15 days from the date of passage of this ordinance, the Clerk of the Zone Board shall post a copy of it in at least three public places within the Zone 7 Service Area.

Adopted by the Board of Directors of the Alameda County Flood Control & Water Conservation District, Zone 7 on the 18 Day of March, 2009 by the following called vote:

AYES: DIRECTORS FIGUERS, GRECI, KALTHOFF, PALMER, QUIGLEY, STEVENS
NOES: NONE
ABSENT: DIRECTOR MYERS
EXCUSED: NONE



Sarah Palmer, President of the Board of Directors of Zone 7 of the Alameda County Flood Control & Water Conservation District



Barbara K. Morse, Clerk of the Board of Directors

APPENDIX A OF ORDINANCE NO. 2009-01

**ZONE 7 DRAINAGE FEE AND REIMBURESMENT SCHEDULE FOR
MARCH 2009 –DECEMBER 31, 2014**

1. The Fee payable by each Developer of a Development Project within the Zone 7 Service Area shall be equal to the product of the number of square feet of impervious surface created and

• Before January 1, 2010	\$0.783 per square foot
• January 1, 2010	\$0.87 per square foot
• January 1, 2011	\$0.96 per square foot
• January 1, 2012	\$1.10 per square foot
• January 1, 2013	\$1.30 per square foot
• January 1, 2014	\$1.42 per square foot

2. In addition to the Fees set forth above, on January 1 of each calendar year, the Fees shall also be adjusted by the annual increase in the Engineering News Record, Construction Cost Index for the calendar year as of December 1 from the prior year to the current year.