

**IMPLEMENTING INTERGOVERNMENTAL AGREEMENT  
FOR TRANSITION OF ADMINISTRATION OF STORMWATER  
PROGRAMS FROM THE CITY OF CENTENNIAL TO  
SOUTHEAST METRO STORMWATER AUTHORITY**

This **IMPLEMENTING INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **CITY OF CENTENNIAL, COLORADO** a Statutory Municipality of the State of Colorado (the “City”), and the **SOUTHEAST METRO STORMWATER AUTHORITY** acting by and through the SEMSWA Water Activity Enterprise (“SEMSWA Water Activity Enterprise”), hereinafter collectively referred to as (the “Parties”).

WHEREAS, pursuant to 29-1-204.2, C.R.S., the Southeast Metro Stormwater Authority (“SEMSWA”) was established on September 19, 2006, by the Intergovernmental Agreement (the “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, the 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 the City and SEMSWA with regard to both the transition of the administration of stormwater programs from the City 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; and,

WHEREAS, Section I.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 transferred to SEMSWA by the parties to the IGA as well as those obtained in the name of SEMSWA; and,

WHEREAS, the City currently holds a NPDES MS4 stormwater permit issued by the State of Colorado (“State”) and intends to transfer that permit to SEMSWA and for SEMSWA to apply for its own NPDES MS4 stormwater permit within the boundaries of the City beginning on or about March 9, 2008; and,

WHEREAS, in order for SEMSWA to be able to obtain NPDES MS4 permits, it must be able to legally regulate, pursuant to an IGA with the City, certain stormwater activities, conduct certain stormwater programs, require stormwater improvements, enforce stormwater regulations, and to declare certain actions and activities as unlawful which result in the degradation of the health, safety and welfare; and

WHEREAS, Section I.5(a) of the Original IGA requires the City to delegate to SEMSWA such police powers as may be necessary to enable SEMSWA to enforce any and all provisions of NPDES MS4 Stormwater Permits transferred to SEMSWA or obtained by SEMSWA; and,

WHEREAS, until SEMSWA obtains its own MS4 permit applicable within the City's boundaries, the Original IGA mandates the transition of the administration of the NPDES MS4 Stormwater Management Programs from the City to SEMSWA; and,

WHEREAS, the City and SEMSWA desire to enter into this Intergovernmental Agreement to provide for the City to delegate to SEMSWA the necessary authority and police powers to enable SEMSWA to administer stormwater programs in the name of the City; and,

WHEREAS, the City of Centennial has adopted Title 11 – Land Development Code, of the City of Centennial Municipal Code, which authorizes the City to regulate land development projects within the City; and,

WHEREAS, the City of Centennial passed Ordinance No. 2004-O-27, an Ordinance Adopting a new Chapter 4 of Title 9 of the Municipal Code for the City of Centennial Pertaining to Illicit Discharge Control and Declaring an Emergency; and,

WHEREAS, the City of Centennial passed Ordinance No. 2005-O-05, an Ordinance Adopting by Reference the "Grading, Erosion, And Sediment Control (GESC) Manual" ("GESC Manual" ) Published by the City of Centennial, Colorado dated March 2005, Amending the GESC Manual, Establishing Penalties for Violations of the Manual, and Declaring an Emergency; and,

WHEREAS, the City of Centennial passed Ordinance No. 2007-O-01, an Ordinance Adopting by Reference the "City of Centennial Stormwater Management Manual" ("Stormwater Management Manual" Published by the City of Centennial, Colorado, Establishing Penalties for Violation of the Stormwater Management Manual, Amending the Centennial Municipal Code and Declaring an Emergency; and,

WHEREAS, both SEMSWA and the City desire SEMSWA to administer and enforce, on behalf of the City, pertinent provisions of Title 11- Land Development Code of the City of Centennial Municipal Code, related to the NPDES MS4 Permit program areas and other stormwater activities within the City; and,

WHEREAS, both SEMSWA and the City desire SEMSWA to administer and enforce on behalf of the City, Ordinance No. 2004-O-27, to regulate activities associated with Illicit Discharges and Connections to the Stormwater System in accordance with the prohibitions, requirements, and penalties established in the Ordinance; and,

WHEREAS, both SEMSWA and the City desire SEMSWA to administer and enforce Ordinance No. 2005-O-05 on behalf of the City of Centennial, to regulate certain grading, erosion, and sediment control activities in accordance with the standards and criteria established in the City of Centennial's GESC Manual, and the City of Centennial's Ordinance No. 2005-O-05; and,

WHEREAS, both SEMSWA and the City desire SEMSWA to administer and enforce on behalf of the City, Ordinance No. 2007-O-01, to regulate stormwater management planning, design and construction in accordance with the standards and criteria established in the City of Centennial's Stormwater Management Manual dated February 2007, and City of Centennial's Ordinance No. 2007-O-01; and,

WHEREAS, the City and SEMSWA agree that in addition to the regulatory authorities described above, additional agreement and coordination between the City and SEMSWA is needed in order for SEMSWA to administer and manage stormwater programs in accordance with the MS4 permit requirements and to manage other stormwater activities described in this Agreement.

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

**ARTICLE I**  
General Obligations

1. The City hereby delegates its authority and police powers to SEMSWA to the extent necessary to enforce the provisions of this Agreement and authorizes SEMSWA to administer and enforce, and SEMSWA shall so administer and enforce on behalf of the City, the following regulations pertaining to stormwater management activities contained within Title 11 – Land Development Code of the City of Centennial Municipal Code as may be amended by the City from time to time, including: Chapter 3- Design Standards for the Arapahoe County Storm Drainage Design and Technical Criteria, Chapter 6- Flood Management, Chapter 8- Stormwater quality requirements, and GESC permit regulations, and other Chapters within the Land Development Code which may be necessary for SEMSWA to administer and enforce the City's stormwater regulations and to comply with SEMSWA's NPDES MS4 Stormwater Permit requirements.
2. The City hereby delegates its authority and police powers to SEMSWA to the extent necessary to implement and enforce Ordinance No. 2004-O-27 and authorizes SEMSWA to implement and enforce, and SEMSWA shall so administer and enforce, on behalf of the City, said Ordinance, to regulate activities associated with Illicit Discharges and Connections to the Stormwater System in accordance with the prohibitions, requirements, and penalties established in the Ordinance as may be amended by the City from time to time.
3. The City hereby delegates its authority and police powers to SEMSWA to the extent necessary to implement and enforce Ordinance No. 2005-O-05 and authorizes SEMSWA to implement and enforce, and SEMSWA shall so administer and enforce, on behalf of the City, said Ordinance regarding grading, erosion, and sediment control activities within the City for all land disturbance projects within the City.
4. The City hereby delegates its authority and police powers to SEMSWA to the extent necessary to implement and enforce Ordinance No. 2007-O-01 and authorizes SEMSWA to implement and enforce, and SEMSWA shall so administer and enforce, on behalf of the City, said Ordinance, to regulate stormwater management planning, design and construction in accordance with the standards and criteria established in the City of Centennial's Stormwater Management Manual.
5. In accordance with Section 1.5(a) of the Original IGA, the City agrees to promptly present to its City Council for consideration and possible adoption, ordinances, regulations and policies presented to it by SEMSWA to enable SEMSWA to enforce all NPDES MS4 Stormwater permits held in SEMSWA's name. The City Staff agrees to support such adoption. If such adoption fails, the City agrees to assist SEMSWA in its enforcements efforts, at no cost to the City.

6. Upon SEMSWA obtaining a NPDES MS4 Permit in its name, SEMSWA will adopt rules and regulations as authorized by law, pertaining to compliance and enforcement of its Permit requirements. The City agrees to delegate its authority and police powers to SEMSWA to the extent necessary to implement and enforce SEMSWA's rules and regulations as they pertain to SEMSWA's NPDES MS4 Permit within the City and the City agrees to comply with SEMSWA's regulations as they relate to SEMSWA's permit requirements within the City. In addition, to the extent legally necessary, the City will continue to assist SEMSWA in SEMSWA's compliance and enforcement effort with respect to MS4 Permit requirements.
7. The City and SEMSWA agree to coordinate and abide by the operational provisions established in this Agreement for each of the MS4 Program areas to ensure that the City and SEMSWA are performing as necessary to meet the MS4 permit requirements within the City of Centennial.
8. Notwithstanding the City's delegation of authority to SEMSWA under the terms of this Agreement, the City retains jurisdiction to the extent it deems necessary to preserve the health, safety and welfare to adopt, implement and enforce the City codes, manuals, ordinances and regulations that may relate to matters delegated to SEMSWA under this Agreement. Such actions shall not unreasonably interfere with SEMSWA's ability to implement and enforce its MS4 permit programs within the City or cause SEMSWA to violate its NPDES MS4 Permit within the City.
9. The City agrees to transfer its interests in land (drainage easements, tracts and other parcels used or dedicated exclusively for drainage purposes) and drainage and stormwater improvements necessary for the accomplishment of SEMSWA's obligations set forth in this Agreement and the Original IGA. In cases where the City's interest in land allows for multiple uses (e.g., drainage, access, landscaped buffer), the City agrees to transfer a non-exclusive easement to SEMSWA to permit SEMSWA to fulfill its obligations under this Agreement and the Original IGA. Fee title to such land and drainage improvements shall be transferred to SEMSWA by quitclaim deed or easement in accordance with the respective ordinances, rules, regulations and policies adopted by the City and SEMSWA. The parties hereby waive the condition precedent contained in Article II, Paragraph 1 of the Original IGA and agree to endeavor to complete all transfers in land interest and drainage/stormwater improvements promptly but no later than June 30, 2008, or by another date mutually agreed upon by the Parties.

## **ARTICLE II**

### **MS4 Permit Transfer**

1. Upon the State's approval of SEMSWA's assumption of the City's MS4 permit, SEMSWA shall file and process an application with the State and pay any associated application fees and costs.
2. SEMSWA shall assume all obligations of the City's MS4 permit within thirty (30) days following the State's approval of SEMSWA's application to the extent that such obligations are within its control, and that the City cooperates with SEMSWA on the transition of all of its MS4 obligations and activities within the specified time frame.
3. SEMSWA shall pay the City four thousand fifty dollars (\$4,050.00) as reimbursement for the MS4 permit fees paid to the State for the 2007 MS4 permit fees within 30 days of

State approving SEMSWA's application, and upon the City's providing SEMSWA an invoice and documentation of payment to the State.

4. Upon SEMSWA's assumption of the City's MS4 permit, the City shall transfer to SEMSWA all of the Cottonwood Creek basin fees, held or controlled by the City and not otherwise committed by the City to any Cottonwood Creek master plan projects, for SEMSWA's use to construct one or more of the identified Cottonwood Creek master plan projects.

### **ARTICLE III**

#### **Obligations Concerning MS4 Programs 1 & 2**

1. SEMSWA shall implement and administer a Public Education and Outreach program and a Public Participation and Involvement program on behalf of the City, upon coordination with and approval from the appropriate City departments, to meet the requirements of the MS4 permit Programs 1 and 2 within the City.
2. The City agrees to reasonably assist SEMSWA in the coordination of stormwater related outreach activities mandated by the MS4 permit. Specifically, the City agrees to reasonably assist SEMSWA in the following areas:
  - a. The City agrees to provide a link from the City's web site to a website created and maintained by SEMSWA where stormwater management related documents may be added subject to City's policies, procedures, and programs related to the management of the City's web site.
  - b. The City agrees to allow SEMSWA to submit for publication in the City's newsletters, articles relevant to stormwater quality, subject to the City's policies, procedures, and programs related to the management of the City's newsletters.
  - c. If the City requests SEMSWA to do so, SEMSWA shall act on behalf of the City at various technical groups that require attendance and technical input (examples: Cherry Creek Basin Water Quality Authority, Cherry Creek Stewardship Partners, and various Urban Drainage Technical committees).
  - d. The City shall, to the extent reasonable necessary for SEMSWA to meet its NPDES MS4 Permit requirements within the City, allow SEMSWA access to the City's storm drain inlet system within the City's public rights-of-way for the purposes of inlet labeling efforts, both as part of an ongoing SEMSWA program, and as an educational effort with civic groups (i.e. Girl Scouts) and students.
  - e. The City agrees to require signage on all City-funded construction project sites to provide stormwater contact information and allow for public comment, as mandated by the MS4 permit.
  - f. The City agrees to comply with the City's policies and procedures regarding public notification procedures for City-funded projects.
3. The City shall reasonably provide SEMSWA with notification of City-sponsored events and, where appropriate, allow SEMSWA access to such events to distribute stormwater quality information to citizens.

4. The City shall, to the extent reasonably necessary for SEMSWA to meet its NPDES MS4 Permit requirements within the City, allow access to public drainage ways for the purpose of posting interpretative signage regarding stormwater in conformance with the City's sign regulations. The City reserves the right to remove any signage that threatens the health, safety or welfare of the citizens of the City.
5. The City shall reasonably cooperate with SEMSWA to allow SEMSWA to issue press releases and special mailings as necessary for the public notification process, and any other public information outreach efforts mandated by the MS4 permit requirements, at SEMSWA's sole cost and expense.

#### **ARTICLE IV**

##### **Obligations Concerning MS4 Program 3**

1. SEMSWA agrees to administer and implement an Illicit Discharge Detection and Elimination (IDDE) program on behalf of the City to meet the requirements of the MS4 permit - Program 3 within the City of Centennial.
2. SEMSWA shall implement and enforce the City's IDDE Ordinance No. 2004-O-27 within the City. If enforcement is necessary, to the extent permitted by law, SEMSWA shall carry out such enforcement action in the name of SEMSWA acting by and on behalf of the City, at all times keeping the City updated as to the enforcement actions SEMSWA has taken and will take. SEMSWA shall promptly notify the City of any and all violations, state enforcement actions, and issuance of notices of non-compliance. Enforcement of penalties by SEMSWA for IDDE violations will be in accordance with Ordinance 2004-O-27. If SEMSWA determines that an enforcement action is necessary which SEMSWA is not legally authorized to carry out or lacks the necessary resources to carry out, the City will conduct the enforcement action. SEMSWA shall then pay the reasonable cost of the City's enforcement action to the extent the City has not recouped the expense in the enforcement action. The City shall issue SEMSWA an invoice for the cost of the enforcement action which SEMSWA shall pay in full within thirty (30) days. In the event the City recoups fines and penalty costs exceeding the direct and indirect costs of the enforcement action, the City will return this excess money to SEMSWA. Once SEMSWA holds a NPDES MS4 Permit in SEMSWA's name covering the boundaries of the City, SEMSWA may adopt its own IDDE regulations and enforcement mechanisms and, if legally necessary, the City shall cooperate with SEMSWA in the enforcement of those regulations at no cost to the City.
3. The City agrees to make available to SEMSWA the NPDES MS4 Stormwater Tributary and Outfall System mapping that has been developed as a part of the City's MS4 permit.
4. The City agrees to allow SEMSWA to continue to implement the Curbside Hazardous Waste Recycling Program within the City. SEMSWA agrees to administer and fund the Curbside Hazardous Waste Recycling Program within the City. SEMSWA shall publish information regarding the Curbside Household Hazardous Waste program through press release articles, newsletters, mailings, and website articles and links.
5. The City agrees to continue to have and to publicize the citizen complaint number (720-874-ROAD) to provide for public input and citizen complaints regarding IDDE incidents until July 1, 2008. SEMSWA shall obtain, maintain and publicize a citizen complaint

number to provide for public input and citizen complaints regarding IDDE incidents within the City no later than to July 1, 2008.

6. The City agrees to allow SEMSWA to coordinate with the Environmental Crimes Unit of the City's Law Enforcement Agency or other appropriate agency to assist in the resolution of and in enforcement actions arising from IDDE incidents to the extent such coordination is at no cost to the City.
7. The City agrees to assist SEMSWA in the coordination of activities related to the IDDE program by providing reasonable access to City resources, programs and staff to assist SEMSWA in stormwater activities associated with the IDDE program that are mandated by the MS4 permit. Specifically, the City agrees to assist SEMSWA in the following areas:
  - a. The City agrees to continue to receive and process maintenance requests (MRF) program with regard to IDDE complaints within the City. MRFs that are related to an IDDE incident shall be referred from the City to SEMSWA for resolution.
  - b. The City and SEMSWA shall coordinate to provide training to appropriate City staff regarding the IDDE program.

## **ARTICLE V**

### **Obligations Concerning MS4 Program 4**

1. SEMSWA agrees to administer and implement a Construction Site Stormwater Runoff Control program on behalf of the City to meet the requirements of the MS4 permit – Program 4 within the City.
2. SEMSWA will administer and enforce the City's Ordinance No. 2005-O-05 regarding grading, erosion, and sediment control activities, and will adopt the City's GESC Manual to provide construction site stormwater runoff control for all land disturbance projects within the City. Once SEMSWA holds a NPDES MS4 Permit in its own name covering the boundaries of the City, SEMSWA may adopt its own construction site stormwater runoff control regulations and enforcement mechanisms and, if legally necessary, the City shall reasonably assist SEMSWA in regard to enforcement of those regulations at no cost to the City.
3. The City agrees to provide prompt written notification to SEMSWA of known land disturbance activities that occur within the City and SEMSWA agrees to inform those identified parties creating the disturbance activities of the SEMSWA Construction Site Stormwater Runoff Control program requirements. The City shall refer to SEMSWA all projects with land disturbance activities that are submitted to the City for review and approval and to require as conditions of City's Land Use Approval that such projects comply with SEMSWA's Construction Site Stormwater Runoff Control program and the City's GESC Manual. The City shall require SEMSWA's approval within thirty (30) days of GESC reports and plans prior to the City's final approval of GESC documents.
4. The City and SEMSWA agree to follow the Memorandum to Land Use Services dated June 18, 2007, regarding the Interim Procedures to Coordinate City of Centennial's Land Development Projects within the SEMSWA Service Area, and the SOP attached to the memorandum, entitled "Standard Operating Procedures for Land Development, Land

Use and Capital Improvement Projects in the SEMSWA Service Area” dated June 18, 2007, (the “Memorandum and SOP”) that set forth among other things the following:

- a. Procedures for GESC Plan and Report Referrals to SEMSWA.
  - b. Procedures for City/SEMSWA Coordination with Applicants.
  - c. GESC Plan Review and Approval processes.
  - d. Standard Forms.
  - e. A list of all pending GESC projects and identification of whether the City or SEMSWA is responsible for each project. The list will be updated as projects are either closed-out by the City or transitioned from the City to SEMSWA.
  - f. That SEMSWA will be responsible for all new GESC permitting, inspections and close-out on applications for GESC permits filed on or after May 18, 2007.
  - g. That the City will close out all GESC permits that can be closed out by the end of 2007.
  - h. That SEMSWA will assume responsibility for all inspections and close-outs on January 1, 2008, that have not been closed out by that date.
5. The City and SEMSWA agree to coordinate on transition of the GESC permits that have been issued by the City prior to the date of this Agreement. On such projects, the City and SEMSWA will work together to establish and implement transition timelines to insure that all permits are transitioned to SEMSWA by January 1, 2008.
6. SEMSWA has adopted the City's GESC review and permitting fee schedule as an interim measure. SEMSWA will review the City's fee schedule and if it determines the City's fees are insufficient to cover its costs, SEMSWA may establish and adopt its own review and permitting fee schedule. All fees collected by the City and by SEMSWA from the review of GESC documents, issuance of GESC permits and enforcement of GESC related penalties shall remain the sole and separate property of SEMSWA.
7. If enforcement is necessary, to the extent permitted by law SEMSWA shall carry out such enforcement action in the name of SEMSWA acting by and on behalf of the City, at all times keeping the City updated as to the enforcement actions SEMSWA has taken and will take. SEMSWA shall promptly notify the City of any and all, state enforcement actions, and issuance of Stop Work Orders. Enforcement of penalties by SEMSWA for GESC permit violations will be in accordance with Section 5.9 of the GESC Manual and Ordinance 2005-O-05 until such time as SEMSWA is able to legally adopt its own enforcement mechanism. If SEMSWA determines that an enforcement action is necessary which SEMSWA is legally not authorized to carry out or lacks the necessary resources to carry out, the City shall conduct the enforcement action and SEMSWA shall pay the reasonable cost of the City's enforcement action to the extent the City has not recouped the expense in the enforcement action. The City will issue SEMSWA an invoice for the cost of the enforcement action which SEMSWA shall pay in full within thirty (30) days. Once SEMSWA holds a NPDES MS4 Permit in its name covering the boundaries of the City, SEMSWA may adopt its own GESC regulations and enforcement mechanisms and, if legally necessary, the City shall reasonably assist SEMSWA in the enforcement of those regulations at no cost to the City.
8. The City agrees to implement SEMSWA's GESC program requirements on all applicable City owned or funded projects except that no collateral or other performance or financial security shall be required of the City when the City's employees are performing the work. However, SEMSWA shall be permitted to require collateral or other performance or



financial security from independent contractors who are performing work on City owned or funded projects. SEMSWA shall require GESC reports and plans for review and approval and shall perform periodic inspections to ensure GESC compliance on City projects. SEMSWA and the City agree to follow the procedures set forth in the Memorandum and SOP referenced herein.

9. SEMSWA shall publicize a citizen complaint number to provide for public input and citizen complaints regarding construction activities within the City. 10. In order for SEMSWA to comply with the NPDES MS4 permit issued to the City regarding Program 4 requirements, the City agrees to continue to receive and process maintenance requests ("MRF") with regard to stormwater functions. MRFs that are related to a stormwater function shall be referred to SEMSWA to address and resolve.
10. The City agrees to continue to have and to publicize the citizen complaint number (720-874-ROAD) to provide for public input and citizen complaints regarding construction projects within the City until July 1, 2008. SEMSWA shall obtain, maintain and publicize a citizen complaint number to provide for public input and citizen complaints regarding construction projects within the City no later than to July 1, 2008.

## **ARTICLE VI**

### **Obligations Concerning MS4 Program 5**

1. SEMSWA agrees to administer and implement a post-construction Stormwater Management program on behalf of the City to meet the requirements of the MS4 permit – Program 5 within the City of Centennial.
2. SEMSWA agrees to administer and implement other stormwater programs and policies on behalf of the City to plan, require, permit, inspect and accept stormwater public improvements as required in the City's Stormwater Management Manual and the Land Development Code, as may be amended. Once SEMSWA holds a NPDES MS4 Permit in its own name covering the boundaries of the City, SEMSWA may adopt its own post-construction stormwater management regulations and enforcement mechanisms and, if legally necessary, the City shall reasonably assist SEMSWA in its enforcement of these regulations at no cost to the City.
3. The City agrees to notify SEMSWA of known land disturbance activities that occur within the City and SEMSWA agrees to inform those identified parties creating the land disturbance activities of the SEMSWA Post-construction Stormwater Management program requirements. The City shall refer to SEMSWA all projects with land disturbance activities that are submitted to the City for review and approval and to require as conditions of the City's Land Use Approval that such projects comply with the Post-Construction Stormwater Management program and the City's Stormwater Management Manual. The City agrees to require SEMSWA's design approval and construction acceptance for all stormwater facilities which are intended to be maintained by SEMSWA and for those facilities for which SEMSWA is responsible for long-term operation and maintenance. SEMSWA shall provide such approval to the City within thirty (30) days of submittal to SEMSWA.
4. The City and SEMSWA agree to follow the Memorandum and SOP that sets forth, among other things, the following:

- a. Procedures for Land Use Referrals to SEMSWA.
  - b. Procedures for City/SEMSWA Coordination with Applicants.
  - c. Review and Approval processes for Drainage Reports, Construction Drawings and other Stormwater related documents.
  - d. Processes to Guarantee Stormwater Public Improvements.
  - e. Permitting procedures.
  - f. Inspection and Acceptance procedures.
  - g. Standard Forms.
  - h. Transition timelines for current projects.
5. The City agrees to require applicants to place all public stormwater improvements, and access to public stormwater improvements within tracts, easements, and parcels conveyed to SEMSWA for the purpose of inspection and maintenance. The City shall require that stormwater tracts or easements be dedicated to SEMSWA with Final Plats or by separate document to the extent required by law.
6. The City agrees to cooperate with SEMSWA during the City's land use approval process to ensure that a Stormwater Facilities Maintenance Agreement and an Operations and Maintenance Manual be executed and recorded for Stormwater facilities, prior to the City's land use approval.
7. The City and SEMSWA agree to coordinate on the approval, inspection and acceptance of all stormwater improvements within the City Rights of Way. The City and SEMSWA agree that the City shall be responsible for the approval, inspection, and acceptance of all stormwater improvements as they relate to the integrity of the roadway and transportation elements within the rights-of-way. The City and SEMSWA agree that SEMSWA shall be responsible for the approval, inspection and acceptance of stormwater improvements as they relate to the hydraulic function and maintenance of the stormwater improvement. SEMSWA shall be responsible for ensuring the long-term operation and maintenance for all public stormwater facilities that are approved, permitted and accepted by SEMSWA. SEMSWA shall be responsible for ensuring the long-term operation and maintenance of private water quality improvements, required and provided in accordance with SEMSWA's Post-construction Stormwater Management program.
8. The City and SEMSWA agree to coordinate and implement the transition of the land use projects that are in process prior to the date of this Implementing IGA. The City and SEMSWA will work together to establish and implement transition timelines to insure that all projects are transitioned to SEMSWA by January 1, 2008.
9. SEMSWA shall adopt the City's Stormwater Management Manual including the fee schedule of the City until SEMSWA has its own NPDES MS4 permit and Post-construction Stormwater Management program covering the City. If SEMSWA determines that the fees paid to it are insufficient to cover its costs, SEMSWA may establish its own fee schedule which the City will assist SEMSWA, at no cost to the City, to collect.
10. If enforcement of the activities in this program area is necessary, to the extent permitted by law, SEMSWA shall carry out such enforcement action in the name of SEMSWA acting by and on behalf of the City, at all times keeping the City updated as to the

enforcement actions it has taken and will take. SEMSWA shall promptly notify the City of any, state enforcement actions, and issuance of Stop Work Orders. Enforcement of penalties by SEMSWA for violations will be in accordance with the actions described in the City's Municipal Code and in the City's Ordinance 2007-O-01 until such time as SEMSWA is able to legally adopt its own enforcement mechanism. If SEMSWA determines that it is legally not authorized to carry out or lacks the necessary resources to carry out any necessary enforcement action, the City shall conduct the enforcement action and SEMSWA shall pay the reasonable costs of the City's enforcement action to the extent the City has not recouped the costs in the enforcement action. The City will issue SEMSWA an invoice for the cost of the enforcement action which SEMSWA shall pay in full within thirty (30) days. In the event the City recoups fines and penalty costs exceeding the direct and indirect costs of the enforcement action, the City will return such excess money to SEMSWA. Once SEMSWA holds a NPDES MS4 Permit in its name covering the boundaries of the City, SEMSWA shall adopt its own regulations and enforcement mechanisms and, if legally necessary, the City shall reasonably assist SEMSWA in the enforcement of those regulations at no cost to the City.

11. The City agrees to implement SEMSWA's Post-construction Stormwater Management program requirements and the requirements of the City's Stormwater Management Manual on applicable City owned or funded projects. SEMSWA shall require plan review and approval, shall require permits, and shall perform periodic inspections to determine if the City is in conformance with SEMSWA's requirements on City projects. SEMSWA and the City agree to follow the procedures set forth in the Memorandum and SOP. In consideration of the mutual cooperation of the City and SEMSWA, the City shall be exempt from any and all fees normally imposed by SEMSWA for plan review, permits, inspections and any other service provided by SEMSWA, provided that the City agrees to similarly waive any fees normally imposed by the City on any SEMSWA project. However, at either Party's request, the waiver of fees may be renegotiated.
12. SEMSWA shall be responsible for the operation and maintenance of permanent water quality improvements that are installed as a part of the City's Capital Improvement Projects, provided that they have been designed, constructed and accepted in accordance with the procedures set forth in the Memorandum and SOP.

## **ARTICLE VII**

### **Obligations Concerning MS4 Program 6**

1. The City and SEMSWA agree to coordinate on the administration and implementation of a Pollution Prevention/Good Housekeeping for Municipal Operations ("PPGH") program to meet the requirements of the MS4 permit within the City of Centennial. SEMSWA agrees to acquire the MS4 permit on behalf of the City. SEMSWA agrees to provide oversight of the City's PPGH program in order to determine whether the City is meeting the intent of the MS4 - PPGH program requirements.
2. The City agrees to reasonably implement internal programs and procedures upon advice of SEMSWA regarding the City's municipal operations and its facilities to meet the requirements for the MS4 permit - PPGH program.
3. The City agrees to require and implement Runoff Control Plans ("RCPs") for all of its owned and leased facilities, properties and open space areas. SEMSWA shall assist the City in the development and updating of RCPs for the City's facilities and properties.

4. The City agrees to require and implement Standard Operating Procedures (“SOPs”) for all of its municipal operations. At the City’s request, SEMSWA shall prepare draft SOPs for all of the City’s municipal operations that have the potential to impact stormwater quality for the City’s consideration and adoption.
5. At the City’s request, SEMSWA shall prepare draft language for the City’s inclusion and adoption in all of the City’s contracts, lease agreements and other documents relating to the City’s facilities and municipal operations which have the potential to impact stormwater quality, requiring that all the City’s owned or leased facilities, and all contractors used by the City comply with the City’s PPGH program. The City shall include such language in all of the City’s contracts and lease agreements relating to the City’s facilities and municipal operations which have the potential to impact stormwater quality.
6. The City shall provide training and education to its employees regarding the City’s PPGH program to ensure that City employees are aware of the City’s PPGH program and PPGH program measures associated with their job.
7. SEMSWA agrees to provide training to the City’s employees, consultants and contractors on the City’s implementation of the PPGH program upon request of the City.
8. The City agrees to provide periodic reporting and documentation to SEMSWA (no less frequently than annually or as necessary to comply with SEMSWA’s MS4 permit) to verify that the City is meeting the intent of the PPGH program.
9. The City agrees to allow SEMSWA reasonable access to inspect the City facilities and operations and to audit the City’s documentation of compliance records regarding the PPGH program to verify that the City is meeting the intent of the PPGH program.
10. The City and SEMSWA shall follow the “Program 6 - Pollution Prevention and Good Housekeeping” Procedures Manual dated September 2007, as amended, that sets forth among other things the following:
  - a. General Policy regarding the City’s PPGH program.
  - b. Procedures for Facility Runoff Control Plans.
  - c. Procedures for Municipal Operations SOPs.
  - d. Procedures for incorporating PPGH requirements in the City. Contracts and New Construction.
  - e. Training and Education Requirements.
  - f. Procedures for Documentation.
11. The City agrees to maintain a written copy of the Program 6 - Pollution Prevention and Good Housekeeping” Procedures Manual on file at the City offices at all times.
12. The City agrees to promptly perform reasonable remedies as requested by SEMSWA of specific violations on City property to address areas of non-compliance that could result in a violation of the MS4 permit. SEMSWA shall assume the responsibility to remedy violations on SEMSWA property.

13. The City agrees that in the event SEMSWA reasonably determines that (1) SEMSWA is unable to adequately ensure the City's compliance with the MS4 permit requirements for Program 6 as it relates to the City's municipal facilities and operations (specifically the City has not met on a continuing basis its obligations described in Paragraphs 1 through 12 above in regard to Program 6 or SEMSWA is unable, on a continuing basis, to determine if the City has met and is meeting those obligations due to the City's failure to provide SEMSWA with necessary information or documentation to make such determination); or (2) the City has intentionally failed to comply with the PPGH program requirements or reasonable directions from SEMSWA in regard to the PPGH program requirements; or (3) the City's actions and inactions have resulted in a violation of SEMSWA's Program 6 NPDES MS4 Stormwater Permit within the City, the City shall promptly accept transfer of the Program 6 portion of the MS4 permit back to the City, unless otherwise agreed by the Parties.

## **ARTICLE VIII**

### **Miscellaneous Provisions**

1. SEMSWA agrees to assume the NPDES MS4 permit liabilities associated with SEMSWA's administration of the City's Stormwater Management Programs 1 - 6 to the extent such activities are within the authority and police powers provided to SEMSWA by the City, and will agree to defend, indemnify and hold the City harmless for actions taken and actions not taken in SEMSWA's administration of the MS4 Permit programs on behalf of the City, unless the actions result from the City's negligence. This indemnification is contingent on the City delegating to SEMSWA the necessary authority and police powers to implement and enforce Programs 1 - 6, and on the City's full compliance with all of the MS4 Programs administered by SEMSWA. This indemnification is further limited to only those projects and activities that SEMSWA has taken over the administration of, and only to the extent of SEMSWA actions and inactions after it has taken over that administration.
2. To the extent permitted by law, the City agrees to indemnify and hold SEMSWA harmless from any and all liability or penalties that SEMSWA incurs or is assessed as a result of the City's failure to meet its obligations contained herein. At the City's option, the City may defend SEMSWA in any suit, proceeding, or cause of action arising from the City's failure to meet its obligations contained herein.
3. When SEMSWA is issued a NPDES MS4 Permit covering the City, and as SEMSWA adopts its own regulatory and enforcement mechanisms, this Agreement will terminate only to the extent that certain of its provisions are no longer necessary. In addition, after SEMSWA is issued a NPDES MS4 Permit covering the City, the parties agree to modify and amend the provisions of this Agreement to enable SEMSWA to effectively and economically comply with its NPDES MS4 Permit within the City.
4. The laws of the State of Colorado shall govern this Agreement. Venue for any action for the enforcement of this Agreement shall be in the appropriate court for Arapahoe County, Colorado. Any judgment shall be limited to specific performance and/or injunctive relief and no Party shall have any claim or remedy for monetary damages arising from an alleged breach of this Agreement against another Party except that SEMSWA shall be able to recover from the City any penalty assessed against SEMSWA and its reasonable attorney fees incurred as a direct result of the City's actions or inactions in regard to its obligations under this Agreement. Notwithstanding the

foregoing, the prevailing party in any judicial action to enforce this Agreement shall be entitled to reasonable attorneys' fees and costs. This Agreement is not intended to modify or eliminate the standing the Parties may possess independent of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.

5. A waiver by any Party to this Agreement or the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by a Party.
6. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to any Party, its officials, employees, contractors, or agents, or any other person acting on behalf of a Party and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
7. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, legal representatives, and assigns of the Parties; provided that this Section shall not authorize assignment.
8. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this IGA is an incidental and unintended beneficiary only.
9. The Parties understand and agree that all terms and conditions of this Agreement that require continued performance, compliance, or effect beyond the termination date of this Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
10. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
11. Invalidity of any of the provisions of this IGA or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
12. Unless otherwise stated in this Agreement, exhibits, appendices, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
13. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Parties. Such notice shall be deemed to

have been given when deposited in the United States Mail properly addressed to the intended recipient.

14. Should SEMSWA extend to any other entity within the boundaries of SEMSWA terms or conditions which are more favorable to said entity than the terms and conditions set forth in this Agreement, such terms and conditions shall automatically be extended to the City.
15. SEMSWA's adoption of rules, regulations, ordinances, resolutions or policies, as contemplated herein, shall not conflict with any adopted rules, regulations, ordinances, resolutions or policies of the City. However, the City shall not adopt a rule, regulation, ordinance, resolution or policy that would cause a violation of the NPDES MS4 permit.
16. Where there is a discrepancy or conflict between this Agreement and the Original IGA, the Original IGA shall control.
17. This Agreement shall not become effective until approved or accepted in writing by the State of Colorado.

CITY OF CENTENNIAL

(SEAL)

By: \_\_\_\_\_  
Randolph E. Pye, Mayor

ATTEST:

Approved as to Form:

By: \_\_\_\_\_  
City Clerk or Deputy City Clerk

\_\_\_\_\_  
For: City Attorney's Office

SOUTHEAST METRO STORMWATER AUTHORITY  
Acting by and through SEMSWA Water Activity Enterprise

By \_\_\_\_\_  
Chairperson

Approved as to Form:

By \_\_\_\_\_  
Edward J. Krisor, SEMSWA Attorney