

INTERGOVERNMENTAL AGREEMENT REGARDING
DESIGN FUNDING OF CHERRY CREEK AT THE CHERY CREEK VALLEY
ECOLOGICAL PARK STREAM STABILIZATION

This INTERGOVERNMENTAL AGREEMENT REGARDING DESIGN FUNDING OF CHERRY CREEK @ ECO PARK STREAM STABILIZATION (the "Agreement") is made and entered into as of this _____ day of _____ 2010 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 to coordinate and participate in the provision of certain Open Space improvements within its boundaries in the State of Colorado, including, but not limited to, water quality enhancements, floodplain management, riparian area vegetation, park amenities, and other improvements; and

WHEREAS, SEMSWA was formed to plan, design, construct, acquire, operate and maintain various drainage and flood control facilities and manage the stormwater quality within its boundary in the County and the City of Centennial, Colorado, (City); and

WHEREAS, there are drainageways within the County's Cherry Creek Valley Ecological Park property that exist within SEMSWA's boundary and the County and SEMSWA are authorized to provide certain drainageway improvements; and

WHEREAS, the County and SEMSWA wish to provide for the design of a stream stabilization project along Cherry Creek, to be known as Cherry Creek @ Eco Park Stream Stabilization, (the "Project"); and

WHEREAS, the County and SEMSWA, have discussed the nature, scope, and timing of the Project which represents a benefit to the Cherry Creek Valley Ecological Park area as a whole and to the region; and

WHEREAS, the Project will be located on County park property, within SEMSWA's boundary, and within the City's jurisdiction, and upon final acceptance after construction, will be the responsibility of SEMSWA to maintain; and

WHEREAS, SEMSWA has authority to own easements as may be necessary to construct, operate and maintain the project; and

WHEREAS, the Parties desire to cooperate in the funding for the design of the Project as set forth herein.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein

contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Purpose. The purpose of this Agreement is to identify certain drainageway improvements to be designed by the Parties and the allocation of the design costs thereof between the Parties, to establish dates regarding the design thereof, and to establish the process by which such drainageway improvements will be designed.

2. General Description of the Project funding. The Parties hereby agree to cooperate in the funding of the design of the Project, as described more fully in this Agreement. The Parties anticipate that design of the Project will begin in the year 2010. A further description of the costs for the design of the Project is set forth below.

Project costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
Design	\$100,000.00

The total estimated costs for the Project design for each of the Parties is set forth below:

	<u>Each Party's Share of Cost of the Design Project</u>	<u>% of Total Design Costs</u>
SEMSWA	\$50,000	50%
<u>County</u>	<u>\$50,000</u>	<u>50%</u>
Total	\$100,000	100%

SEMSWA has previously entered into an agreement with Urban Drainage and Flood Control District (UDFCD) to contribute \$50,000.00 to the Project design. The \$50,000 contribution of SEMSWA referred to above is the same \$50,000 that it has agreed to contribute in its agreement with UDFCD.

If any of the contributed design funds remain unused after the design is completed, the County and SEMSWA may either choose to withdraw each of their portions of the remaining funds or to utilize those excess funds towards the construction of the Project.

3. Project Design.

a) Scoping/Appropriations. The County and SEMSWA intend to budget and appropriate their respective shares of the funds for the Project, such that the funds are available for such purpose at time of execution of this agreement. The following provisions regarding design, funding and contract administration and accounting shall apply to the design of the Project.

b) SEMSWA Responsible for Design. SEMSWA shall be responsible for the design of the Project, with the County's input. SEMSWA, in cooperation with UDFCD, has engaged an engineer to design the Project and prepare an estimate of construction costs. SEMSWA has required the engineer to design the Project so that the design is incorporated into SEMSWA's construction document format so that the Project can be put out for public bidding by UDFCD on behalf of SEMSWA, following the acquisition of any necessary easements, utility clearances, environmental clearances, and other clearances as necessary.

c) Easement Acquisition. SEMSWA shall be responsible for pursuing acquisition of necessary easements from the County for the project. The County will convey to SEMSWA the necessary easements without cost to SEMSWA. However, such conveyance will be without any warranty of title.

d) Funding and Contract Administration.

i) Within 60 days of the date of the Notice of Award of the contract to design the Project, the County will issue payment to SEMSWA for its' respective share of the Project design costs as described in Paragraph 2 of this Agreement. Notwithstanding any language in this Agreement to the contrary, the County's share of design costs shall not exceed \$50,000 unless agreed to in writing by the County.

ii) Upon award of the design contract, SEMSWA shall proceed to design the Project in accordance with this Agreement. All payments to contractors shall be subject to withholding for retention in accordance with law, and to SEMSWA's CIP administrator's recommendation that such payments be made in accordance with work performed to the satisfaction of SEMSWA. Final payment shall be made in accordance with Colorado law.

4. Failure to Provide Funds/Termination. The funding obligation of the Parties is, in addition to the other limitations contained in this Agreement, expressly conditioned upon annual budget and appropriation by each party. In the event that one of the Parties fails to either appropriate funds, or fund its respective obligations hereunder by the date prescribed, or to exercise any other funding options as described in Paragraph 3 of this Agreement, the other Party shall be entitled to terminate this Agreement without liability or obligation to the other Party.

5. Miscellaneous.

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

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

c) Third Party Beneficiary. It is specifically agreed between 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.

d) 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.

e) 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:

Ron Carl, Esq.
Assistant Arapahoe County Attorney
Arapahoe County
5334 South Prince Street
Littleton, Colorado 80126-0001

Bob Toll, Manager
Arapahoe County Open Space Program
10730 E. Briarwood Ave.
Centennial, Colorado 80112

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:

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

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

f) Binding Representative. In regard to change orders, the County designates its Open Space Manager or his/her designee as its representative with power to bind the County.

h) 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 costs and reasonable attorneys' fees.

i) 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.

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

k) 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: _____

ATTEST

By: _____
County Clerk