

INTERGOVERNMENTAL AGREEMENT  
FOR THE CONSTRUCTION AND MAINTANCE OF  
ARAPAHOE COUNTY FAIRGROUNDS IMPROVEMENTS  
GRADING, EROSION AND SEDIMENT CONTROL MEASURES

THIS AGREEMENT, dated as of this \_\_\_\_\_ day of, \_\_\_\_\_, 2007, is by and between the Southeast Metropolitan Stormwater Authority, a political subdivision of the State of Colorado, whose address is 10730 E. Briarwood Ave, Suite 100, Centennial, Colorado 80112, hereinafter called the “Authority” and The Board of County Commissioners of the County of Arapahoe, a political subdivision of the State of Colorado, whose address is 5334 South Prince Street, Littleton, Colorado, 80166, hereinafter called the “County”.

**WITNESSETH:**

WHEREAS, County owns the following property in fee simple:

Unplatted parcel of land Parcel Number 2071-08-2-00-200

Arapahoe County, State of Colorado (hereinafter the “Property”

WHEREAS, County has this date submitted to Authority for approval, a Grading, Erosion and Sediment Control Plan Report and cost estimate designated as the Arapahoe County Fairgrounds Improvements (hereinafter sometimes referred to as the “Plan”); and

WHEREAS, County has appropriated and reserved funds in the amount of \$74,979.00, which is necessary to construct the improvements described on Exhibit A attached hereto and made part hereof by this reference, and has authorized the construction of the Exhibit A improvements in accordance with the terms of this Agreement; and

WHEREAS, Authority has agreed that the restrictions on conveyance and permits contained in the Grading, Erosion and Sediment Control Manual may be waived for so long as County continues to make such funds available; and

WHEREAS, pursuant to Part 2 of Article 1 of Title 29, C.R.S., as amended, the Authority and the County have the authority to enter into intergovernmental agreements; and

WHEREAS, the County Commissioners, by resolution, has determined that the County shall cause the construction and completion of the public improvements as set forth in Exhibit A.

NOW, THEREFORE, in consideration of the following mutual covenants and agreements, the Authority, and the County agree as follows:

#### **IMPROVEMENTS TO BE COMPLETED**

1. The County shall construct or cause to be constructed and maintain or cause to be maintained all Grading, Erosion and Sediment Control improvements within the Plan as itemized on documents dated May 24, 2007, a copy of which is attached hereto as Exhibit "A" and made a part hereof, according to the applicable standards, rules, and regulations of Authority, and according to the approved plans submitted by the County for the Arapahoe County Fairgrounds Improvements. Once begun, the Exhibit "A" improvements shall be completed in sixty (60\_ days.

#### **LEGAL ENCUMBRANCE**

2. The restriction, covenants and conditions as set forth above constitute both a formal restriction and a legal encumbrance on the Property and the same shall run with such land and shall extend to and be binding upon the successors, and assigns of the County. The Parties, in order to

assure that these restrictions, covenants and conditions run with the land, intend to record a copy of this IGA in the records of the Clerk and Recorder of Arapahoe County, Colorado.

### **CERTIFICATION OF FUNDING**

3. The County shall make available all aforementioned County funds for the purpose of completing the above-referenced Grading, Erosion and Sediment Control improvements and shall certify to the Authority the amount of County funds available for the Grading, Erosion and Sediment Control improvements and that such proceeds will be used for those improvements contained on Exhibit "A" and no other.

### **ENFORCEMENT**

4. It is mutually agreed that Authority shall have the authority to bring an action in Arapahoe County District Court to compel enforcement of this Intergovernmental Agreement by way of specific performance and damages, if incurred by the Authority including reasonable attorney fees.

### **FILING**

5. The County and the Authority agree to meet their obligation set forth in Section 29-1-205, C.R.S., as amended to include information about this Agreement in a filing with the Division of Local Government; however, failure to do so shall in no way affect the validity of this Agreement nor the remedies available to the parties hereunder.

### **INDEMNIFICATION - BREACH – COUNTY RESPONSIBILITY**

6. In the event the County fails to perform under the terms of this Agreement, that the Authority will be held harmless for any damages suffered by the Authority as a result thereof; that the Authority shall have no obligation to undertake the completion of any Grading, Erosion and Sediment Control improvements which are the subject of this Agreement; that the Authority may undertake the responsibility for completion of the Grading, Erosion and Sediment Control improvements set forth in Exhibit "A" hereto remaining as a result of any failure to perform on the part of the County and seek the reasonable cost thereof from the County.

### STIPULATIONS

13. This Agreement, in addition to the consideration of the premises, the mutual covenants herein contained, and the approval of the Plan by Authority, shall be and is subject to the following stipulation(s) and County agrees to the following:

A. The attached cost estimate (Exhibit "A") has been prepared using the best available data known at this time. It is provided for the purpose of establishing a collateral amount only. It is not a guarantee of project quantities or costs and should not be construed as such. However, the County will expend whatever funds are necessary in order to complete the Exhibit "A" improvements even if those costs exceed the attached cost estimate.

B. For so long as no default exists under this Agreement, Authority agrees to accept the County resolution appropriating **Seventy Four Thousand Nine Hundred and Forty Nine and 00/100 Dollars (\$74,949.00)** as collateral for payment of the construction cost of the grading, erosion and sediment control improvements.

C. County acknowledges that County is ultimately burdened by this Agreement, and that the County's failure to construct or cause to be constructed the improvements as

required by this Agreement shall not relieve County of the burdens and restrictions of this Agreement.

## **SECTION HEADINGS**

14. The section heading are inserted herein only for convenience of reference and in no way shall they define, limit or describe the scope or intent of any provisions of this Agreement.

## **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE**

15. Notwithstanding any other term or provision hereof, Authority shall not declare County to be in default hereunder unless Authority has first given the County notice of the alleged default or failure of performance and a reasonable period of time in which to cure such default or failure of performance.

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IN WITNESS WHEREOF the parties have hereunto set their hands and seals effective the day and year first written above.

For the Board of County Commissioners

\_\_\_\_\_  
David M. Schmit, P.E., Director, PWD  
Authorization pursuant to Resolution No. 070118

ATTEST:

Authority: Southeast Metropolitan Stormwater  
Authority, a Political Subdivision of the State  
of Colorado

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO                    }  
  }ss  
COUNTY OF                                }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, as \_\_\_\_\_ of .  
Southeast Metro Stormwater Authority, a Political Subdivision of the State of Colorado.

My commission expires, \_\_\_\_\_. Witness my hand and official seal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Notary

\_\_\_\_\_  
Address of Notary