

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 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 Permit within the service areas of IWSD for the permit period beginning on or about April 15, 2009; and,

WHEREAS, the State, in order for it to issue a non-standard MS4 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 Permit to be held by SEMSWA; and

WHEREAS, IWSD owns property or has the right to enter onto property and owns or manages certain drainage improvements necessary for the accomplishment of SEMSWA's purposes, and IWSD intends to promptly transfer interests that it has in the property necessary for SEMSWA to complete its responsibilities while maintaining the intent necessary to accomplish other governmental purposes; 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 Permit issued to IWSD by the State of Colorado transferred to SEMSWA and SEMSWA thereby assume responsibility for compliance with the permit's terms and conditions, except as specifically limited by this Agreement.
2. SEMSWA agrees to submit an application to the State for the transfer to SEMSWA of IWSD's non-standard MS4 Permit by April 15, 2009, wherein SEMSWA would assume responsibility for IWSD's MS4 stormwater responsibilities. Once SEMSWA is issued an 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 service area for a reasonable period of time. IWSD 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. IWSD shall invoice SEMSWA for reimbursement and unless contested, SEMSWA shall promptly pay the invoices.
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, 2008. Beginning January 1, 2009, 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 enter onto its stormwater related properties and, to the extent legally possible, to allow SEMSWA to use IWSD's easements, through a right of entry agreement to be prepared by SEMSWA, the terms of which shall be agreed upon by IWSD, for the purposes of operating and maintaining the regional stormwater conveyances and facilities, and carrying out the MS4 Permit activities. Said entry agreement shall continue until such time as IWSD has conveyed adequate easements across its properties to SEMSWA necessary for SEMSWA's purposes described in the this Agreement SEMSWA acknowledges that IWSD's properties are necessary for IWSD's other governmental purposes and SEMSWA agrees that it will use reasonable care in accessing the properties and or crossing over easements in order to avoid damage to turf, irrigation systems, recreational facilities and other improvements. In the event that damages occur as a result of SEMSWA's access, the damaged property will be repaired by SEMSWA in a timely manner and at no cost to IWSD to the condition that existed prior to SEMSWA's access to those properties to the extent reasonable possible.
5. Pursuant to the Original IGA, SEMSWA shall compensate IWSD for costs that it has incurred beginning January 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 during 2007 by April 15, 2009, and shall invoice SEMSWA for its staff costs and expenses for maintenance and operations work performed during 2008 by April 15, 2009. Unless contested, SEMSWA will pay said invoice within thirty days of receipt of said invoice. IWSD shall provide an accounting of requested reimbursements as described in Item 1 above.

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 drainage improvements necessary for the accomplishment of SEMSWA's purposes. IWSD shall not be obligated, except as setout herein, to transfer any property interests necessary for SEMSWA's purposes which IWSD does not own, or which IWSD has no right to transfer. As previously described, 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 December 31, 2009. Since much of the IWSD land is used for multiple purposes, and since the IWSD and Inverness Metropolitan Improvement District (Metro) will continue to utilize its land for additional improvements such as water wells, water storage, pipe lines, lift stations, open space, golf course and parks

etc., IWSD shall in most cases provide easements for SEMSWA to carry out its purposes related to the collection and conveyance of storm drainage, and for fulfillment of their MS4 Permit activities. In the event that IWSD transfers a fee interest to SEMSWA, IWSD shall retain a blanket easement across the whole of the property for its, and Metro's, purposes authorized by law. However, such use will not unreasonably 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 or Metro within the fee property interests conveyed by IWSD to SEMSWA, IWSD shall obtain advanced written approval of SEMSWA for those improvements, which shall not be unreasonably withheld. The conveyance of any stormwater structures or facilities shall be by bill of sale.

2. The regional stormwater facilities and conveyances to be transferred 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 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 drainage improvements to SEMSWA pursuant to and consistent with the terms of the Original IGA. IWSD shall cooperate and assist SEMSWA to the extent necessary to accomplish the conveyance.
3. There are certain properties within the IWSD service area which are not owned by IWSD and that contain portions of the floodplain and regional stormwater system, and access to those properties is necessary for SEMSWA to carry out its MS4 Permit 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 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.
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, which will be transferred to SEMSWA. In accordance with the Original 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. The basis for that billing shall be agreed to in advance by SEMSWA and IWSD. SEMSWA's obligations pursuant to this Paragraph shall not begin until agreement has been reached between SEMSWA and IWSD in regard to billing and payment. 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, IWSD 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. Thereafter, SEMSWA shall be responsible under the MS4 Permit for the matters contained therein.
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 March, 2009.

SOUTHEAST METRO
STORMWATER AUTHORITY

By: John McCarty
Executive Director

Approved as to form:

By: Edward Krisor, Esq.

