

IMPLEMENTING INTERGOVERNMENTAL AGREEMENT
FOR
TRANSITION OF STORMWATER MANAGEMENT RESPONSIBILITIES
FROM ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY (ACWWA)
TO THE SOUTHEAST METRO STORMWATER AUTHORITY (SEMSWA) WATER
ACTIVITY ENTERPRISE

This Implementing Intergovernmental Agreement ("Agreement") is entered into by and between ACWWA and SEMSWA acting by and through SEMSWA Water Activity Enterprise, hereinafter collectively referred to as the "Parties".

WHEREAS, pursuant to Section 29-1-204.2, C.R.S., SEMSWA was established on September 19, 2006, by the Original Intergovernmental Agreement (IGA) ("Original IGA") *Concerning the Formation of a Drainage Authority Amongst County of Arapahoe, City of Centennial, ACWWA,, East Cherry Creek Valley Water and Sanitation District, and Inverness Water and Sanitation District Pursuant to Section 29-1-204.2, C.R.S.*; and,

WHEREAS, SEMSWA Water Activity Enterprise was established by SEMSWA on September 28, 2006, pursuant to 37-45.1-101, C.R.S., *et.seq.*; and,

WHEREAS, this Agreement is intended to further define roles and responsibilities between SEMSWA and ACWWA with regard to both the transition of the administration and implementation of stormwater programs from ACWWA to SEMSWA and SEMSWA's ongoing operation of those programs, but is not intended to replace, revise or otherwise change the intent of the Original IGA. Where there is a discrepancy between this Agreement and the Original IGA, the original IGA shall have precedence; and,

WHEREAS, Section 1.5(a) of the Original IGA requires SEMSWA to manage stormwater quality and to comply, to the degree legally required, with provisions and permit requirements of National Pollutant Discharge Elimination System (NPDES) MS4 stormwater permits ("MS4 Permit") transferred to SEMSWA by the parties to the Original IGA as well as those obtained in the name of SEMSWA; and,

WHEREAS, ACWWA currently holds a non-standard MS4 SPermit issued by the State of Colorado ("State") and intends to transfer that non-standard permit to SEMSWA and SEMSWA intends to apply for its own MS4 Permit within the service areas of ACWWA for the permit period beginning on or about March 9, 2008; and,

WHEREAS, the State, in order for it to issue a MS4 Permit to SEMSWA within the service areas of ACWWA, is requiring that SEMSWA and ACWWA have in place an

Implementing IGA (IIGA) setting forth the respective rights and responsibilities of each entity in regard to the MS4 Permit to be held by SEMSWA; and

WHEREAS, ACWWA holds interests in land and drainage improvements necessary for the accomplishment of SEMSWA's purposes and intends to promptly transfer such interests to SEMSWA; and

WHEREAS, SEMSWA commits to accept such transfers pursuant to the terms of the IIGA; and

WHEREAS, ACWWA is willing to provide interim assistance during the initial start-up period of SEMSWA until SEMSWA is able to assume the full responsibility for stormwater management activities within the ACWWA service area; and

WHEREAS, ACWWA is willing to provide such assistance pursuant to certain terms and conditions.

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

ARTICLE I MS4 Permit Transfer

1. Pursuant to and consistent with the terms of the Original IGA, ACWWA hereby requests SEMSWA take the steps necessary to have the existing non-standard MS4 Permit issued to ACWWA by the State transferred to SEMSWA and thereby SEMSWA shall assume responsibility for compliance with its terms and conditions. Once SEMSWA is issued an MS4 Permit, which includes ACWWA's MS4 non-standard Sstormwater responsibilities, ACWWA may request the State to terminate ACWWA's MS4 Permit.
2. SEMSWA agrees to submit an application to the State for an MS4 Permit by March 31, 2008 wherein SEMSWA would assume responsibility for ACWWA's non-standard MS4 Permit responsibilities by May 10, 2008.
3. Pursuant to the Original IGA, the parties agree that ACWWA is responsible to fully comply with its MS4 Permit, until the MS4 Permit is transferred to SEMSWA. However, SEMSWA agrees to operate and maintain ACWWA's regional stormwater conveyances and facilities necessary for carrying out the ACWWA's MS4 Permit activities pursuant to the terms of this Agreement including, but not limited to, those contained in Article II, Paragraphs 4 and 5 hereof. To the extent allowed by law, SEMSWA shall defend, indemnify, and hold ACWWA harmless in regard to violations of the ACWWA MS4 Permit arising from SEMSWA's failure to perform hereunder.

