

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

RESOLUTION 10-32

(Authorization to Enter into a Transfer IGA with Arapahoe
County Water and Wastewater Authority for the Transfer of
ACWWA's NPDES MS4 Permit to SEMSWA)

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, Section 1.5(a) of the Original IGA requires SEMSWA to manage stormwater quality and comply, to the degree legally required, with provisions and permit requirements of National Pollutant Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System ("MS4") Stormwater Permits transferred to SEMSWA by the parties of the Original IGA as well as those obtained in the name of SEMSWA; and

WHEREAS, Arapahoe County Water and Wastewater Authority ("ACWWA") currently holds a Non-standard NPDES MS4 Stormwater Permit issued by the State of Colorado ("State") and intends to transfer the permit responsibilities to SEMSWA to be incorporated into the existing SEMSWA NPDES MS4 Permit issued by the State; and

WHEREAS, in order for SEMSWA to be able to hold the NPDES MS4 permit, it must be able to legally regulate 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, ACWWA and SEMSWA have determined that an additional agreement and coordination between ACWWA and SEMSWA is needed in order for SEMSWA to administer stormwater programs within the ACWWA Service Area in accordance with the MS4 Permit requirements and to manage other stormwater activities and, to that end, have prepared for SEMSWA Board of Director's consideration the Transfer IGA ("TIGA") between ACWWA and SEMSWA, attached hereto as Exhibit A; and

WHEREAS, in order for SEMSWA to carry out its administration of stormwater programs within the ACWWA Service Area, the TIGA provides for the assignment of ACWWA's Stormwater Quality MS4 Permit to SEMSWA, the transfer of its drainage properties to SEMSWA, and the assignment of the System Development Fee (SDF) Reimbursement Agreements by ACWWA to SEMSWA and the assumption by SEMSWA of the obligations of ACWWA contained in those Agreements; and

WHEREAS, the Board of Directors of ACWWA on August 11, 2010 approved the TIGA; and

WHEREAS, the State has final authority to approve the assigning of the ACWWA Non-standard MS4 Permit responsibilities to SEMSWA's existing MS4 Permit, and the timing of the final authorization by the State in regard to the permit assignment is unknown at this time; and

WHEREAS, SEMSWA has a goal of assigning the ACWWA MS4 Permit responsibilities to its existing State MS4 Stormwater Permit prior to December 31, 2010.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director of SEMSWA to execute, in behalf of SEMSWA, the attached TIGA and for SEMSWA to: a) complete the MS4 Permit assignment of ACWWA Non-standard MS4 Permit responsibilities to the existing SEMSWA MS4 Permit for the purposes of carrying out the MS4 Permit responsibilities within the ACWWA Service Area as defined in the TIGA, b) to pursue to completion the transfer of ACWWA's drainage properties to SEMSWA and c) to accept the assignment of the System Development Fee (SDF) Reimbursement Agreements by ACWWA to SEMSWA and to assume the obligations of ACWWA contained in those Agreements.

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

TRANSFER IGA

THIS TRANSFER Intergovernmental Agreement (“Transfer IGA”) is made by and between Arapahoe County Water and Wastewater Authority (“ACWWA”) and Southeast Metro Stormwater Authority (“SEMSWA”) to be effective as of September 1, 2010.

WHEREAS the Intergovernmental Agreement *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 29-1-204.1, C.R.S.* (“Formation IGA”) provides both for a method for transfer of ACWWA’s Non-standard Municipal Separate Storm Sewer System (MS4) Permit responsibilities and land improvements as well as for a waiver or partial waiver of the requirements for such transfers; and

WHEREAS, ACWWA desires to stop its stormwater activities and responsibilities as related to its existing Non-standard MS4 Permit and to transfer its Non-standard MS4 Permit responsibilities to SEMSWA; and

WHEREAS, SEMSWA pursuant to the terms of the IGA, is ready, willing, and able to accept the transfer of ACWWA’s Non-standard MS4 Permit responsibilities and to comply with all terms of the MS4 Permit as it applies to stormwater management; and

WHEREAS, prior agreements between ACWWA and SEMSWA have had the objective described above, but included very complicated procedures to accomplish those objectives; and

WHEREAS, ACWWA and SEMSWA desire to simplify such procedures pursuant to the terms of the Formation IGA contained in Section II. 1. (g) and have determined that it is in the best interest of both SEMSWA and ACWWA to do so.

NOW, THEREFORE, for valuable consideration, ACWWA and SEMSWA agree as follows:

1. As soon as possible after September 1, 2010, ACWWA will quit-claim and furnish a bill of sale to SEMSWA to convey all of ACWWA's right, title, and interest, if any, in and to all ACWWA stormwater properties, easements, and facilities ("Properties") in the Lone Tree Creek, Dove Creek, and Windmill Creek drainage areas within SEMSWA's boundaries ("Areas") shown on Exhibit A. In order to facilitate these conveyances, ACWWA will authorize its consultants, employees and prior employees to cooperate with SEMSWA, at SEMSWA's sole expense, to provide SEMSWA with the information identified in II. 1. (d)(iv) and (e)(ii) of the Formation IGA. In addition, SEMSWA will prepare and submit to ACWWA, again at SEMSWA's sole expense, the information necessary for ACWWA to make the conveyances referred to above. Conveyances of real property interests shall be made by legal descriptions which descriptions will be provided to ACWWA at SEMSWA's sole expense.

2. (a) A blanket permanent easement will be reserved over, under, across, and through all such Properties for the perpetual use by ACWWA, its successors and assigns, for any water and sewer purpose. Such blanket permanent easement for any water and sewer purpose

shall be exercised in such a way by ACWWA, its successors and assigns that such usage shall not unreasonably interfere with SEMSWA's use of the Properties.

(b) Further, ACWWA will reserve a temporary easement for stormwater purposes over, under, across, and through such Properties that shall terminate upon the completion of the transfer of ACWWA's Non-standard MS4 Permit responsibilities described in Section 3 hereof.

3. After the adoption of the Standard Operating Procedure (SOP) referred to in Paragraph 4 below and as soon as possible after September 1, 2010, ACWWA, at SEMSWA's expense, shall take whatever reasonable actions are requested in writing by SEMSWA to transfer ACWWA's Non-standard MS4 Permit responsibilities to SEMSWA as soon as reasonably possible.

4. (a) ACWWA will assist SEMSWA in the timely preparation of a SOP document for activities specific to ACWWA's municipal operations in order to comply with MS4 Permit Program 6, "Good Housekeeping/Pollution Prevention". Costs to address ACWWA's municipal operations in order to comply with MS4 Permit Program 6, Good Housekeeping/Pollution Prevention shall be the responsibility of ACWWA. Once the SOP has been prepared, ACWWA shall promptly adopt the same, fully comply with the SOP and, to the extent permitted by law, defend, indemnify and hold SEMSWA harmless from ACWWA's failure to do so.

(b) In addition, ACWWA will also be responsible, at its sole expense, for ACWWA's compliance with the requirements of Program 3, "Illicit Discharge, Detection

and Elimination” in regard to illicit connections and shall report, as required by SEMSWA, to SEMSWA all actions that it has taken in regard to any illicit connections that it has discovered. Also, ACWWA, to the extent permitted by law, shall defend, indemnify and hold SEMSWA harmless in regard to ACWWA’s responsibilities in regard to illicit connections.

(c) Nothing in this Transfer IGA shall require ACWWA to monitor or enforce compliance with or violations of said Program 6 or Program 3 by any third party or to defend, indemnify, or hold SEMSWA harmless for any acts or omissions of SEMSWA or any third party. However, at the request and sole expense of SEMSWA, ACWWA will assist SEMSWA with SEMSWA’s enforcement of violations of Program 6 and Program 3 within the boundaries of ACWWA.

5. As of the date ACWWA’s Non-standard MS4 Permit responsibilities are transferred to SEMSWA, SEMSWA shall be responsible for compliance with the terms and provisions of its MS4 Permit except as set forth in Paragraph 4 above, and will maintain the Properties in the manner required by SEMSWA’s MS4 Permit and any best management practices applicable to that MS4 Permit. Except as set forth in Paragraph 4 above, ACWWA will assist SEMSWA to comply with the MS4 Permit at no cost to ACWWA, and at the request of SEMSWA. If the conveyances of the Properties and the compliance with the provisions set forth in Sections 1 and 2 hereof have not been fully completed by the date that ACWWA’s Non-Standard MS4 Permit responsibilities have been transferred to SEMSWA, ACWWA hereby grants SEMSWA the right to enter all of the Properties not already conveyed to SEMSWA for

the purpose of compliance with SEMSWA's MS4 Permit. All other provisions of this *Transfer IGA* will apply to the non-conveyed Properties as if they have been conveyed to SEMSWA.

6. To the extent allowed by law, SEMSWA shall defend, indemnify, and hold harmless ACWWA from any and all liability, claims, and losses, including reasonable attorney's fees and costs, arising from any act or omission by SEMSWA relating to compliance with the SEMSWA's MS4 Permit, except as may arise from ACWWA's own negligence or any action or inaction ACWWA, its successors or assigns, may take when exercising ACWWA's blanket permanent easement referred to in Section 2 hereof.

7. On December 31, 2010, ACWWA shall assign and SEMSWA shall accept the assignment of, the "Reimbursement Agreements" listed in Exhibit B hereof and SEMSWA shall fully comply with the requirements contained therein. Pursuant to Section III. 5. (b) of the IGA, the "Jordan-Arapahoe Settlement" shall be considered as being included in the Reimbursement Agreements. Such performance by SEMSWA shall begin on December 31, 2010 irrespective of the date that both the transfer of the Properties from ACWWA to SEMSWA is completed and ACWWA's Non-standard MS4 Permit responsibilities are transferred to SEMSWA. However, ACWWA, prior to December 31, 2010, shall pay all payments due pursuant to the Reimbursement Agreements for the year 2010. Any System Development Fees ("SDFs") collected by ACWWA, prior to December 31, 2010, and not utilized by ACWWA for payment of its obligations under the Reimbursement Agreements or other proper stormwater purpose shall be promptly transferred to SEMSWA after December 31, 2010.

To the extent allowed by law, SEMSWA shall defend, indemnify, and hold harmless ACWWA from any and all liability, claims, and losses, including reasonable attorney's fees and costs, arising from any act or omission relating thereto, except as may arise from ACWWA's own negligence. ACWWA represents that to the best of its knowledge and belief, the current balance due for each Reimbursement Agreement is shown on Exhibit B.

8. On December 31, 2010, ACWWA will cease charging and collecting its SDFs and SEMSWA may begin charging and collecting SEMSWA's SDFs in the Areas. The method of calculation and the amount of those SEMSWA SDFs shall be determined by SEMSWA in a manner that complies with law.

9. It is the intent of SEMSWA and ACWWA that by December 31, 2010, SEMSWA will be the holder of a Standard MS4 Permit that includes ACWWA and, except as provided in ACWWA's reservations under Section 2 hereof, SEMSWA will have complete dominion and control over the Properties in the Areas and that ACWWA shall have none.

10. (a) SEMSWA acknowledges that ACWWA has or may secure phosphorous credits from the Cherry Creek Basin Water Quality Authority for specific stormwater facilities.

(b) ACWWA may elect not to make improvements for phosphorus credits. If additional capital improvements or significant maintenance improvements are necessary for the sole or primary purpose of ACWWA retaining or improving future phosphorous credits, then ACWWA may pay for the cost and may complete such improvements.

(c) If ACWWA elects to proceed with such improvements, then ACWWA shall be required to submit the design and construction plans to SEMSWA and obtain SEMSWA's written approval for such improvements within the drainage facility and associated permits for said improvements. SEMSWA may deny its approval only if such improvements would have a substantial negative impact on the drainage, flood control or water quality components of SEMSWA's facilities or would result in a violation of SEMSWA's MS4 permit. ACWWA shall have the right, but not the obligation, to mitigate any such substantial negative impacts at ACWWA expense, and if ACWWA exercises such right, SEMSWA shall provide said written approval for the improvements. ACWWA may obtain an independent engineer's study of such substantial negative impacts alleged by SEMSWA, and if such engineer disagrees with SEMSWA, ACWWA and SEMSWA shall submit the matter to a mediator. The mediator shall be selected by agreement of the SEMSWA and ACWWA managers. The cost of the mediation shall be shared equally by ACWWA and SEMSWA. The decision of the mediator shall be final; however, ACWWA may determine not to proceed with the project following the mediator's decision.

(d) ACWWA shall be responsible for all activities which are necessary to maintain the phosphorous credits, including monitoring and reporting requirements.

(e) If SEMSWA plans to construct, reconstruct, operate, maintain, remove, or replace a drainage facility in a manner that would substantially negatively impact any ACWWA phosphorus credits ("Activity"), then SEMSWA shall notify ACWWA of the Activity and give ACWWA the opportunity, but not the obligation, at ACWWA expense, to modify or assist with the plans or the Activity to mitigate the substantial negative impact.

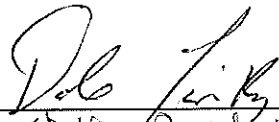
11. In the event of a conflict between this Transfer IGA and any other agreement between ACWWA and SEMSWA, this Transfer IGA shall control except as specifically noted herein. It is the intent of ACWWA and SEMSWA that this Transfer IGA simplify the terms of the IGA dated September 19, 2006, as noted herein.

IN WITNESS WHEREOF, SEMSWA and ACWWA have approved this Agreement to be effective on the date first set forth above.

SOUTHEAST METRO
STORMWATER AUTHORITY

By: _____
Its: _____

ARAPAHOE COUNTY WATER AND
WASTEWATER AUTHORITY

By: 
Its: 1st Vice President