

DRAFT

IMPLEMENTING INTERGOVERNMENTAL AGREEMENT FOR TRANSITION OF STORMWATER MANAGEMENT RESPONSIBILITIES FROM INVERNESS WATER AND SANITATION DISTRICT TO SEMSWA

This Implementing Intergovernmental Agreement ("Agreement") is entered into by and between Inverness Water and Sanitation District ("IWSD") and the Southeast Metro Stormwater Authority acting by and through SEMSWA Water Activity Enterprise (SEMSWA), hereinafter collectively referred to as the "Parties".

WHEREAS, pursuant to Section 29-1-204.2, C.R.S., the Southeast Metro Stormwater Authority was established on September 19, 2006, by the original Intergovernmental Agreement ("Original IGA") *Concerning the Formation of a Drainage Authority Amongst County of Arapahoe, City of Centennial, Arapahoe County Water and Wastewater Authority, 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 IWSD with regard to both the transition of the administration and implementation of stormwater programs from IWSD 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, IWSD currently holds a non-standard MS4 Stormwater permit issued by the State of Colorado ("State") and intends to transfer that permit to SEMSWA and SEMSWA intends to apply for its own non-standard MS4 stormwater permit within the service areas of IWSD for the permit period beginning on or about March 9, 2008; and,

WHEREAS, the State, in order for it to issue a non-standard MS4 Stormwater permit to SEMSWA within the service areas of IWSD, is requiring that SEMSWA and IWSD have

in place an IGA setting forth the respective rights and responsibilities of each entity in regard to the non-standard MS4 Stormwater permit to be held by SEMSWA; and

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

WHEREAS, SEMSWA desires to accept such transfers pursuant to the terms of the IGA; and

WHEREAS, IWSD 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 IWSD service area; and

WHEREAS, IWSD 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, IWSD hereby requests SEMSWA take the steps necessary to have the existing non-standard MS4 Stormwater permit issued to IWSD by the State of Colorado transferred to SEMSWA and thereby assume responsibility for compliance with its terms and conditions, except as specifically limited by this agreement.
2. SEMSWA agrees to submit an application to the State for a non-standard MS4 Stormwater Permit by March 10, 2008, wherein SEMSWA would assume responsibility for IWSD's non-standard MS4 Stormwater responsibilities. Once SEMSWA is issued a non-standard MS4 Permit which includes IWSD's permitting responsibilities, IWSD may request the State to terminate IWSD's MS4 permit.
3. Pursuant to the Original IGA, the parties agree that IWSD is responsible to fully comply with its MS4 permit, until the MS4 permit is transferred to SEMSWA. However, SEMSWA agrees to operate and maintain IWSD's regional stormwater conveyances and facilities necessary for carrying out the IWSD's MS4 permit activities pursuant to the terms of this Agreement, including but not limited to those contained in Article II, Paragraphs 3 and 4.

ARTICLE II

IWSD Interim Assistance to SEMSWA

1. To the extent that SEMSWA will need assistance from IWSD to transition stormwater management responsibilities within the Cottonwood Creek drainage basin, IWSD 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 IWSD provide a scope of work and estimated costs for direct and indirect costs that IWSD will incur for providing such assistance. Upon SEMSWA's authorization, IWSD will provide such assistance, and invoice SEMSWA for the related costs. SEMSWA will reimburse IWSD for staff costs plus other direct costs such as legal and engineering consulting. Billing for staff costs will be based on the IWSD Schedule of Hourly Rates, Exhibit A. SEMSWA will require that IWSD provide an accounting of the costs, including all copies of invoices from outside consultants and a Time/Expense report for IWSD staff time. IWSD may provide support in the areas of new development review, maintenance and operations, and implementation of the NPDES permit measurable goals. SEMSWA acknowledges that IWSD is largely staffed through a management and engineering consultant, namely Mulhern MRE, Inc., and that the Schedule of Hourly Rates presented in Exhibit A are developed to pay the consultant, without additional markup by the District. The services which may be provided are further defined below.
2. IWSD agrees to assist SEMSWA in facilitating the engineering review of new land development submittals within the IWSD. SEMSWA will refer land development submittals directly to Mulhern MRE and copy IWSD on the referral. Mulhern MRE shall review the submittals for conformance to the regional stormwater system requirements and existing infrastructure within the regional stormwater area that IWSD managed prior to the formation of SEMSWA. SEMSWA will endeavor to contract directly with Mulhern MRE for these development review services no later than January 1, 2008.
3. IWSD agrees to coordinate with and assist SEMSWA with the operation and maintenance activities of the regional stormwater facilities and conveyances until the facilities and conveyances have been fully transferred to SEMSWA. IWSD will continue to provide the routine maintenance and operation services for the regional stormwater facilities and conveyances through December 31, 2007. Beginning January 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 are shown on Exhibit B, and listed on Exhibit C, IWSD Regional Stormwater Management Facilities and Conveyances.
4. IWSD agrees to allow SEMSWA to utilize its stormwater related property and, to the extent reasonably necessary, its easements, through a right of entry agreement to be prepared by SEMSWA the terms of which shall be agreed upon

by IWS, 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 property interests and/or easements which are necessary for SEMSWA to perform said activities are conveyed to SEMSWA. Since many of the easements are over property which has multiple uses by the District, SEMSWA agrees that it will use reasonable care in accessing the properties and or easements to avoid damages to turf, irrigation systems, recreational facilities and other improvements. In the event that damages occur as a result of SEMSWA access, they will be repaired to the condition that existed prior to their access, to the extent reasonably practical..

5. Pursuant to the Original IGA, SEMSWA shall compensate IWSD for costs that it has incurred beginning Jan. 1, 2007 for drainage management within its jurisdiction for which it has not collected fees. IWSD shall invoice SEMSWA for its staff costs and expenses for maintenance and operations work performed on the above defined facilities through December 31, 2007, as estimated below. IWSD shall provide an accounting of requested reimbursements as described in Item1, above. IWSD's estimate for costs to be reimbursed is

Through October 31, 2007 (actual)	\$36,000
October 31, 2007 – December 31, 2007 (estimated)	\$33,000

ARTICLE III

Property Interest Transfer

1. Pursuant to and consistent with the terms of the IGA, the Parties desire to transfer interests in land and drainage improvements necessary for the accomplishment of SEMSWA's purposes. IWSD agrees to convey to SEMSWA 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 within the IWSD service area. The parties agree to endeavor to complete all transfers in land interest and stormwater improvements prior to June 30, 2008. Since much of the IWSD land is used for multiple purposes, and since the IWSD frequently continues to utilize its land for additional improvements such as water wells, water storage, pipe lines, lift stations, etc., the IWSD shall in most cases provide easements with rights necessary for SEMSWA to carry out their purposes related to the collection and conveyance of storm drainage, and for fulfillment of their MS4 Permit activities.. Wherever a land transfer is made, the District shall retain easements to allow use of the property for its purposes. However, such use by IWSD will not interfere with SEMSWA's performing necessary activities associated with the MS4 permit or the management of the public stormwater facilities and conveyances within the IWSD service area. For all improvements proposed to be constructed by IWSD within the real property interests conveyed by IWSD to SEMSWA, IWSD shall

obtain advanced written approval of SEMSWA for those improvements.

2. The regional stormwater facilities and conveyances to be transferred via easement agreement to SEMSWA are generally described as the regional stormwater detention and water quality ponds, and major drainageway conveyances within the Cottonwood Creek drainage basins within the IWSD service area, shown on Exhibit B and listed on Exhibit C. In order for SEMSWA to accept the transfer, IWSD shall provide the information set forth in the 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 drainage improvements to SEMSWA pursuant to and consistent with the terms of the IGA. IWSD shall cooperate and assist SEMSWA to the extent necessary to accomplish the conveyance.
3. There are certain properties within IWSD which are not within IWSD ownership that contain portions of the floodplain and regional stormwater system, and are necessary for SEMSWA to carry out its MS4 and stormwater management obligations. IWSD does not have drainage or access easements over these properties, but has been permitted access to the properties through agreements with the property owners. 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. IWSD agrees to reasonably assist SEMSWA, at no cost to IWSD, in obtaining stormwater and access easements across these private properties within IWSD which contain the floodplain and regional drainage system. IWSD agrees to facilitate meetings with the affected property owners and assist SEMSWA in the acquisition of stormwater and access easements.

ARTICLE IV

General Conditions and Obligations

1. SEMSWA agrees to assume the full responsibility for the implementation and enforcement of the non-standard MS4 stormwater management programs 1 through 6 within IWSD once SEMSWA has either received IWSD's non-standard MS4 permit by transfer or has been issued a non-standard MS4 permit in its own name, and IWSD has been released from its MS4 obligations. IWSD agrees to comply with SEMSWA's stormwater regulations and management programs.
2. SEMSWA and IWSD acknowledge that SEMSWA's level of maintenance shall consist of those activities that are 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. IWSD acknowledges that, unless modified by separate agreement, SEMSWA will not maintain landscaped areas, and will 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.

