

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION NO. 09-47
(Authorization to Enter Into a Three Party Reimbursement Agreement
for Construction of Pond L1 East-
SEMSWA / ACWWA & SUNBORNE 16 XVI LTD)

WHEREAS, Sunborne 16 XVI Ltd., (hereinafter referred to as “Sunborne”), is the lease holder of the property described in the attached Stormwater Facility Construction and Reimbursement Agreement (hereinafter the “Agreement”), which Agreement is made a part hereof by this reference. The Sunborne leased property, which is shown in Exhibit A of the Agreement (hereinafter the “Property”), lies within the boundaries of both the ACWWA and SEMSWA service areas; and

WHEREAS, ACWWA currently holds the Colorado Department of Public Health and Environment (CDPHE) issued National Pollution Discharge Elimination System (NPDES) for Municipal Separate Storm Sewer System (MS4) – Phase II requirements permit for the ACWWA service area; and

WHEREAS, ACWWA manages the stormwater system for the ACWWA service area, including the collection of System Development Fees (SDFs) for the purpose of constructing regional detention, water quality, and regional conveyance facilities as further described in the *Stormwater Management Study – Regional Water Quality and Detention Management* prepared by Wright Water Engineers (2002); and

WHEREAS, SEMSWA has entered into an Intergovernmental Agreement (Formation IGA) with Arapahoe County, the City of Centennial, ACWWA, East Cherry Creek Valley Water and Wastewater Authority, and Inverness Water and Sewer District for the purpose of transferring the standard and non-standard MS4 permits from the parties in the Formation IGA to SEMSWA; and

WHEREAS, Sunborne desires to construct regional improvements for detention, water quality, and conveyance as is required to fulfill the requirements outlined in the Arapahoe County *Stormwater Management Manual*, hereinafter referred to as “The Criteria”, and intends to fulfill the detention and water quality capture volume requirements for development of the Property, as further outlined in this Agreement, for its intended use; and

WHEREAS, as an alternative to Sunborne constructing multiple on-site detention and or water quality improvements on the Property, Sunborne desires to construct regional Pond L1-East, a part of ACWWA’s and SEMSWA’s regional stormwater facilities

intended to serve the Property and other tributary areas. The proposed regional stormwater facilities are described in Exhibit B (“Stormwater Facilities”) of the Agreement; and

WHEREAS, the Stormwater Facilities are identified in the ACWWA’s *Stormwater Management Study – Regional Water Quality and Detention Management* as prepared by Wright Water Engineers (2002), as amended from time to time, as a regional facility, which serves the Property and other properties as further defined in the *Stormwater Management Study – Regional Water Quality and Detention Management*; and

WHEREAS, ACWWA currently does not have adequate funds on hand to pay anticipated construction costs of the Stormwater Facilities, ACWWA expects to collect revenues through its stormwater system development fees (SDFs) adequate to defray a portion of the actual capital costs of the Stormwater Facilities; and

WHEREAS, Sunborne desires to proceed with development of the Property at this time and desires to construct, at its initial sole cost, the Stormwater Facilities to facilitate the development of the Property, provided Sunborne is reimbursed for a portion of the actual capital costs of the Stormwater Facilities; and

WHEREAS, the Sunborne, ACWWA and SEMSWA desire to proceed with the construction of the Stormwater Facilities at Sunborne’s initial actual capital cost, and desire to provide for reimbursement of a portion of the actual capital costs pursuant to the Agreement; and

WHEREAS, the Agreement provides that ACWWA will reimburse Sunborne for its actual capital cost to construct the Stormwater Facility less one-half of ACWWA’s stormwater Development fee due from Sunborne. Such reimbursement to be from revenues collected from ACWWA’s stormwater development fee; and

WHEREAS, the Agreement further provides that ACWWA may assign the Agreement including its reimbursement obligations to SEMSWA and SEMSWA may accept the assignment all subject to the terms and conditions of the Formation IGA.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board approves the Stormwater Facility Construction and Reimbursement Agreement attached hereto and authorizes the Executive Director of SEMSWA to execute the attached Agreement.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor