

FIRST AMENDMENT TO  
IMPLEMENTING INTERGOVERNMENTAL AGREEMENT

THIS FIRST AMENDMENT TO IMPLEMENTING INTERGOVERNMENTAL AGREEMENT ("Amendment") is entered into by and between ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY ("ACWWA") and the SOUTHEAST METRO STORMWATER AUTHORITY ("SEMSWA"), hereinafter collectively referred to as the "Parties."

WHEREAS, the Parties entered into an Implementing Intergovernmental Agreement for transition of stormwater management responsibilities from ACWWA to SEMSWA ("Implementing IGA"); and

WHEREAS, the ACWWA Board of Directors approved the Implementing IGA with a condition that an additional agreement be entered into between ACWWA and SEMSWA concerning certain matters and this Amendment is intended to fulfill the condition required by ACWWA.

NOW, THEREFORE, the Parties agree as follows:

1. SEMSWA shall complete the design and construction of Phase 1 of Pond W4 by August 1, 2008.
2. SEMSWA shall design and complete Pond D1 within a reasonable time, 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 Pond D2 within a reasonable time, 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.
4. Under the Implementing IGA, ACWWA is to continue to perform Program 6 responsibilities under its MS4 permit. ACWWA shall invoice SEMSWA for the reasonable costs of performing such Program 6 responsibilities. SEMSWA shall pay such invoices within

30 days of their presentment by ACWWA from such funds as SEMSWA may have available for such purpose.

5. Third Party Beneficiary. The terms and provisions of this Amendment shall inure to the benefit of and be binding upon the parties hereto. SEMSWA and ACWWA acknowledge that Dove Valley Business Park Associates, Ltd. is an express third party beneficiary to this Agreement and the terms and provisions hereof shall inure to the benefit of Dove Valley Business Park Associates, Ltd. Dove Valley Business Park Associates, Ltd. shall have all rights to enforce the provisions and terms of this Amendment against SEMSWA, including but not limited to: injunctive relief, mandamus, specific performance and damages.

6. Enforcement. The Parties acknowledge and agree that this Amendment may be enforced in law or in equity by decree of specific performance, damages, injunction, or any other legal or equitable relief as may be available to either party subject to the provisions of the statutes of the State of Colorado. The Parties agree that in any action to enforce any provision of this Amendment the prevailing party shall be entitled to recover its attorney fees from the other.

This Amendment shall be effective as of the effective date of the Implementing IGA.

ARAPAHOE COUNTY WATER AND  
WASTEWATER AUTHORITY

SOUTHEAST METRO STORMWATER  
AUTHORITY

By \_\_\_\_\_

By \_\_\_\_\_