

## INTERGOVERNMENTAL AGREEMENT REGARDING DISTRIBUTION OF STORMWATER DEVELOPMENT FEES COLLECTED BY ARAPAHOE COUNTY

This INTERGOVERNMENTAL AGREEMENT REGARDING DISTRIBUTION OF DEVELOPMENT FEES COLLECTED BY ARAPAHOE COUNTY (the "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by and between the COUNTY OF ARAPAHOE, COLORADO, a body corporate and politic of the State of Colorado (the "County"), and SOUTHEAST METRO STORMWATER AUTHORITY, a quasi-municipal corporation and political subdivision of the State of Colorado ("SEMSWA"), collectively (the "Parties").

### RECITALS

WHEREAS, the County is authorized, has in the past, and will continue to collect fees from property developers for stormwater public infrastructure improvements and studies within its boundaries in the State of Colorado; and

WHEREAS, SEMSWA was formed to plan, fund, construct, acquire, operate and maintain various drainage and flood control facilities and to manage stormwater quality within its boundaries in the unincorporated County; and

WHEREAS, the County wishes to provide to SEMSWA collected fees for the design and construction of stormwater infrastructure improvements and planning studies; and

WHEREAS, the Parties desire to cooperate in the funding of master planning and design and construction of stormwater and water quality infrastructure improvements as set forth herein.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, the Parties hereto agree as follows:

### COVENANTS AND AGREEMENTS

1. Purpose. The purpose of this Agreement is to allow for and define an administrative process by which SEMSWA can apply to the County for the fees collected by the County from property developers for specific projects that are scheduled for study, design and/or construction by SEMSWA, and the County can release the funds to SEMSWA for those specific projects. Once this Agreement is approved by the parties, individual project funding requests can be processed administratively without any formal approval by the County.

2. General Description of the Project funding. The fees collected by the County are from specific property development projects, located in specific drainage basins. The intent of collecting the fees is to recover the costs for existing or future improvements to the major drainageway system that serves all development in the drainage basin. The use of the fees for the funding of design and construction of stormwater infrastructure improvements and planning studies is consistent with the intent of collecting the fees. The fees may be used to fund major drainageway

master planning, the design of stormwater and water quality infrastructure improvements or the construction of stormwater infrastructure improvements. The fees are required to be spent in support of projects, including master planning, the design of stormwater infrastructure improvements or the construction of stormwater infrastructure improvements, within the specific drainage basin of the specific property development project from which the fees were collected.

The fees that are the subject of this Agreement are separate and in addition to the SEMSWA Capital Improvement Program (CIP) funding. The fees that are the subject of this Agreement are not to be included in the CIP funding allocation for the unincorporated portion of the County.

3. Funding Process.

a) Identification of Available Funds. The County shall quarterly identify the funding amounts collected and available for SEMSWA projects within specific drainage basins and provide this information to SEMSWA. This information shall include cost centers for identification.

b) Identification of Projects and Request for Funding. SEMSWA shall, when it has determined it wishes to proceed with a project for which the County has collected fees, that meets the project funding criteria set forth in Paragraph 2 above and that is ready for study, design, or construction; identify the project within the major drainageway system within a specific drainage basin. The identification shall consist of:

- 1) A general map showing the location of the project, including the specific drainage basin boundary and the name of the drainage basin the project is within,
- 2) A brief description of the project,
- 3) Estimated projects costs,
- 4) Estimated project schedule,
- 5) Funding cost center from the quarterly report identified in 3.a. above, and
- 6) Invoice for funding amount requested.

c) Funding Request Review and Response. All funding requests by SEMSWA shall be submitted to the County's Public Works and Development Department. The County Public Works and Development Department shall acknowledge in writing the request from SEMSWA for funding of projects within two (2) weeks of receiving the request. The County Public Works and Development Department shall respond in writing to the request from SEMSWA within thirty (30) days of the request acknowledgement. The response from the County Public Works and Development Department to SEMSWA shall consist of either a transmittal of the requested funds or the reasons for denial of the requested funds or the transmittal of a portion of the funds requested. If the County Public Works and Development Department denies all or any part of the requested funds, it shall provide a detailed explanation for such denial.

d) Funding Dispute Resolution. In the event the County denies the funding

request from SEMSWA, SEMSWA may:

- 1) Provide additional information to the County justifying the use of the requested funds for the project and County shall again respond in writing within two (2) weeks of receiving the additional information,
- 2) Determine not to proceed with the project, or
- 3) Request that the County enter into mediation with SEMSWA in an attempt to reach an agreement with the County on the County's funding of the project. The County agrees that, if such a request is made by SEMSWA, it will promptly cooperate with SEMSWA in selecting an impartial mediator and participating in mediation in regard to the funding by the County of the project.