ARTICLE II
ACWWA Interim Assistance to SEMSWA

1. To the reasonable extent that SEMSWA will need assistance from ACWWA to transition stormwater management responsibilities within the Lonetree, Windmill, and Dove Creek drainage basin, and if ACWWA determines that it has the resources to provide the assistance without burdening ACWWA's own operations, ACWWA agrees to provide such assistance on an as-needed basis until no longer needed by SEMSWA. Prior to providing its assistance, SEMSWA will request that ACWWA, at SEMSWA's expense, provide a scope of work and estimated costs for direct and indirect costs that ACWWA will incur for providing such assistance. Upon SEMSWA's written authorization, ACWWA will provide such assistance and invoice SEMSWA for the related costs. SEMSWA will reimburse ACWWA for staff costs plus other direct costs such as legal and engineering consulting. Billing for staff costs will be based on the Schedule of Hourly Rates, Exhibit A. SEMSWA will require that ACWWA provide an accounting of the costs, including all copies of invoices from outside consultants and a time/expense report for ACWWA staff time. ACWWA may provide support in the areas of: 1) new development review; 2) maintenance and operations; and 3) interim project management. The services to be provided are further defined below.
2. Development Review
 - a. ACWWA agrees to assist SEMSWA in facilitating the stormwater related engineering review of new land development submittals within the ACWWA service area through March 31, 2008. SEMSWA will refer land development submittals directly to Wright Water Engineering (WWE) and copy ACWWA on the referral. WWE shall review the submittals for conformance to the regional stormwater system requirements and existing infrastructure within the regional stormwater area that ACWWA managed prior to the formation of SEMSWA. ACWWA will pay WWE for its direct review costs out of the imprest account, as further defined below. SEMSWA will endeavor to contract directly with WWE for these development review services no later than April 1, 2008.
 - b. ACWWA requires developers to open an imprest account held by ACWWA prior to staff review of development applications for integration with the water, wastewater, and regional stormwater systems (Stormwater Development Fees, SDFs). ACWWA will continue its practice of drawing from developer imprest accounts for review of stormwater impacts on behalf of SEMSWA through March 31, 2008. Monies remaining in the imprest accounts after ACWWA's assistance is no longer needed shall be retained by ACWWA for its use toward completing water and wastewater improvements, after which such funds remaining shall be returned to respective developers. SEMSWA

shall establish its own system for recovering the costs associated with the regional system stormwater reviews no later than April 1, 2008.

3. Maintenance and Operations

- a. ACWWA will continue to provide the routine maintenance and operation services for the regional stormwater facilities and conveyances through March 31, 2008. Beginning April 1, 2008, SEMSWA shall take over the maintenance and operation activities for the regional stormwater facilities and conveyances subject to and in accordance with the provisions contained in this Agreement. The stormwater facilities and conveyances to be transferred to SEMSWA, and for which SEMSWA will take over maintenance and operation services, generally described as the regional stormwater detention and water quality ponds, and major drainageway conveyances within the Lonetree, Windmill, and Dove drainage basins shown on Exhibit B, ACWWA Regional Stormwater Management Facilities and Conveyances.
- b. ACWWA agrees to allow SEMSWA to utilize its property and easements for the purposes of operating and maintaining the regional stormwater conveyances and facilities, and carrying out the MS4 Permit activities until such time that all of the properties and/or easements which are necessary for SEMSWA to perform said activities are conveyed to SEMSWA.

4. Interim Project Management

ACWWA has initiated the Windmill Creek Channel Improvement Project, that adds to and improves the regional stormwater system that it managed prior to the formation of SEMSWA, and which will eventually be transferred to SEMSWA. ACWWA will finalize this project and turn it over to SEMSWA for project management. For this project that ACWWA continues to manage, it will keep SEMSWA informed and involved with project status and activities to enable SEMSWA to exercise its role. ACWWA shall track its costs, including project management, administration, and inspection services plus other direct costs such as legal and engineering consulting. Billing for staff costs will be based on the ACWWA's Schedule of Hourly Rates, Exhibit A. ACWWA shall document its expenses, including all copies of invoices from outside consultants and a Time/Expense report for ACWWA staff time. Costs for these services shall be reimbursed to ACWWA from the SDFs that are collected and held by ACWWA and further described below.

5. ACWWA will continue to collect stormwater SDFs until March 31, 2008. Thereafter, SEMSWA shall collect such fees. These funds can be applied to the cost of providing project management services as defined above. SDFs remaining after ACWWA assistance is no longer needed, and after ACWWA's administrative deduction and payments pursuant to reimbursement agreements, shall promptly be transferred to SEMSWA. SEMSWA shall use these funds in

accordance with terms set forth in agreements between ACWWA and developers contributing the SDFs ; however, once SDFs have been transferred to SEMSWA, monies may be spent as determined appropriate by the SEMSWA Board to the extent such use is not a violation of an agreement between ACWWA and the developer who contributed those funds.

ARTICLE III

Property Interest Transfer

1. Pursuant to and consistent with the terms of the Original IGA, the Parties desire to transfer interests in land and stormwater improvements necessary for the accomplishment of SEMSWA's purposes. To the extent owned by ACWWA, ACWWA agrees to convey to SEMSWA, and SEMSWA agrees to accept conveyance of, all interests in land and improvements associated with or necessary for SEMSWA to perform activities associated with the MS4 Permit, and for the management of the public stormwater facilities and conveyances within the ACWWA service area. The parties agree to endeavor to complete all transfers in land interest and stormwater improvements prior to June 1, 2008. Wherever available, such conveyance shall be of fee title and not an easement; however, ACWWA may reserve right-of-way or other easements needed for ACWWA facilities. Such reservations shall be by mutual agreement of the Parties in order that both ACWWA and SEMSWA's facilities may co-exist within the reserved right-of-way or easement.

SEMSWA recognizes that there are properties (or construction and permanent easements) that remain to be acquired for future construction of major regional drainageways and other regional facilities. ACWWA will have no further responsibility for obtaining additional properties and / or easements for the stormwater facilities other than as provided below.

2. The lands and improvements to be transferred to SEMSWA are generally described as the regional stormwater detention and water quality ponds, and major drainageway conveyances within the Lonetree, Windmill, and Dove drainage basins within the ACWWA service area as shown on Exhibit B. In order for SEMSWA to accept such transfer, ACWWA shall provide the information available to it, and as set forth in the Original IGA unless waived or partially waived by SEMSWA. Upon submittal of the required information, SEMSWA shall promptly initiate the steps necessary for the conveyance of the interest in land or stormwater improvements to SEMSWA pursuant to and consistent with the terms of the Original IGA. ACWWA shall cooperate and assist SEMSWA to the extent necessary to accomplish the conveyance.
3. There are certain properties within ACWWA that are not within ACWWA ownership and contain portions of the floodplain and regional stormwater system

necessary for SEMSWA to carry out its MS4 Permit and stormwater management obligations. ACWWA does not have drainage or access easements over these properties. In order for SEMSWA to manage the regional drainage system and perform activities associated with the MS4 Permit, SEMSWA must be able to access the properties for the purposes of inspection, maintenance, and construction of public stormwater improvements and conveyances. ACWWA agrees to reasonably assist SEMSWA, at no cost to ACWWA, in obtaining stormwater and access easements across the private properties within the ACWWA service area which contain the floodplain and regional drainage system. SEMSWA acknowledges that ACWWA does not have any power of eminent domain for stormwater purposes.

ARTICLE IV

General Conditions and Obligations

1. On and after April 10, 2008, SEMSWA shall assume the responsibility for the implementation and enforcement of the MS4 stormwater management programs 1 through 5 within ACWWA. ACWWA agrees to comply with SEMSWA's stormwater regulations and management programs.
2. SEMSWA and ACWWA acknowledge that SEMSWA's level of maintenance shall consist of those activities necessary to ensure the operation and function of the stormwater management facilities and conveyances. SEMSWA's maintenance may include activities such as limited dry land grass mowing, trash and debris pickup, cleaning of debris and detention basins, maintenance of outlet structures, sediment removal, and minor and major rehabilitation of structures. ACWWA acknowledges that, unless modified by separate agreement, SEMSWA may not maintain landscaped areas and may not provide irrigation for or maintenance of grassed or sod areas, flower beds, shrubs, and other improvements which are not intended solely for the purposes of stormwater management. ACWWA may refer material complaints that ACWWA receives from third parties concerning stormwater facility maintenance to SEMSWA.
3. SEMSWA acknowledges that ACWWA has or may secure phosphorous credits from the Cherry Creek Basin Water Quality Authority for specific stormwater facilities. In the event that additional capital improvements or significant maintenance improvements are necessary for the purpose of ACWWA retaining or improving future phosphorous credits, ACWWA shall be responsible for the cost and completion of such improvements and shall be required to submit the design and construction plans to SEMSWA and obtain SEMSWA's written approval for such improvements within the drainage facility, provided that SEMSWA may deny its approval only if such improvements would have a substantial negative impact on the drainage, flood control, or water quality components of SEMSWA's facilities, or that would result in a violation of

SEMSWA's MS4 Permit. ACWWA shall have the right, but not the obligation, to mitigate any such substantial negative impacts at ACWWA expense, after which SEMSWA shall provide said written approval for the improvements. ACWWA shall be responsible for all activities which are necessary to maintain the phosphorous credits, including monitoring and reporting requirements. ACWWA may obtain an independent engineer's study of such substantial negative impacts alleged by SEMSWA, and if such engineer disagrees with SEMSWA, ACWWA and SEMSWA shall submit the matter to mediation. The mediator shall be selected by agreement of the SEMSWA and ACWWA managers. The cost of the mediation shall be shared equally by ACWWA and SEMSWA. The decision of the mediator shall be final; however, ACWWA may determine not to proceed with the project following the mediator's decision.

4. There are portions of the ACWWA service area that are located in Douglas County. However, there are areas in the Windmill and Lone Tree Creek drainage basins in Douglas County that are not within ACWWA's service area. In accordance with the Original IGA, ACWWA has requested, and SEMSWA has agreed to include those portions of ACWWA located in Douglas County within SEMSWA's boundaries. SEMSWA agrees to take over the operation and maintenance of the regional drainage system and ACWWA's MS4 Permit responsibilities for those portions of ACWWA located in Douglas County. SEMSWA agrees to take over only those programs and responsibilities of the MS4 Permit that are now applicable to ACWWA as a non-standard MS4 Permit (?) within Douglas County. SEMSWA does not agree to take over those programs and responsibilities of the MS4 Permit for which ACWWA relied on Douglas County as the standard permittee. SEMSWA will attempt to enter into an Agreement with Douglas County to further define the roles and responsibilities for regional stormwater management and MS4 Pactivities for those areas of the ACWWA service area within Douglas County, but will not agree to accept any further responsibility in regard to ACWWA's MS4 Permit other than for what ACWWA is presently responsible.

The intent of this section is for SEMSWA to have all of ACWWA's stormwater responsibilities for property in Douglas County, and for ACWWA to have none, but SEMSWA does not agree to accept more responsibilities in Douglas County than ACWWA has on the date that SEMSWA takes over ACWWA's stormwater responsibilities.

5. Until the transfer of all interests in land and stormwater improvements necessary for the accomplishment of SEMSWA's purposes have been completed and ACWWA's MS4 permit has been deactivated by the State, SEMSWA and ACWWA agree that SEMSWA shall not have the responsibility or liability for ACWWA's municipal operations within the ACWWA service area and will not take over any programs or measurable goals associated with ACWWA's MS4 Permit for Program 6 – Pollution Prevention/Good Housekeeping (PP/GH). Therefore, until such transfer, ACWWA shall retain responsibility for its municipal

operations. Once those stormwater properties and MS4 Permit are transferred to SEMSWA, ACWWA will no longer have responsibilities for this program area. Thereafter, SEMSWA shall comply with its own MS4 Program 6 – PP/GH, when carrying out its activities and operations within the ACWWA service area.

6. Upon transfer by ACWWA to SEMSWA of the ACWWA property and improvements identified in Exhibit B and Exhibit C, SEMSWA agrees to assume only ACWWA's obligations as set forth in Exhibit D and the payments required hereunder beginning April 1, 2008. SEMSWA agrees to make timely payment of the obligations identified in Exhibit D as further described in the underlying agreements with the named payees beginning April 1, 2008. To the extent permitted by law, SEMSWA agrees to defend, indemnify and hold ACWWA harmless in regard to those assumed payment obligations. To the extent permitted by law, ACWWA agrees to defend, indemnify and hold SEMSWA harmless in regard to the accuracy of financial information set forth on Exhibit D, with the understanding that ACWWA will timely make all payments required pursuant to Exhibit D through March 31, 2008. The parties agree that ACWWA from the date of this IIGA until ACWWA makes all payments required to be made through March 31, 2008 will continue to collect its currently established SDFs and account for those collections and payments separately, unless SEMSWA establishes different SDFs within ACWWA's boundaries, in which case, after ACWWA's receipt of written notice from SEMSWA, and as allowed by law, ACWWA will promptly revise its Rules and Regulations to impose and to collect the revised SDF. After payments made through March 31, 2008, ACWWA will promptly provide SEMSWA with an accounting of its collections from the date of this IIGA until that accounting, and promptly pay SEMSWA any remaining SDFs it has collected from the date of this IIGA, except \$100,000 for the Windmill Creek Channel Improvement Project and additional amounts for other ACWWA expenses related to stormwater activities through March 31, 2008. After March 31, 2008, ACWWA will cease the collection of SDFs, and thereafter SEMSWA shall collect all SDFs that were formally collected by ACWWA as amended by SEMSWA.