INVERNESS WATER AND
SANITATION DISTRICT

By: 

Approved as to form:

By: _____

EXHIBIT A

INVERNESS WATER AND SANITATION DISTRICT
CONSULTANT FEE SCHEDULE
January 1, 2009 – December 31, 2009

Mulhern MRE, Inc.

PAT MULHERN.....	\$114.00/HR
RON LAMBERT.....	\$ 94.00/HR
MITCH CHAMBERS.....	\$ 94.00/HR
MARK SKOCIK.....	\$ 63.00/HR
SCOTT BARNETT.....	\$ 63.00/HR
LUIS TOVAR.....	\$ 57.00/HR
ROGER MASON.....	\$ 53.00/HR
MATHEW PELLEGRINI.....	\$ 52.00/HR
LAURIE TATLOCK.....	\$ 62.00/HR
NIKI BUSSEY.....	\$ 53.00/HR
KELLY CHINNICK.....	\$ 51.00/HR

Bell Surveying

PRINCIPAL.....	\$ 125.00/HR
EXPERT TESTIMONY.....	\$ 350.00/HR*
PROJECT MANAGER.....	\$ 95.00/HR
COMPUTER DRAFTING.....	\$ 75.00/HR
SURVEY CREW (4 hr. Minimum).....	\$ 135.00/HR
SURVEY CREW (OT).....	QUOTE
SURVEY COMPUTATIONS.....	\$ 80.00/HR
MEETING ATTENDANCE.....	\$ 125.00/HR
CLERICAL.....	\$ 30.00/HR
SUBCONTRACT WORK.....	COST + 10%
GPS EQUIPMENT PER CREW DAY.....	\$ 150.00
TRAVEL TIME.....	\$100.00/HR

**INVERNESS WATER AND SANITATION DISTRICT
CONSULTANT FEE SCHEDULE
January 1, 2009 – December 31, 2009**

**Bell Surveying
(continued)**

PRINTS: \$ 5.00 Ea.
MYLAR ORIGINALS: \$ +/-85.00 Ea.
ELECTRONIC FILES (Proprietary Data) QUOTE

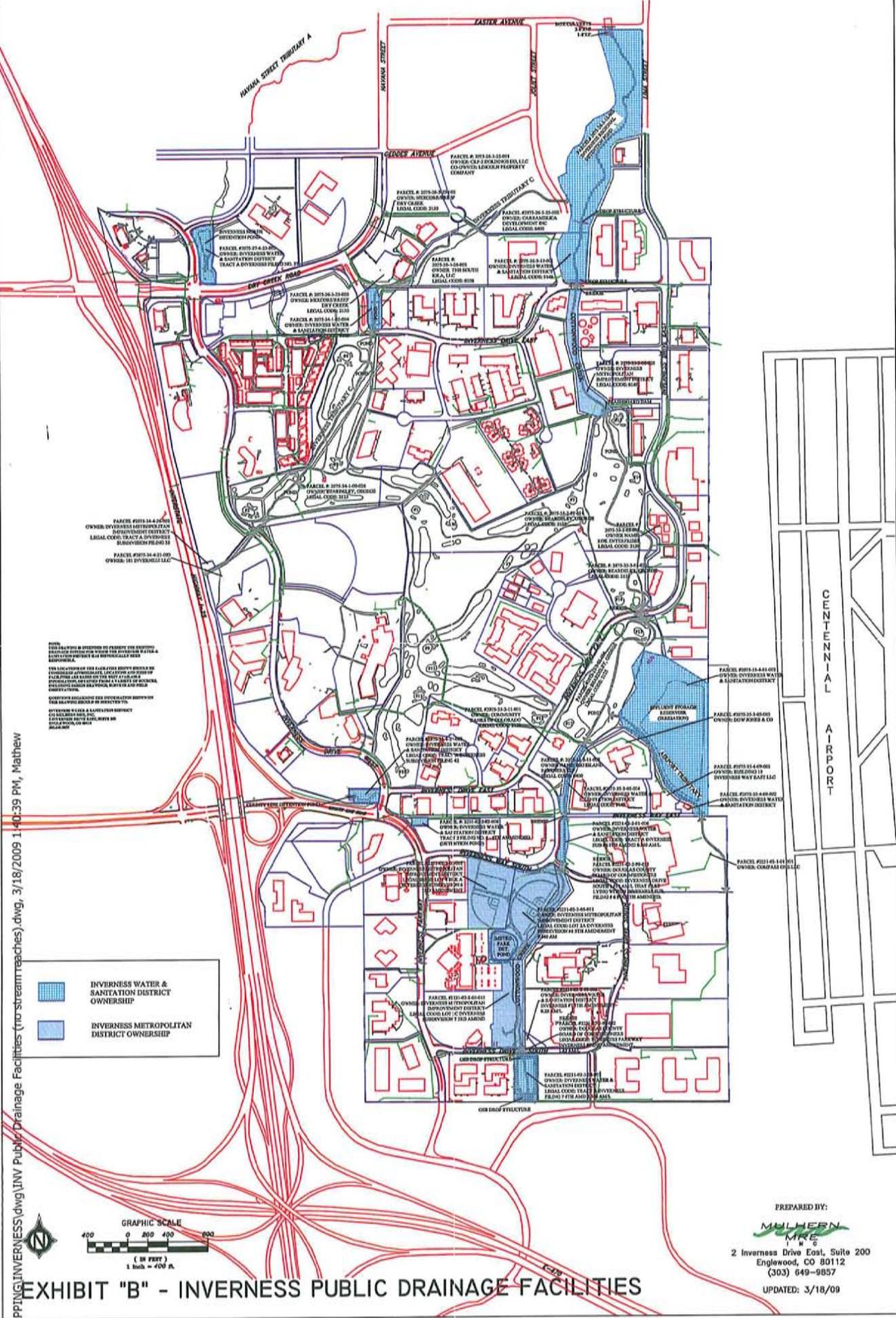
*PLUS EXPENSES

THE ABOVE RATES INCLUDE STANDARD MATERIAL COSTS

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

DAVID HAHN	\$250.00/HR
JOHN SMITH	\$250.00/HR
ED WALSH.....	\$250.00/HR
T.J. MANCUSO.....	\$250.00/HR
CYNDY CALKINS.....	\$250.00/HR
PARALEGAL.....	\$ 85.00/HR

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



R:\MAPPING\INVERNESS.dwg\INV Public Drainage Facilities (no stream reaches).dwg, 3/18/2009 1:40:39 PM, Matthew

THIS DRAWING IS SPECIFIC TO THE PROJECT AND SHOULD NOT BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE ENGINEER. THE ENGINEER'S LIABILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE FACILITIES SHOWN ON THIS DRAWING. THE ENGINEER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR THE RESULTS OF THE DESIGN. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ENGINEER'S LIABILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE FACILITIES SHOWN ON THIS DRAWING. THE ENGINEER DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT OR THE RESULTS OF THE DESIGN. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

INVERNESS WATER & SANITATION DISTRICT OWNERSHIP

INVERNESS METROPOLITAN DISTRICT OWNERSHIP

GRAPHIC SCALE
 0 200 400 600
 (IN FEET)
 1 inch = 400 ft.

PREPARED BY:
MILBERN MIRE INC.
 2 Inverness Drive East, Suite 200
 Englewood, CO 80112
 (303) 649-9857
 UPDATED: 3/18/09

EXHIBIT "B" - INVERNESS PUBLIC DRAINAGE FACILITIES

Exhibit C

IWSD Regional Stormwater Management Facilities and Conveyances

Drainageway	Parcel Number	Owner	Drainage Component on Property (3)	Type of IWSD Ownership	Notes / Comments
Cottonwood Creek	2075-26-3-16-003	IWSD (1)	Regional Pond, channel, drop struct.	Fee Title	Arapahoe Co.
Cottonwood Creek	2075-26-3-19-001	IWSD (1)	Channel, drop struct.	Fee Title	Arapahoe Co.
Cottonwood Creek	2075-35-2-06-020	IMID (2)	Channel	Easement	Arapahoe Co.
Cottonwood Creek	2075-35-3-05-004	IWSD (1)	Channel	Fee Title (tract)	Arapahoe Co.
Cottonwood Creek	2231-02-2-01-006	IWSD (1)	Channel	Fee Title (tract)	Douglas Co.
Cottonwood Creek	2231-02-2-05-012	IMID (2)	Channel, detention pond	Easement through Park	Douglas Co.
Cottonwood Creek	2231-02-2-05-015	IMID (2)	Channel	Easement through Park	Douglas Co.
Cottonwood Creek	2231-02-2-08-003	IWSD (1)	Channel, 2 GSB drop struct.	Fee Title (tract)	Douglas Co.
Tributary C	2075-34-1-02-004	IWSD (1)	Pond (Landscape Feature)	Fee Title	Arapahoe Co.
Airport Tributary	2075-35-4-01-002	IWSD (1)	Channel	Fee Title	Arapahoe Co.
Airport Tributary	2075-35-4-09-002	IWSD (1)	Channel	Fee Title	Arapahoe Co.
Havana St. Trib.	2075-27-4-23-002	IWSD (1)	Northwest Detention Pond	Fee Title	Arapahoe Co.
local	2075-34-4-29-003	IWSD (1)	County Line Detention Pond	Fee Title	Arapahoe Co.
local	2231-02-2-02-006	IWSD (1)	Filing No. 6 Detention Pond	Fee Title	Douglas Co.

- 1) Inverness Water & Sanitation District
- 2) Inverness Metropolitan Improvement District
- 3) Transfer portion applies to 100 year floodplain and access route for maintenance