

FIRST AMENDMENT TO  
IMPLEMENTING INTERGOVERNMENTAL AGREEMENT

THIS FIRST AMENDMENT TO IMPLEMENTING INTERGOVERNMENTAL AGREEMENT ("Amendment") is entered into by and between ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY ("ACWWA") and the SOUTHEAST METRO STORMWATER AUTHORITY ("SEMSWA"), hereinafter collectively referred to as the "Parties."

WHEREAS, the Parties entered into an Implementing Intergovernmental Agreement for transition of stormwater management responsibilities from ACWWA to SEMSWA ("Implementing IGA"); and

WHEREA, the ACWWA Board of Directors approved the Implementing IGA with a condition that an additional agreement be entered into between ACWWA and SEMSWA concerning certain matters and this Amendment is intended to fulfill the condition required by ACWWA.

NOW, THEREFORE, the Parties agree as follows:

1.a. Notwithstanding any provision of the Implementing IGA to the contrary, ACWWA shall retain \$75,000 from existing SDF revenues (that would otherwise have been transferred to SEMSWA) for ACWWA to use for the design, engineering, and construction of Phase 1 of Pond W-4. SEMSWA shall cooperate with ACWWA in the completion of Phase 1 of Pond W-4 and shall not unreasonably deny or delay any required permit therefor.

b. SEMSWA shall use objective criteria to determine the capacity and use of Phase 1 of Pond W-4 to reasonably maximize the use of Phase 1 of Pond W-4 for existing and future stormwater flows. It is the intent of ACWWA and SEMSWA to cooperate with each other to allow development that will fully utilize Phase 1 of Pond W-4.

c. SEMSWA shall design and complete future phases of Pond W-4 within a reasonable time, such time to: (a) be compatible with development plans known to SEMSWA for all or part of the property that drains to future phases of Pond W-4, (b) be suitable for such property owners to obtain land development approvals and permits, and (c) be subject to the availability of SEMSWA funds for such purpose. If SEMSWA funds are not reasonably available for such purpose at such time, SEMSWA shall use best efforts to enter into an agreement to allow funding or design and construction of future phases of Pond W-4 by an entity other than SEMSWA, with SEMSWA to reimburse such entity from available revenue, the payment of which may be subject to annual budget and appropriations.

d. Upon the completion of Phase 1 of Pond W-4, SEMSWA shall accept ownership and operation and maintenance thereof in accordance with SEMSWA's generally applicable rules and regulations——SEMSWA shall complete the design and construction of Phase 1 of Pond W4 by August 1, 2008.

2. SEMSWA shall design and complete Pond D1 within a reasonable time, such time to: (a) be compatible with development plans known to SEMSWA for all or part of the property that drains to Pond D1, (b) be suitable for such property owners to obtain land development approvals and permits, and (c) be subject to the availability of SEMSWA funds for such purpose. If SEMSWA funds are not reasonably available for such purpose at such time, SEMSWA shall use best efforts to enter into an agreement to allow funding or design and construction of Phase 1 (or any other applicable phase) of Pond D1 by an entity other than SEMSWA, with SEMSWA to reimburse such entity from available revenue, the payment of which may be subject to annual budget and appropriations.

3. SEMSWA shall design and complete Pond D2 within a reasonable time, such time to: (a) be compatible with development plans known to SEMSWA for all or part of the property that drains to Pond D2, (b) be suitable for such property owners to obtain land development approvals and permits, and (c) be subject to the availability of SEMSWA funds for such purpose. If SEMSWA funds are not reasonably available for such purpose at such time, SEMSWA shall use best efforts to enter into an agreement to allow funding or design and construction of Phase 1 (or any other applicable phase) of Pond D2 by an entity other than SEMSWA, with SEMSWA to reimburse such entity from available revenues, the payment of which may be subject to annual budget and appropriations.

4. Under the Implementing IGA, ACWWA is to continue to perform Program 6 responsibilities under ~~the~~ MS4 permit that ACWWA intends to transfer to SEMSWA until the transfer is complete. ACWWA shall invoice SEMSWA for the reasonable costs of performing such Program 6 responsibilities under such MS4 permit. SEMSWA shall pay such invoices within 30 days of their presentment by ACWWA from such funds as SEMSWA may have available for such purpose. To the extent that ACWWA may have Program 6 responsibilities that arise from requirements other than those under such MS4 permit, ACWWA will pay the costs of compliance with such other responsibilities.

5. ~~Third Party Beneficiary. The terms and provisions of this Amendment shall inure to the benefit of and be binding upon the parties hereto. SEMSWA and ACWWA acknowledge that Dove Valley Business Park Associates, Ltd. is an express third party beneficiary to this Agreement and the terms and provisions hereof shall inure to the benefit of Dove Valley Business Park Associates, Ltd. Dove Valley Business Park Associates, Ltd. shall have all rights to enforce the provisions and terms of this Amendment against SEMSWA, including but not limited to: injunctive relief, mandamus, specific performance and damages.~~

6. ~~Enforcement.~~ The Parties acknowledge and agree that this Amendment and the Implementing IGA may be enforced in law or in equity by decree of specific performance, damages, injunction, or any other legal or equitable relief as may be available to either party subject to the provisions of the ~~laws~~statutes of the State of Colorado. The Parties agree that in any action to enforce any provision of this Amendment or the Implementing IGA the prevailing party shall be entitled to recover its attorney fees from the other.

This Amendment shall be effective as of the effective date of the Implementing IGA.

ARAPAHOE COUNTY WATER AND  
WASTEWATER AUTHORITY

By \_\_\_\_\_

SOUTHEAST METRO STORMWATER  
AUTHORITY

By \_\_\_\_\_