ACWWA further agrees to pay to SEMSWA any other SDFs that it has collected and has not spent, and SEMSWA agrees to use those SDFs towards the projects for which they were collected.

7. This Agreement may be amended at any time with the mutual consent of the parties. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing.

ARTICLE V

Construction of Facilities

1. Pond W-4

- a. SEMSWA agrees to complete the design and construct a 23.5 acre-foot Pond W-4 in 2008. An approximate schedule is as follows. Every effort will be made to meet this schedule, but the Parties recognize circumstances may arise that may affect the schedule:
 - i. Finalize plans and specifications and cost estimates – Start 2/15/08
 - ii. Completed plans and specs including Co & SEMSWA reviews – By 5/29/08
 - iii. 404 permit renewal application - Submit By 3/01/08
 - iv. Obtain 404 Permit - By 7/21/08
 - v. Advertise for project bids - By 7/21/08
 - vi. Start Construction - By 9/09/08
 - vii. Complete construction (Six month construction period) - By 3/08/09
 - b. SEMSWA agrees to contribute \$700,000 and ACWWA agrees to contribute \$300,000 toward the design and construction of Pond W-4. ACWWA funds are to be paid to SEMSWA within 30 days of the acceptance of a bid for construction of the project.
 - c. The estimated cost of Pond W-4 is \$1,400,000 and the SEMSWA and ACWWA contributions total \$1,000,000. Arapahoe County has indicated they will also contribute \$400,000 toward the design and construction of Pond W-4, which will produce the \$1,400,000 needed for the project. Therefore, construction of Pond W-4 is contingent on Arapahoe County contributing \$400,000 toward the design and construction of Pond W-4, unless other financial arrangements are mutually approved by the Parties to this agreement.
 - d. The cost estimate of \$1,400,000 is based on Arapahoe County Public Airport Authority (ACPAA) accepting the excavation from Pond W-4 on ACPAA property adjacent to Pond W-4. This arrangement has a significant impact on the cost of the project. Therefore, construction of Pond W-4 is contingent on ACPAA accepting the excavated material from Pond W-4, unless the costs are less than the \$1,400,000 available or unless other financial arrangements are mutually approved by the Parties to this agreement.
 - e. SEMSWA agrees to establish an escrow account into which all project funds will be deposited.
2. SEMSWA shall design and complete Phase 1 (or any other applicable phase) of Pond D1 within a reasonable time, with such time to: (a) be compatible with development plans known to SEMSWA for all or part of the property that drains to Pond D1; (b) be suitable for such property owners to obtain land development

approvals and permits; and (c) be subject to the availability of SEMSWA funds for such purpose. If SEMSWA funds are not reasonably available for such purpose at such time, SEMSWA shall use best efforts to enter into an agreement to allow funding or design and construction of Phase 1 (or any other applicable phase) of Pond D1 by an entity other than SEMSWA, with SEMSWA to reimburse such entity from available revenue, the payment of which may be subject to annual budget and appropriations.

3. SEMSWA shall design and complete Phase 1 of Pond D2 (or any other applicable phase) within a reasonable time, with such time to: (a) be compatible with development plans known to SEMSWA for all or part of the property that drains to Pond D2; (b) be suitable for such property owners to obtain land development approvals and permits; and (c) be subject to the availability of SEMSWA funds for such purpose. If SEMSWA funds are not reasonably available for such purpose at such time, SEMSWA shall use best efforts to enter into an agreement to allow funding or design and construction of Phase 1 (or any other applicable phase) of Pond D2 by an entity other than SEMSWA, with SEMSWA to reimburse such entity from available revenues, the payment of which may be subject to annual budget and appropriations.

The parties to this Agreement have caused it to be executed this _____ day of March, 2008.

SOUTHEAST METRO
STORMWATER AUTHORITY

By:

ATTEST:

By:

Approved as to form:

By: Edward J. Krisor, Esq.

ARAPAHOE COUNTY WATER AND
WASTEWATER AUTHORITY

By: _____

ATTEST:

By:

Approved as to form:

By: Norman F. Kron, Jr. General Counsel

List of Exhibits:

- A: Current ACWWA Schedule of Hourly Rates
- B: ACWWA Regional Stormwater Management Facilities and Conveyances (Map)
- C: ACWWA Property Summary
- D: Reimbursement Agreement Summary