

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

RESOLUTION NO. 10-19

(Authorization to Enter Into Agreements with Arapahoe County and the Arapahoe County Water and Wastewater Authority for the Broncos Parkway Water Quality Swale)

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 approved Phase III Drainage Study dated April 14, 2009 prepared to address the stormwater issues for the Project identifies that water quality enhancements are required for the widening of Broncos Parkway to meet County stormwater criteria; and

WHEREAS, water quality enhancements are an important component of the regional detention and water quality system for the Lone Tree Creek basin; and

WHEREAS, SEMSWA and the County have agreed that the most effective means of providing the necessary water quality enhancements is to construct a water quality swale which will receive stormwater runoff from the Project; and

WHEREAS, Southeast Metro Stormwater Authority (SEMSWA) has agreed to design, build and maintain the water quality swale on behalf of the County; and

WHEREAS, SEMSWA has budgeted funds necessary to complete the design and construction of the water quality swale in 2010; 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, a Memorandum of Understanding (attached hereto as Exhibit A), which allows SEMSWA to access certain County property as necessary to construct and maintain the proposed water quality swale, has been prepared jointly by SEMSWA and County staffs and has been approved by the legal counsel for both SEMSWA and the County; and

WHEREAS, a Permanent Storm Drainage Easement (attached hereto as Exhibit B), which allows SEMSWA to access certain ACWWA property as necessary to construct and maintain the proposed water quality swale and its outfall into Lone Tree Creek, has been prepared jointly by SEMSWA and the ACWWA staffs and has been reviewed by SEMSWA legal counsel.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director to execute the Memorandum of Understanding attached hereto as Exhibit A.
2. 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 B.

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

MEMORANDUM OF UNDERSTANDING

Between Arapahoe County and Southeast Metro Stormwater Authority
acting by and through SEMSWA Water Activity Enterprise
Regarding Construction and Maintenance of
the Broncos Parkway Water Quality Swale

This Memorandum of Understanding ("MOU") is entered into by and between Southeast Metro Stormwater Authority acting by and through SEMSWA Water Activity Enterprise ("SEMSWA") and Arapahoe County ("County") regarding the construction and maintenance of the Broncos Parkway Water Quality Swale. SEMSWA and County being collectively referred to as "Parties".

WHEREAS, the County is the owner of a certain parcel of land known as Lot 1 of the Dove Valley Business Park Subdivision Filing No. 18, County of Arapahoe, State of Colorado, a/k/a (12829 E. Broncos Parkway), (hereinafter referred to as the "Property"); and

WHEREAS, the approved Phase III Drainage Study dated April 14, 2009 prepared to address the stormwater issues for the expansion of Broncos Parkway between Peoria Street and Potomac Street identifies that water quality enhancements are required for the expansion of Broncos Parkway to meet County stormwater criteria; and

WHEREAS, Water Quality enhancements are an important component of the regional detention and water quality system for the Lone Tree Creek basin; and

WHEREAS, SEMSWA and the County desire to ensure the expansion of Broncos Parkway to meet current standards; and

WHEREAS, SEMSWA has agreed to design, build and maintain the water quality swale on behalf of the County; and

WHEREAS, SEMSWA has budgeted funds necessary to complete the design and construction of the water quality swale in 2010; and

WHEREAS, the location of Water Quality Swale is on land primarily owned by the County; and

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

1. SEMSWA, subject to its annual budget, appropriation of necessary funds and resolution of its Board of Directors, agrees to:
 - a. complete the design of the Water Quality Swale in 2010,
 - b. complete the construction of the Water Quality Swale following the acquisition of necessary approvals and permits,
 - c. maintain the Water Quality Swale and

- d. involve the County in the process of design, construction and maintenance of the Water Quality Swale.
2. The County agrees to allow access to and the construction of the Water Quality Swale, as shown and detailed in the design documents for the Property, within the area shown in the attached Exhibit A.
3. The County agrees to allow access to and the maintenance of the Water Quality Swale by SEMSWA as necessary to assure the swale continues to function as intended per the design.
4. SEMSWA agrees that after any construction or other operations associated with the Water Quality Swale, 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.
5. The County agrees that no building, structure, fill of soils or other materials, or other above or below ground obstruction that will interfere with the established drainage or the purposes of the Water Quality Swale, will be placed, erected, or installed without SEMSWA's written authorization, which SEMSWA will not unreasonably withhold.
6. SEMSWA hereby covenants and agrees to indemnify, defend, save, and hold the County 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 MOU or of any law, ordinance, or regulation by SEMSWA, SEMSWA's agents, employees, servants, subcontractors, business invitees in regard to this MOU or as a result of the construction of the Water Quality Swale; or by reason of any injury or damage however occurring to any person or persons whomever as a result of the construction of Water Quality Swale. SEMSWA's obligation under this paragraph shall be limited to the extent that is permitted by law to do so.
7. 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 South Prince Street
Littleton, CO 80166

Southeast Metro Stormwater Authority
Executive Director
76 Inverness Drive East, Suite A
Centennial, CO 80112

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

8. This MOU, and any exhibits attached hereto, contain the entire agreement between the Parties and shall supersede all prior offers, negotiations and agreements.
9. No revision of this MOU shall be valid unless made in writing and signed by SEMSWA and the County or their authorized agent(s).
10. 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.
11. 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.
12. 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.
13. 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.
14. A copy of this MOU will be recorded in the records of the Clerk and Recorder of Arapahoe County, Colorado, and the obligations described herein shall run with the property upon which the Water Quality Swale is constructed, as shown in Exhibit A.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives on the date indicated below their respective signatures.

For the Board of County Commissioners, Arapahoe County, Colorado

David M. Schmit, P.E., Director, Public Works and Development
Authorization pursuant to Resolution No. 100140

Date: _____

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

By: _____

Name: _____

Title: _____ Executive Director, SEMSWA

Date: _____

Approved as to Form:

By: _____
SEMSWA Attorney

PERMANENT STORM DRAINAGE EASEMENT

This **PERMANENT DRAINAGE EASEMENT** is granted this_____ day of_____, 2009, 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 agrees that at such time and in the event that the Permanent Drainage Easement described herein be 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.
- 6. 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.
- 7. 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.

GRANTOR:

STATE OF COLORADO)
COUNTY OF ARAPAHOE) SS.

The Foregoing Permanent Drainage Easement was acknowledged before me this _____ day of_____, 2009, by _____, Owner

Witness my hand and official seal.
My commission expires: _____

Notary Public