4. Accounting. Following the transmittal of the requested funds from the County to SEMSWA, SEMSWA shall provide project documentation, including:

a) A quarterly report detailing projects, County funding from developer fees applied to the project, funding cost center, and status of the project including total budget, budget expended, and schedule. Projects shall be reported in the quarterly reports until the one (1) year project warranty expires.

b) An annual report detailing projects, County funding from developer fees applied to the project, funding cost center, and status of the project including total budget, budget expended, and schedule. All projects funded by developer fees provided by the County shall remain on the annual report. SEMSWA shall prepare annual reports until such time as the County no longer collects fees from property developers for stormwater public infrastructure improvements and studies, and all previously collects fees have been transmitted to SEMSWA.

c) In the event the estimated cost of design and construction of a project exceeds the actual cost of the design and construction of a project, SEMSWA shall retain such funds from the County and use those retained funds in the future for other capital projects within the basin which was the source of those funds and within the unincorporated portion of the County within that same basin.

5. Miscellaneous.

a) Responsibility for use of Transferred Fees. Once fees have been transferred to SEMSWA, SEMSWA shall be solely responsible for their proper use.

b) Annexation. If at any time the County holds fees from a drainage basin which, as a result of annexation, is entirely with the City of Centennial, the County shall promptly transfer those fees as directed by the City of Centennial.

c) Signatory Authorization. The Board of County Commissioners authorizes the Director of Public Works and Development to administer this Agreement pursuant to its

terms without further authorization of The Board.

d) Governing Law. The Parties agree this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, assigns, and legal representatives.

f) Third Party Beneficiary. It is specifically agreed among the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

g) Entire Agreement; Amendments. This Agreement, including its exhibits, contains the entire understanding of the Parties with respect to this subject matter. This Agreement supersedes all prior agreements and understandings between the Parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

h) Notice and Communications. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and delivered personally, or sent by certified mail, return receipt requested, or sent by a recognized overnight mail or courier services, with delivery receipt requested, to the following addresses (or to such other address as may from time to time be specified in writing by the Parties):

If to the County:

Chairman  
Board of County Commissioners  
County of Arapahoe  
5334 South Prince Street  
Littleton, Colorado 80126-0001

With a copy to:

Arapahoe County Attorney  
Arapahoe County  
5334 South Prince Street  
Littleton, Colorado 80126-0001

David Schmit, Director  
Public Works and Development Department  
Arapahoe County  
5334 South Prince Street  
Littleton, Colorado 80126-0001

If to SEMSWA:

John A. McCarty, Executive Director  
Southeast Metro Stormwater Authority  
76 Inverness Drive East, Suite A  
Centennial, Co 80112-5106

With a copy to:

Ed Krisor, Esq.  
3900 South Wadsworth Blvd, Suite 320  
Lakewood, Co 80235

Notices shall be effective when received by the party to whom addressed.

i) Default/Remedies. In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

j) Force Majeure. Wherever there is provided in this Agreement a time limitation for performance by the Parties for any obligations related to construction, the time provided for shall be extended for as long as and to the extent that the delay in compliance with such limitation is due to an act of God, strikes, labor disputes, inability to obtain labor or materials or reasonable substitutes therefor, fire or other casualty and other causes beyond the control of the Parties.

k) Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

l) Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the County or SEMSWA pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

Made and entered into as of the date and year first above written.

SEMSWA

By: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
Secretary

COUNTY OF ARAPAHOE, COLORADO

By: \_\_\_\_\_  
Susan Beckman, Chair

ATTEST

By: \_\_\_\_\_  
County Clerk