

~~—DRAFT~~

IMPLEMENTING INTERGOVERNMENTAL AGREEMENT FOR
TRANSITION OF STORMWATER MANAGEMENT RESPONSIBILITIES
FROM EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT TO
SOUTHEAST METRO STORMWATER AUTHORITY~~SEMSWA~~

This Implementing Intergovernmental Agreement (“-Agreement”) is entered into by and between East Cherry Creek Valley Water and Sanitation District (“ECCV”) and the Southeast Metro Stormwater Authority (SEMSWA) acting by and through SEMSWA Water Activity Enterprise, ~~(SEMSWA)~~, hereinafter collectively referred to as the “Parties.”~~“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.~~~~et seq.~~; and,

WHEREAS, this Agreement is intended to further define roles and responsibilities between SEMSWA and ECCV with regard to both the transition of the administration and implementation of stormwater programs from ECCV 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~~original IGA. Where there is a discrepancy between this Agreement and the ~~Original~~original IGA ~~regarding~~, the stormwater and drainage responsibilities of SEMSWA, the Original~~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, ECCV currently holds a ~~non-standard~~ MS4 Stormwater permit issued by the State of Colorado (“State”) and intends to transfer that non-standard

permit to SEMSWA and SEMSWA intends to apply for its own non-standard MS4 stormwater permit within the service areas of ECCV for the permit period beginning on or about March 9, 2008; and,

WHEREAS, the State, in order for it to issue a non-standard MS4 Stormwater permit to SEMSWA within the service areas of ECCV, is requiring that SEMSWA and ECCV have in place an IIGA setting forth the respective rights and responsibilities of each entity in regard to the non-standard MS4 Stormwater permit to be held by SEMSWA; and

WHEREAS, ECCV holds interests in land and drainage improvements necessary for the accomplishment of SEMSWA's purposes and intends to promptly transfer such interests to SEMSWA; and

WHEREAS, SEMSWA desires to accept such transfers pursuant to the terms of the Original IGA; and

WHEREAS, ECCV 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 ECCV service area; and

WHEREAS, ECCV is willing to provide such assistance pursuant to certain terms and conditions.

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

ARTICLE I

MS4 Permit Transfer

1. Pursuant to and consistent with the terms of the Original IGA, ECCV hereby requests SEMSWA take the steps necessary to have the existing non-standard MS4 Stormwater permit issued to ECCV by the State ~~of Colorado~~ transferred to SEMSWA and thereby assume responsibility for compliance with its terms and conditions, to the extent defined in this Agreement.
2. SEMSWA agrees to submit an application to the State for an MS4 Stormwater Permit by March 10, 2008, wherein SEMSWA would assume responsibility for ECCV's non-standard MS4 Stormwater responsibilities. Once SEMSWA is issued an MS4 Permit for ECCV's service area, ECCV may request the State to terminate ECCV's non-standard MS4 permit.

3. Pursuant to the Original IGA, the ~~Parties~~parties agree that ECCV is responsible to fully comply with its non-standard MS4 permit, until the non-standard MS4 permit is transferred to SEMSWA. However, SEMSWA agrees to operate and maintain ECCV's regional stormwater conveyances and facilities necessary for carrying out ~~the~~ECCV's non-standard 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

ECCV Interim Assistance to SEMSWA

1. To the extent that SEMSWA will need assistance from ECCV to transition stormwater management responsibilities and interests in certain properties within the ECCV service area drainage basins, ECCV 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 ECCV provide a scope of work and estimated costs for direct and indirect costs that ECCV will incur for providing such assistance. Upon SEMSWA's written authorization and payment of estimated costs, ECCV will provide such assistance, assistance, and invoice SEMSWA for the related costs. SEMSWA will payreimburse ECCV for staff costs plus other direct costs such as legal and engineering consulting. Billing for staff costs will be based on the Schedule of Hourly Rates, Exhibit A. SEMSWA will require that ECCV provide an accounting of the costs, including all copies of invoices from outside consultants and a Time/Expense report for ECCV staff time. ECCV may provide support in the areas of new development review, maintenance and operations, and implementation of the NPDES permit measurable goals. The services which may be provided are further defined below.
2. ECCV agrees to assist SEMSWA in facilitating the engineering review of new land development submittals within the ECCV service area through December 31, 2007. SEMSWA will refer land development submittals directly to Muller Engineering and copy ECCV on the referral. Muller Engineering shall review the submittals for conformance to the regional stormwater system requirements and existing infrastructure within the regional stormwater area that ECCV managed prior to the formation of SEMSWA. ECCV will pay Muller Engineering for its direct review costs and shall invoice SEMSWA for reimbursement. SEMSWA will endeavor to contract directly with Muller Engineering for these development review services no later than January 1, 2008.
3. ECCV 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. ECCV will continue to provide the routine maintenance and operation services for the regional stormwater facilities and conveyances through December 31, 2007. Beginning January 1, 2008, 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, ECCV Regional Stormwater Management Facilities and Conveyances.

