

MEMORANDUM OF UNDERSTANDING

Between Arapahoe County and Southeast Metro Stormwater Authority
acting by and through SEMSWA Water Activity Enterprise
Regarding Construction and Maintenance of Windmill Creek Pond W – 5

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 Windmill Creek Pond W – 5. SEMSWA and County being collectively referred to as “Parties”.

WHEREAS, the regional detention Pond W – 5 is identified in the 1987 “Outfall Systems Planning Lonetree, Windmill and Dove Creeks Area” report (OSP), and subsequent report updates: and

WHEREAS, Pond W – 5 is an important component of the regional detention and water quality system for the Windmill Creek basin; and

WHEREAS, SEMSWA and the County desire to upgrade the existing pond to meet current standards for a regional facility; and

WHEREAS, the existing culvert at the outlet of the pond does not provide the full conveyance capacity as identified in the Outfall System Plan; and

WHEREAS, SEMSWA has budgeted funds necessary to complete the design and construction of Pond W – 5 in 2009; and

WHEREAS, the location of Pond W – 5 is on land 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 Pond W - 5 in 2009,
- b. complete the construction of Pond W – 5 following the acquisition of necessary approvals and permits,
- c. maintain the stormwater components of Pond W – 5 and
- d. involve the County in the process of design, construction and maintenance of Pond W - 5.

2. The County agrees to allow access to and the construction of Pond W – 5 as shown in the OSP and detailed in the design documents, on the County land within the area shown in the attached Exhibit A.
3. The County agrees to allow access to and the maintenance of Pond W – 5 as necessary to assure the pond continues to function as intended per the design, including; survey, construction, reconstruction, operation, use, maintenance, repair, upgrade, replace, and removal of the improvements, and to remove objects interfering therewith. SEMSWA agrees to, as promptly as reasonable under the circumstances, after any construction or other operations associated with Pond W - 5 which disturb the surface of the ground, restore the general surface of the ground as may reasonably be done to the grade and condition it was in immediately prior to construction.
4. 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 Pond W – 5, will be placed, erected, or installed without written authorization of SEMSWA, which will not be unreasonably withheld.
5. Parties agree that in the event of a catastrophic flooding event in which damage is caused to the roadway surface and embankment of Broncos Parkway; that the Parties will share in the cost (50% each) to make the necessary repairs.
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 Pond W – 5; or by reason of any injury or damage however occurring to any person or persons whomever as a result of the construction of Pond W – 5. 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 Memorandum Of Understanding will be recorded in the records of the Clerk and Recorder of Arapahoe County, Colorado.

ARAPAHOE COUNTY

By:_____

Chair, Board of County Commissioners

Date:_____

SOUTHEAST METRO STORMWATER AUTHORITY

Acting by and through SEMSWA Water Activity Enterprise

By:_____

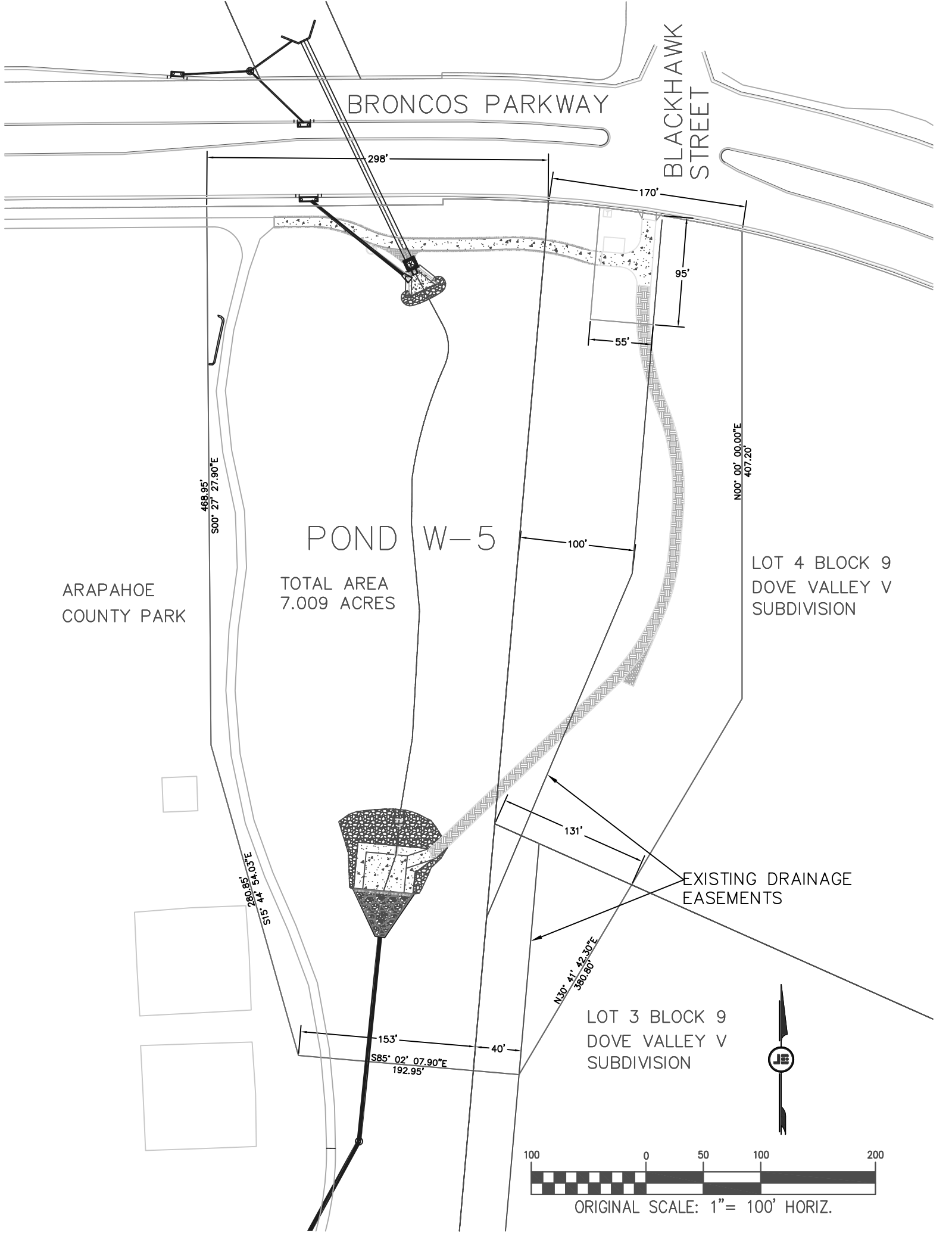
Executive Director

Date:_____

Approved as to Form:

By:_____

SEMSWA Attorney



POND W-5

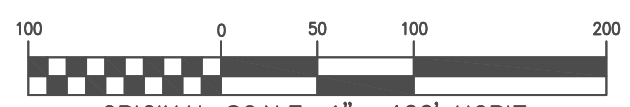
TOTAL AREA
7.009 ACRES

ARAPAHOE
COUNTY PARK

LOT 4 BLOCK 9
DOVE VALLEY V
SUBDIVISION

LOT 3 BLOCK 9
DOVE VALLEY V
SUBDIVISION

EXISTING DRAINAGE
EASEMENTS



ORIGINAL SCALE: 1"= 100' HORIZ.