3. SEMSWA and IWSD acknowledge that IWSD maintains the right to secure phosphorous credits from the Cherry Creek Basin Water Quality Authority for specific stormwater facilities already constructed, and which will now be transferred to SEMSWA. In accordance with the IGA, SEMSWA shall provide routine operation and maintenance for such stormwater facilities, and shall invoice IWSD for incremental routine maintenance costs associated with those phosphorous credits. In the event that additional capital improvements or significant maintenance improvements are necessary for the purpose of IWSD retaining, expanding or improving those phosphorous credits, IWSD shall be responsible for the cost and completion of such improvements and shall be required to obtain SEMSWA design and construction written approval for such improvements within the drainage facility. Such approval is not to be unreasonably denied by SEMSWA as long as the proposed improvements allow the affected storm water facilities to continue to meet their intended purpose. IWSD shall be responsible for all activities which are necessary to maintain the phosphorous credits, including monitoring and reporting requirements.
4. There are portions of the IWSD service area that are located in Douglas County. In accordance with the Original IGA, IWS has requested, and SEMSWA has agreed to include those portions of IWSD located in Douglas County within SEMSWA's boundaries. SEMSWA agrees to take over the operation and maintenance of the regional drainage system and IWSD's non-standard MS4 permit responsibilities for those portions of IWSD located in Douglas County. SEMSWA agrees to take over only those programs and responsibilities of the MS4 permit that are now applicable to IWSD as a non-standard MS4 within Douglas County. SEMSWA does not agree to take over those programs and responsibilities of the MS4 permit for which IWSD 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 permit activities for those areas of IWSD service area within Douglas County but will not agree to accept any further responsibility in regard to IWSD's MS4 permit other than for what IWSD is presently responsible.
5. Until the transfer of all interests in land and stormwater improvements necessary for the accomplishment of SEMSWA's purposes have been completed; SEMSWA and IWSD agree that SEMSWA shall not have the responsibility or

liability for IWSD's Municipal Operations within the IWSD service area, and will not take over any programs or measurable goals associated with IWSD's MS4 permit for Program 6 – Pollution Prevention/Good Housekeeping (PP/GH). Therefore, IWSD shall retain responsibility for its Municipal Operations. Once those stormwater properties and MS4 permit are transferred to SEMSWA, IWSD 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 IWSD service area.

6. The portions of this Agreement which address the duties of the Parties prior to SEMSWA becoming the holder of the MS Permit within the service area of IWSD (as limited in Paragraph 4 above), will terminate when SEMSWA is issued the MS4 permit for IWSD and has acquired title to the stormwater facilities and interests in properties which are necessary to carry out its obligations under the MS4 Permit.
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.

The parties to this Agreement have caused it to be executed this _____ day of Nov. 2007, *nunc pro tunc* January 1, 2007.

SOUTHEAST METRO
STORMWATER AUTHORITY

By:

ATTEST:

By:

Approved as to form:

By: Edward Krisor, Esq.

INVERNESS WATER AND
SANITATION DISTRICT

By: _____

ATTEST:

By:

Approved as to form:

By:

EXHIBIT A

INVERNESS WATER AND SANITATION DISTRICT
CONSULTANT FEE SCHEDULE
July 1, 2007 – December 31, 2007

Mulhern MRE, Inc.

PRINCIPAL -----	\$ 120.00/HR
PROJECT ENGINEER-----	\$ 104.00/HR
ENGINEER I -----	\$ 76.00/HR
ENGINEER II -----	\$ 64.00/HR
DESIGNER -----	\$ 58.00/HR
ADMINISTRATIVE I -----	\$ 70.00/HR
ADMINISTRATIVE II -----	\$ 63.00/HR
CLERICAL -----	\$ 53.00/HR

Bell Surveying

PRINCIPAL -----	\$ 125.00/HR
PROJECT MANAGER -----	\$ 90.00/HR
COMPUTER DRAFTING -----	\$ 70.00/HR
SURVEY CREW (4 hr. Minimum)-----	\$ 135.00/HR
SURVEY COMPUTATIONS -----	\$ 85.00/HR
CLERICAL -----	\$ 30.00/HR
GPS EQUIPMENT PER CREW DAY-----	\$ 125.00

Hahn, Smith, Walsh, & Mancuso, P.C.

DAVID HAHN -----	\$220.00/HR
JOHN SMITH -----	\$200.00/HR
ED WALSH -----	\$200.00/HR
T.J. MANCUSO -----	\$200.00/HR
CYNDY CALKINS -----	\$200.00/HR
STEVE HAHN -----	\$190.00/HR
PARALEGAL -----	\$ 70.00/HR

All reimbursable charges including but not limited to copies, reproducibles, mileage, delivery charges, consultant fees will be billed at cost.

SEMSWA / INVERNESS IGA - EXHIBIT B

SEMSWA / INVERNESS IIGA - EXHIBIT C