4. ECCV agrees to allow SEMSWA to access and utilize its stormwater properties, and easements, if permitted by the easement agreement, through a right of entry agreement to be prepared by SEMSWA the terms of which shall be agreed upon by ECCV, for the purposes of operating and maintaining the regional stormwater facilities and conveyances and carrying out the MS4 permit activities until such time that all of the properties, or property interests, which are necessary for SEMSWA to perform said activities are conveyed to SEMSWA. ECCV agrees to assist SEMSWA in obtaining a right of entry in regard to ECCV's easements, if necessary. Such assistance shall be limited to ECCV's introduction of SEMSWA to the owner of that necessary easement. This Agreement shall not be construed to impose any obligation upon ECCV to acquire rights in property beyond those which it presently possesses for the operation of this Agreement.
5. Pursuant to the Original IGA, SEMSWA shall compensate ECCV for costs that it has incurred beginning Jan. 1, 2007 for drainage management within its jurisdiction for which it has not collected fees. ECCV shall invoice SEMSWA for its staff costs and expenses for maintenance and operations work performed on the above defined facilities through December 31, 2007, as estimated below. ECCV shall provide an accounting of requested reimbursements as described in Item 1, above. ECCV's estimate for costs to be reimbursed is

Through October 31, 2007	\$ 27,101.00
November 1, 2007 – December 31, 2007 (estimated)	\$ 5,000.00

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 stormwater improvements necessary for the accomplishment of SEMSWA's purposes. ECCV agrees to convey to SEMSWA all 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 and conveyances within the ECCV service area. The Parties agree to endeavor to complete all transfers in land interest and stormwater improvements prior to June 30, 2008. Wherever possible, such conveyance of real property shall be of fee title and not an easement. Conveyance of facilities shall be by bill of sale. It is agreed as part of the property transfer that ECCV shall reserve unto itself a blanket

easement over all of the property interests that it transfers for its historical uses of the properties and for future uses of the properties consistent with ECCV's public purposes. ECCV represents to the best of its knowledge, information and belief it is agreed that all current uses of the properties by ECCV do not interfere with SEMSWA's performing necessary activities associated with the MS4 permit or the management of the public stormwater facilities and conveyances within the ECCV service area and that any future uses of the properties shall not materially interfere with SEMSWA's MS4 permit activities or the management of the public stormwater facilities and conveyances within the ECCV service area. For all improvements proposed to be constructed by ECCV within the real property interests conveyed by ECCV to SEMSWA, ECCV shall obtain advanced written approval of SEMSWA for those improvements, which approval shall not be unreasonably withheld, conditioned or delayed and any request for approval which is not denied or approved within 45 days shall be deemed approved. SEMSWA agrees to reimburse ECCV for its costs and expenses related to the transfer of the real property described herein.

2. 2.—The lands and improvements to be transferred to SEMSWA are generally described as the regional stormwater detention and water quality ponds, and major drainageway conveyances within the West Toll Gate, East Toll Gate, Unnamed and Piney Creek drainage basins within the ECCV service area, as, shown on Exhibit B and listed on Exhibit C. In order for SEMSWA to accept such transfer ECCV 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 stormwater improvements to SEMSWA pursuant to and consistent with the terms of the Original IGA. ECCV shall cooperate and assist SEMSWA to the extent necessary to accomplish the conveyance.

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3. It is agreed between the Parties, notwithstanding anything herein to the contrary, that conveyance of the properties and facilities within the development referred to as "Copperleaf" in the Original IGA shall not be subject to the schedule of conveyances set out herein.

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ARTICLE IV

General Conditions and Obligations

1. SEMSWA agrees to assume the responsibility for the implementation of the non-standard MS4 stormwater management programs 1 through 56 within the ECCV service area once SEMSWA has either received ECCV's MS4 permit by transfer or been issued an MS4 permit in its own name, and ECCV has been released from its MS4 obligations. ECCV agrees to comply with SEMSWA's stormwater

regulations and management programs for MS4 Programs 1 through 6.

2. SEMSWA and ECCV 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. ECCV acknowledges that, unless modified by a 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 ECCV acknowledge that ECCV has or may secure phosphorous credits from the Cherry Creek Basin Water Quality Authority for specific stormwater facilities, and that such phosphorous credits are not transferred from ECCV to SEMSWA with the transfer of any permit, land or improvement. In accordance with the Original IGA, SEMSWA shall provide routine operation and maintenance for such stormwater facilities, and shall invoice ECCV for incremental routine maintenance costs associated with those phosphorous credits. In the event that additional capital improvements or significant maintenance improvements are necessary for the purpose of ECCV retaining or improving those phosphorous credits, ECCV 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. ECCV shall be responsible for all activities which are necessary to maintain the phosphorous credits, including monitoring and reporting requirements.
4. Until the transfer of all interests in land and stormwater improvements owned by ECCV and necessary for the accomplishment of SEMSWA's purposes have been completed; SEMSWA and ECCV agree that SEMSWA shall not have the responsibility or liability for ECCV's Municipal Operations within the ECCV service area, and will not take over any programs or measurable goals associated with ECCV's MS4 permit for Program 6 – Pollution Prevention/Good Housekeeping (PP/GH). Therefore, ECCV shall retain responsibility for its Municipal Operations until all properties owned by ECCV have been transferred to SEMSWA. Once those stormwater properties and MS4 permit are transferred to SEMSWA, ECCV 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 ECCV service area.
5. The portions of this Agreement which address the duties of the Parties prior to SEMSWA becoming the holder of the MS4 Stormwater permit within the service

areas of ECCV, will terminate when SEMSWA is issued the MS4 permit for the ECCV service area and has acquired title to the stormwater facilities and interests in properties owned by ECCV which are necessary to carry out SEMSWA's obligations under the MS4 permit.

6. This Agreement may be amended at any time with the mutual consent of the Parties~~parties~~. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing.

The Parties~~parties~~ to this Agreement have caused it to be executed this ____ day of December~~Nov~~, 2007, **nunc pro tunc** January 1, 2007.

SOUTHEAST METRO
STORMWATER AUTHORITY

By:

ATTEST:

| _____
By:

Approved as to form:

| _____
By: Edward Krisor, Esq.

EAST CHERRY CREEK VALLEY
WATER AND SANITATION DISTRICT

By: _____

ATTEST:

By:

Approved as to form:

By: