

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

RESOLUTION 13-15

Adoption of an Amendment to Stormwater Facility Construction and Reimbursement Agreement
Between Sunborne XVI, Ltd. and Arapahoe County Water and Wastewater Authority, Assigned to
Southeast Metro Stormwater Authority

WHEREAS, the Southeast Metro Stormwater Authority (SEMSWA) was formed by Intergovernmental Agreement to plan, fund, construct, acquire, operate, and maintain drainage and flood control facilities as well as to manage stormwater quality and comply with requirements of the National Pollutant Discharge Elimination System (NPDES) within its boundaries; and

WHEREAS, Sunborne XVI, Ltd. (Sunborne) and Arapahoe County Water and Wastewater Authority (ACWWA) entered into a *Stormwater Facility Construction And Reimbursement Agreement Between Sunborne XVI, Ltd. And Arapahoe County Water and Wastewater Authority* (Agreement) on May 17, 2010; and

WHEREAS, in Paragraph 15 of that Agreement, Sunborne and ACWWA agreed that “ACWWA may assign and SEMSWA may accept the assignment of this Agreement, all subject to the terms and conditions of the Formation IGA; and

WHEREAS, the SEMSWA Board of Directors agreed on August 25, 2010, by way of Resolution 10-32, that: “On December 31, 2010, ACWWA shall assign and SEMSWA shall accept the assignment of the Reimbursement Agreements listed on Exhibit B thereof, and SEMSWA shall fully comply with the requirements contained therein”; and, the Agreement was contained in Exhibit B; and

WHEREAS, the above referenced assignment and acceptance has taken place and SEMSWA is now obligated to perform the obligations of ACWWA under that Agreement, and ACWWA has, pursuant to that same assignment and acceptance, ceased charging and collecting any related stormwater fees; and

WHEREAS, the cost of Pond L-1 East has been determined and agreed upon between Sunborne and SEMSWA to be \$780,000.00; and

WHEREAS, SEMSWA has paid Sunborne a total of \$10,097.24, and since May 17, 2010 there has been no waiver or payment of any System Development Fee (SDF) and/or Excess Capacity Fee (ECF) that could have been charged in regard to the property described in Exhibit “A” of the Agreement that Sunborne is the leaseholder of (Property); and

WHEREAS, Sunborne has requested that the Agreement be amended to eliminate the SDF and/or ECF credits in regard to the Property and to pay Sunborne, pursuant to the terms of the Agreement, the current reimbursement sum of \$769,902.76 (Reimbursement Sum).

NOW, THEREFORE, BE IT RESOLVED THAT The Board of Directors of the Southeast Metro Stormwater Authority, acting by and through the SEMSWA Water Activity Enterprise,

1. Approves the Amendment to Stormwater Facility Construction And Reimbursement Agreement attached hereto, as Exhibit A.
2. Authorizes the Executive Director to continue distributing SDF and/or ECFs collected for the purpose of repaying the outstanding reimbursement agreements, as has been SEMSWAs custom, or as modified by the Board of Directors in the future.
3. Authorizes the Chairperson to execute said Amendment to Stormwater Facility Construction And Reimbursement Agreement.

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Date: _____

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:

Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor